



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
www.topeka.org  
February 9, 2021

---

DATE: February 9, 2021  
CONTACT PERSON: Brent Trout, City Manager DOCUMENT #: 49243  
SECOND PARTY/SUBJECT: Friends of the Topeka Zoo PROJECT #:  
CATEGORY/SUBCATEGORY 006 Communication / 005 Other  
CIP PROJECT: No  
ACTION OF COUNCIL: Discussion 02-02-21. JOURNAL #: 2021  
Approved on 2/9/2021 PAGE #: 58

---

**DOCUMENT DESCRIPTION:**

APPROVAL of the terms and conditions of a License and Management Agreement with the Friends of Topeka Zoo ("FOTZ") that will provide for the operation and management of the Topeka Zoo and Conservation Center by FOTZ as part of a proposed Public Private Partnership.

**Voting Requirement:** At least six (6) votes of the Governing Body is required.

**VOTING REQUIREMENTS:**

At least six (6) votes of the Governing Body is required.

**POLICY ISSUE:**

Whether to approve the terms and conditions of a License and Management Agreement with FOTZ, which will provide for the operation and management of the Topeka Zoo and Conservation Center by FOTZ as part of a proposed public private partnership.

**STAFF RECOMMENDATION:**

Entering into a public private partnership with FOTZ to operate and manage the Topeka Zoo and Conservation Center is a policy decision for the Governing Body.

**BACKGROUND:**

The subject of Zoo governance has been discussed during multiple Governing Body meetings: June 4, 2019; December 3, 2019; March 2, 2020; October 6 and 13, 2020; November 10, 2020 and December 1 and 8, 2020. At the December 8th meeting, the Governing Body directed the City Manager to pursue a public private partnership with FOTZ and bring forward a License and corresponding Management Agreement for its consideration.

**BUDGETARY IMPACT:**

The current budget impact is unknown at this time.

**SOURCE OF FUNDING:**

This is under review.

**ATTACHMENTS:**

**Description**

License and Management Agreement Overview REVISED as of Feb 8, 2021  
Revisions to Proposed License and Management Agreement Considered by the GB on Feb 2, 2020 (REVISED as of Feb 8, 2021)  
License and Management Agreement (Clean Version) REVISED as Feb 8, 2021  
Exhibit A - (Employee Services Agreement - Jan 21, 2021)  
Exhibit B - (Loaned Animals as of Feb 4, 2021)  
Exhibit C - (Aerial Map of Topeka Zoo and Conservation Center)  
Exhibit D - (Aerial Map of Topeka Zoological Park)  
Exhibit E - (Zoo Animals as of Feb 4, 2021)  
Exhibit G (FOTZ Master Plan) Updated Feb 9, 2021  
Exhibit F - (Zoo Personal Property as of Feb 4, 2021)  
Exhibit H - (Gage Park Deed)  
Exhibit I - (License Agreement between the City and Shawnee County - May 13, 2013)  
Exhibit J - (Aerial Map of Area Maintained and Improved in Accordance with Terms of Exhibit I)  
Exhibit K - (Contracts, Permits, Licenses, etc. as of Feb 4, 2021)  
Question/Answer Summary (Received through Feb 9, 2021)  
Question/Answer Summary (Received through Feb 4, 2021)  
Dec 8, 2020 Financial Services Memo (Includes FOTZ Response Summary Document)  
Columbia Capital Memo - Financial Pro Forma - Dec 8, 2020  
Zoo Operating Cost Focus - Pro-Forma  
Question/Answer Summary (Received through Feb 1, 2021)  
FOTZ Resolution Feb 8, 2021



**CONTRACT NO. 49243**

**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 License and Management Agreement is made effective this 9<sup>th</sup> day of February, 2021, ("Effective Date"), by and between the City of Topeka, Kansas, ("the CITY"), a municipal corporation, and Friends of the Topeka Zoo, ("FOTZ"), a Kansas non-profit corporation.

**RECITALS**

WHEREAS, the City owns and operates the Topeka Zoo and Conservation Center ("Zoo"); and

WHEREAS, FOTZ is a non-profit corporation organized and existing under Kansas law whose mission includes but is not limited to the carrying on of charitable, benevolent, social service, educational and public benefit work in the community for the development and improvement of a Zoo in the City of Topeka and Shawnee County, Kansas, and improving the educational and conservation influence of zoos with children, adults and the general public; and

WHEREAS, the City and FOTZ have been working together to promote and support the operation and development of the Zoo for over fifty-five (55) years and are both dedicated to the advancement of the Zoo and support the stated mission of FOTZ; and

WHEREAS, the City and FOTZ have entered into the following agreements in furtherance of their relationship and the mission of FOTZ:

- A certain Topeka Zoo Support Agreement, City of Topeka Contract No. 45959, dated May 5, 2017, which memorializes the terms and nature of support provided by FOTZ to the Zoo; and
- A certain Education Support and Guest Services Agreement, City of Topeka Contract No. 47578, dated March 7, 2019, through which FOTZ provides guest services and educational support to the Zoo; and
- A certain Development Agreement, City of Topeka Contract No. 47234, dated October 22, 2018, through which terms and conditions are provided in relation to the funding and development of the "Kay's Garden and Event Center" Exhibit at the Topeka Zoo, which includes an Asian Garden and a Gallery and Event Center.

WHEREAS, the City and FOTZ recognize that the Zoo is a vital cultural and recreational community asset and wish to enhance the Zoo's contributions to the community in the areas of recreation, education and conservation; and

WHEREAS, the City and FOTZ are committed to the ongoing development, support and enrichment of the Zoo and share the goal of providing a top flight zoo for a city the size of Topeka, for its citizens, for the citizens of its neighbor communities and for those who visit Topeka; and

WHEREAS, the City and FOTZ pledge to utilize their combined experience as set forth herein, to help ensure the continued success and growth of the Zoo; and

WHEREAS, the City has determined that it is in the best interest of the City and the citizens of Topeka to enter into an agreement with FOTZ related to the operation and management of the Zoo under the terms and conditions set forth in this License and Management Agreement (the "Agreement").

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

## **ARTICLE ONE**

### **RECITALS; DEFINITIONS; OTHER AGREEMENTS**

**1.1 Recitals.** The Recitals set forth above are incorporated and made part of this License and Management Agreement for all purposes.

**1.2 Definitions.** Defined terms are indicated by initial capital letters. Defined terms shall have the meanings set forth herein and the following terms are more specifically set forth below:

(a) "*Applicable Laws*" means all federal, state and local laws, rules and regulations existing on the Effective Date, or later enacted or amended, which are applicable to the Zoo or the Parties.

(b) "*AZA*" means the Association of Zoos and Aquariums.

(c) "*Capital Project*" means any real property and/or physical improvements, maintenance and repairs to the Zoo Premises that exceed the City's capitalization threshold. If funding is from bond proceeds, the Capital Project must be included as part of the project description set forth in the closing documents.

(i) Capital Infrastructure reflects Capital Projects funded primarily through funds raised by FOTZ during the time within which this Agreement is in effect.

(ii) Capital Contributions reflect the portion of the License and Management Fee the City agrees to pay FOTZ to fund Capital Projects, as more particularly set out in Article One subsection (o)(ii).



- (d) “City” means City of Topeka, Kansas.
- (e) “City Directors” means the <insert #> voting members of FOTZ’s Board of Directors as specifically provided for in Article Eleven.
- (f) “County” means Shawnee County, Kansas.
- (g) “Countywide Retailers’ Sales Tax” means the one-half cent sales tax levied in Shawnee County, beginning on January 1, 2017 and expiring on December 31, 2031, pursuant to the affirmative vote of the citizens of Shawnee County on November 4, 2014, as memorialized in the Interlocal Agreement between the Board of County Commissioners of the County of Shawnee, Kansas and the City of Topeka, Kansas, dated April 19, 2016 (City of Topeka Contract No. 44926).
- (h) “Default” means any material breach by a Party of its obligations under this Agreement, which breach (i) has a material effect on the day-to-day operations of the Zoo; and (ii) continues without being cured for sixty (60) days after written notice of the breach from the other Party.
- (i) “Effective Date” means 12:00 a.m. on April 3, 2021.
- (j) “Employee Services Agreement” means an agreement between the City and FOTZ, which is attached hereto as **Exhibit A** and incorporated herein by reference.
- (k) “Expiration Date” means 11:59 p.m. on December 31, 2035.
- (l) “FOTZ” means the Friends of the Topeka Zoo, a non-profit corporation organized under the laws of the State of Kansas.
- (m) “Force Majeure Event” means events beyond the reasonable control of the Party such as, but not limited to: insurrection; strikes; labor shortages; market conditions; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; epidemics; pandemics; quarantine restrictions; freight embargoes; unusually severe weather; government orders causing delays or prohibitions; administrative and permitting delays; or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform.
- (n) “Governing Body” means the Mayor and City Council Members of the City of Topeka, Kansas.
- (o) “License and Management Fee” means:
- (i) the annual payment made by the City to FOTZ, in quarterly installments, to support the daily operations of the Zoo as more specifically set forth in Article Seven, Section 7.5 herein; and

(ii) the Capital Contributions made by the City to FOTZ to fund Capital Projects in the amount and manner, and within the time frame, more specifically described in Article Eight herein.

(p) "*Loaned Animals*" means all animals that are exhibited, housed or otherwise kept or cared for, which are under loan from other institutions or governmental entities or persons; or which are on loan to other institutions or governmental entities in accordance with applicable AZA procedures. See **Exhibit B**. "Loaned Animals" shall not include "Zoo Animals."

(q) "*Parties*" means, collectively, the City and FOTZ.

(r) "*Termination*" means the date upon which this Agreement ends upon (i) the Expiration Date; (ii) the end of a mutually-agreed upon renewal period; or (iii) an act identified in Section 17.1 or 17.2.

(s) "*Topeka Zoo and Conservation Center*" means a specified area of approximately 32 acres located within the Topeka Zoological Park. A map showing the boundaries of the Topeka Zoo and Conservation Center is attached hereto as **Exhibit C** and incorporated herein by reference.

(t) "*Topeka Zoological Park*" means a 59-acre parcel of property located in Gage Park (635 SW Gage Boulevard, Topeka, Kansas); and within which the County has been granted a revocable license to use and maintain all amenities, with the exception of the Topeka Zoo and Conservation Center, pursuant to City of Topeka Contract No. 42895, dated May 13, 2013. A map, with a corresponding legal description, of the Topeka Zoological Park is attached hereto as **Exhibit D** and incorporated herein by reference.

(u) "*USDA*" means the United States Department of Agriculture.

(v) "*Zoo*" means the combination of all of the assets related to the Topeka Zoo and Conservation Center, operated as a going concern, including, without limitation, the Zoo Premises and Zoo Collection.

(w) "*Zoo Animals*" means all animals that are currently, and will in the future be, exhibited, housed or otherwise kept or cared for on the Zoo Premises, which shall become the sole property of FOTZ. See **Exhibit E**. "Zoo Animals" shall not include "Loaned Animals."

(x) "*Zoo Collection*" means Zoo Animals, Loaned Animals and Zoo Personal Property.

(y) "*Zoo Employees*" means individuals who are employed by FOTZ; and/or individuals who are employed by the City and have been assigned to work at the Zoo.

(z) "*Zoo Liaison*" means the City Manager, or the particular staff member(s) he or she designates to serve as a liaison between the City and FOTZ on particular matters related to this Agreement.



(aa) “Zoo Personal Property” means the items listed on *Exhibit F*, including, but not limited to, vehicles, equipment, furniture, tools, supplies, merchandise, trade names, trademarks, intellectual property and all other tangible and intangible personal property acquired or developed by the City on or prior to the Effective Date for the exclusive use at or by the Zoo, generally consistent with the City’s Asset Management Policy. “Zoo Personal Property” specifically excludes non-transferable licenses, all City trademarks (including the City logo) and any software licenses issued to the City that are not explicitly assigned to FOTZ as part of this transaction.

(bb) “Zoo Premises” or “Premises” means the Topeka Zoo and Conservation Center, together with all buildings, structures, animal habitats, fixtures, improvements, appliances, grounds, paths, walkways, fencing, driveways and parking lots located in or around such Premises, or used in connection therewith, that were in existence as of the Effective Date, or constructed or installed prior to Termination of this Agreement, located within the Topeka Zoological Park.

(cc) “Zoo Records” means all books and records pertaining to and maintained at the Zoo as of the Effective Date; but not including human resources or personnel records, or records maintained by and belonging to FOTZ prior to the effective date of this Agreement.

### **1.3 Existing Agreements between the Parties.**

(a) The “Employee Services Agreement” between the City and FOTZ related to former and current employees of the City, which is more specifically referenced in Article Six of this Agreement, is hereby incorporated and made part of this Agreement for all purposes.

(b) The “Guest Services Agreement” between the City and FOTZ (City of Topeka Contract No. 47578), is hereby null and void upon the Effective Date of this Agreement.

(c) The “Annual Support Agreement” between the City and FOTZ (City of Topeka Contract No. 45959), is hereby null and void upon the Effective Date of this Agreement.

(d) The “Development Agreement” between the City and FOTZ (City of Topeka Contract No. 47234), is hereby incorporated into this Agreement by reference and shall remain in effect until FOTZ has fully reimbursed the City for debt service on the Kay’s Garden and Event Center Bonds (2018B PAB GO Bonds or bonds that subsequently refund the 2018B PAB bonds).

**1.4 Transfer of Specified Contracts and Documents.** The Parties will endeavor to transfer and assign all contracts, permits, registrations, certifications, memberships, accreditations, licenses and any other applicable documents or instruments in accordance with Section 10.4.

## **ARTICLE TWO**



## NAME; ENGAGEMENT; OBLIGATIONS

**Section 2.1 Name.** The name of the Zoo shall remain the "Topeka Zoo and Conservation Center" from the Effective Date through Termination of this Agreement, unless both parties mutually agree to a name change in writing.

**Section 2.2 Scope of Engagement.** The City hereby engages FOTZ to be the sole and exclusive manager and operator of the Zoo from the Effective Date through Termination of this Agreement, during which FOTZ will own the Zoo Collection, with the exception of Loaned Animals. FOTZ, hereby agrees to manage and operate the Zoo from the Effective Date through Termination of this Agreement without any further duty or obligation on the part of the City to compensate FOTZ for such services beyond the consideration required herein. As the sole and exclusive manager and operator of the Zoo, FOTZ shall have exclusive authority over the management and operations of the Zoo and all activities therein; provided, however, that FOTZ shall adhere to all of the terms and conditions set forth in this Agreement.

**Section 2.3 Management and Operation.** FOTZ shall manage, operate and maintain the Zoo consistent with AZA accreditation standards, and pay all costs associated therewith in accordance with the terms and conditions set forth in this Agreement and the following minimum standards:

(a) Days/Hours of Operation. Except for a Force Majeure Event, the Zoo shall remain open on a yearly calendar basis generally consistent with the opening and closing dates observed during the five (5) years immediately preceding the Effective Date of this Agreement. FOTZ shall have authority to increase the days and hours during which the Zoo is open to the public; but shall not, absent agreement from the City, reduce the days and hours of operation.

(b) Management of Zoo Collection. FOTZ will provide for the care and maintenance of the Zoo Collection in accordance with Applicable Laws, as well as Article Five, Section 5.2 herein.

(c) Public Services. FOTZ will provide visitor services to members of the public visiting the Zoo which are normal and customary within the zoo industry, including, but not limited to, admissions, concessions, attractions and public safety.

(d) Safety. FOTZ will maintain, develop and implement policies and procedures to reasonably protect Zoo Employees and members of the public from injury or physical harm.

**Section 2.4 Master Plan.** The Parties mutually agree that a viable Master Plan is an important component and tool for the continued growth and improvement of the Zoo. FOTZ has developed a Master Plan, which is attached hereto as **Exhibit G**, and FOTZ shall continue to pursue implementation of the components contained in the Master Plan in consultation with the City's Planning and Development Director, as the same may be amended by FOTZ from time to time.

## ARTICLE THREE TERM; OPTION TO RENEW



This Agreement shall be for a period of time commencing on the Effective Date and extending through the Expiration Date, unless earlier terminated as set forth in Sections 17.1 and 17.2 of this Agreement; provided, however, that the Parties shall have the mutual option to renew this Agreement for two (2) additional ten (10) year periods. Any Party wishing to exercise the option to renew this Agreement must provide the other Party with written notice of its intent to renew, accompanied by a proposed new schedule for operating and capital maintenance amounts, at least one (1) year prior to the Expiration Date or end of the initial ten-year renewal period, whichever is applicable, for purposes of providing sufficient time within which to review the schedule provided prior to any mutually agreed upon decision related to renewal. It is the intent of the Parties that the schedule outlining the renewal amounts be priced with the final year of this Agreement (i) adjusted by the then-prevailing annual inflation rate; and (ii) reduced by the level of funds raised or other contribution streams secured by FOTZ (replacement revenue) that materialized during the course of the Agreement.

## **ARTICLE FOUR PREMISES**

**Section 4.1    Title; Ownership of Premises.** The City is and shall remain the fee simple owner of the Zoo Premises throughout the duration of this Agreement. FOTZ has no authority to and shall not (i) lease, encumber, pledge, mortgage or otherwise subject the Premises to any lien, security interest or other charge, or otherwise cloud the title of the Zoo Premises; or (ii) assert any lien on, or claim against, the Zoo Premises to secure the performance of the City's obligations hereunder.

**Section 4.2    Deed Restrictions; Licenses.**

(a)    Deed Restrictions. The real estate deed of conveyance dated May 31, 1899, between the City and Louisa H. Gage, et al., which includes the Zoo Premises, contains certain restrictions that the City must adhere to. See *Exhibit H*.

(b)    License for Topeka Zoological Park; Exception. Pursuant to a license agreement entered into between the City and the County on May 13, 2013 (City of Topeka Contract No. 42895), the City provided the County with a revocable license to use and maintain all of the amenities within the 59-acre Topeka Zoological Park with the exception of the Topeka Zoo and Conservation Center. See *Exhibit I*.

(c)    License for Topeka Zoo and Conservation Center. In order to adhere to the deed restrictions set forth in subsection (a) of this Section 4.2, this Agreement grants to FOTZ a revocable license, pursuant to which FOTZ shall be entitled to manage, operate, use and maintain the "Topeka Zoo and Conservation Center."

**Section 4.3    Use of Premises.** FOTZ acknowledges and agrees that the Zoo Premises shall only be used for the management and operation of a Zoo, which may include educational programs consistent with the purposes and intent of this Agreement, as well as use of the Premises for entertainment, fundraising or similar uses as a source of revenue and support for the Zoo and/or FOTZ; provided, however, such activities and uses are consistent with Applicable Laws. FOTZ



shall not use or permit the Premises to be used for any other purpose without prior written consent of the City.

**Section 4.4 Expansion of Zoo Premises.** FOTZ acknowledges that the City has issued a license to Shawnee County, Kansas to use, maintain and improve certain amenities located within the Topeka Zoological Park as set forth in the contract referenced in Section 4.2(b) above. This contract provides that the City will make a reasonable effort to provide at least twelve (12) months' prior notice to Shawnee County of the City's intent to expand the existing fenced perimeter. Accordingly, in the event FOTZ desires to expand the existing fenced perimeter, FOTZ shall consult with the City Manager at least eighteen (18) months in advance of the desired expansion; provided, however, that the foregoing shall not preclude or otherwise limit the City Manager, FOTZ and Shawnee County from mutually agreeing to expansion on an expedited basis. Notwithstanding any other term of this Section 4.4, no expansion shall occur unless the Governing Body approves such expansion.

**Section 4.5 City-Sponsored Events.** During each calendar year, the City shall be entitled to utilize the Zoo Premises for up to two (2) City-sponsored events free of charge. The dates and particular conditions associated with such events shall be mutually agreed upon by the Parties. FOTZ will not unreasonably withhold its agreement related to the date and time of such events; provided, however, that the scheduling of such events shall be subject to, and shall not supersede, any events previously scheduled by FOTZ and any dates reserved by FOTZ for future events.

**Section 4.6 Alcohol Sales and Consumption.**

(a) Alcohol Sales. FOTZ may apply to the Kansas Department of Revenue/Alcoholic Beverage Control for a license to sell alcoholic liquor ("alcohol") for consumption on the Zoo Premises and duly sell alcoholic beverages for consumption on the Zoo Premises; provided, however, that at all times when alcohol is being sold or consumed, FOTZ shall comply with and ensure compliance with the Kansas Liquor Control Act and all administrative regulations promulgated by the Kansas Department of Revenue/Alcoholic Beverage Control and shall, further, be subject to the following conditions:

(1) FOTZ shall not sell alcoholic beverages during any period in which it does not have an active license in good standing with the Kansas Department of Revenue/Alcoholic Beverage Control permitting such sales.; and

(2) FOTZ shall not sell alcoholic beverages during any period that FOTZ fails to maintain the insurance as required in Article Fourteen.

(b) FOTZ Subsidiary. The Parties acknowledge that a wholly-owned subsidiary of FOTZ has obtained a license from the Kansas Department of Revenue/Alcoholic Beverage Control to sell alcohol and that FOTZ initially intends to sell alcoholic beverages through this wholly-owned subsidiary and the City approves of the wholly-owned subsidiary subject to compliance with this Section 4.6. Notwithstanding, FOTZ shall remain responsible to the City for compliance with Section 4.6.



(c) Sales by Vendors or Contractors. FOTZ shall remain responsible to the City for compliance with this Section 4.6 even if services are provided by outside vendors or contractors with their own liquor license.

#### **Section 4.7 Maintenance Associated with General Operations.**

(a) Zoo Premises; Routine Maintenance. FOTZ shall be responsible for all routine, day-to-day maintenance, periodic maintenance and preventative maintenance, including, but not limited to: janitorial services, window washing, pest control, general upkeep, repair, replacement and upgrades, including repair to any netting, general landscaping, including regular tree trimming, landscape maintenance and also including all necessary or prudent maintenance on mechanical systems such as heating, ventilation, cooling, electrical, plumbing, irrigation and lighting, associated with the Zoo Premises. Such maintenance work will be completed by FOTZ in a timely, workmanlike manner. Damage caused by FOTZ, FOTZ's vendors or any other contracted service while performing maintenance work shall be the sole responsibility of FOTZ. Routine maintenance shall relate to projects that do not qualify as a Capital Project pursuant to Section 1.2(c).

(b) Trash Removal. FOTZ shall be responsible for maintaining the Zoo Premises in a clean and sightly condition, free from any trash, litter and debris.

(c) Major Tree Maintenance. All major tree maintenance and repair required within and around the Zoo Premises shall be the sole responsibility of FOTZ. Any such work shall be conducted in a timely, workmanlike manner.

(d) Snow and Ice Removal.

(1) FOTZ. Except as provided in Section 4.7(d)(2) below, snow and ice removal required within and around the Topeka Zoo and Conservation Center shall be the sole responsibility of FOTZ.

(2) County. Pursuant to a license agreement entered into between the City and the County on May 13, 2013 (City of Topeka Contract No. 42895), the City provided the County with a revocable license to maintain and improve streets, roadways, parking lots and sidewalks associated with or attenuated to specified amenities within the Topeka Zoological Park; which includes the parking area(s) shown on the attached ***Exhibit J***. The County is responsible for snow and ice removal associated with these parking area(s) pursuant to Section 2(K) on page 3 and subsection (C) on page 4 of Contract No. 42895.

(e) Zoo Personal Property; Maintenance and Replacement. FOTZ shall maintain all Zoo Personal Property in good condition and repair. FOTZ shall not be responsible for any diminution in value of such Zoo Personal Property due to normal, customary and expected wear and tear. FOTZ shall replace Zoo Personal Property with items of similar quality in the event a particular piece of property becomes inoperable or unusable and, in FOTZ's reasonable discretion, is necessary for operation of the Zoo.



(f) Reimbursement. In the event that it becomes necessary for the City to undertake any maintenance-related activities for the Zoo Premises pursuant to this Section 4.7, after notice and opportunity to cure as required by Section 17.3(b) herein, the City may perform such maintenance and FOTZ shall reimburse the City for the costs and expenses of such maintenance.

(g) Records. FOTZ shall keep all records and documentation of maintenance and replacement activities that are required to be kept by the AZA and Applicable Laws and shall make such records and documentation available to the City in accordance with Article Nine herein.

**Section 4.8 City's Right of Entry.** The City or its designated representative(s) shall have the right at all times to enter all portions of the Zoo Premises to inspect the Zoo or its operations; and to do any act which the City may be obligated or have the right to do under this Agreement. The City shall not unreasonably interfere with the operations of the Zoo or the activities of FOTZ hereunder and any action taken by the City under this Section 4.7 shall be consistent with USDA regulations and AZA guidelines. Nothing in this section shall impose or be construed to impose upon the City any independent obligation to construct or maintain improvements or make repairs, replacements and alterations, or create any independent liability for any failure to do so.

## **ARTICLE FIVE**

### **TRANSFER, CARE and USE OF ZOO COLLECTION**

**Section 5.1 Initial Transfer of Zoo Collection to FOTZ.** The City will execute a Bill of Sale transferring to FOTZ the Zoo Collection on the Effective Date. Moreover, the City will take any reasonable steps necessary to transfer Zoo Personal Property to FOTZ, including execution of certificates of title. Any part of the Zoo Collection remaining on or at the Zoo Premises on the Effective Date that may have been omitted from the Bill of Sale shall be deemed automatically transferred to FOTZ on the Effective Date.

#### **Section 5.2 Care and Use.**

(a) Animals. FOTZ shall provide care for all Loaned Animals and Zoo Animals. Such care shall be provided in accordance with all applicable standards, policies and guidelines of the AZA and USDA, or their successor entities, including, but not limited to, animal care and management, veterinary care, husbandry, feeding, cleaning, enrichment, research, acquisition and disposition. Such care shall also be provided in accordance with any other Applicable Laws.

(b) Use. The City grants exclusive permission to FOTZ to use the Zoo Collection for the benefit of the Zoo and assist with the operation of the Zoo for Zoo-related purposes. FOTZ shall not use the Zoo Collection, or otherwise permit the Zoo Collection to be used, for any other purpose without prior written consent of the City.

#### **Section 5.3 Sale or Disposition.**



(a) Process. FOTZ may sell or otherwise dispose of any part of the Zoo Collection that is not subject to donor commitments or restrictions, including, but not limited to, those arising out of historic designations or loan agreements, upon FOTZ's determination that such sale or disposition is in the best interests of the Zoo through application of industry standards and best practices. Such sale or disposition shall be made in strict conformance with all Applicable Laws, as well as applicable policies, standards, guidelines or procedures, including, but not limited to, those of the AZA and USDA.

(b) Proceeds. All proceeds received by FOTZ for the sale or disposition of any part of the Zoo Collection shall be used solely for the benefit of the Zoo.

(c) Reporting. Any part of the Zoo Collection having an asset value in excess of that set forth in the City's Capital Asset Policy, which was sold or disposed of by FOTZ during a calendar year, shall be referenced in the annual report required pursuant to Section 9.3(a). Such report shall contain a detailed accounting of such sale or disposition, as well as any additional information that may be requested by the City related to the same.

**Section 5.4 Subsequent Transfer of Zoo Collection upon Termination**. Upon Termination of this Agreement, FOTZ shall transfer the Zoo Animals, Loaned Animals and Zoo Personal Property to the City in accordance with Section 17.5(b). Regarding personal property obtained by FOTZ for use at the Zoo from the Effective Date through Termination of this Agreement, the City shall have a first right-of-refusal upon Termination of this Agreement to purchase personal property that is necessary for maintaining the Zoo Animals, Loaned Animals and Zoo Premises as long as FOTZ does not intend to use such personal property in its post-termination operations. Notwithstanding the foregoing, however, FOTZ, in its sole discretion, shall endeavor to transfer personal property that is necessary for maintaining the Zoo Animals, Loaned Animals and Zoo Premises to the City upon Termination of this Agreement at no cost, if economically feasible for FOTZ to do so. All personal property not purchased by the City or transferred to the City pursuant to this Section 5.4, shall remain FOTZ's property to the extent such personal property was not part of the original Zoo Personal Property transferred on the Effective Date.

## **ARTICLE SIX**

### **EMPLOYEE/LABOR-RELATED MATTERS**

**Section 6.1 Employee Services Agreement**. The Parties understand and acknowledge that certain City employees will be impacted by this Agreement. Concurrent with this Agreement, the City and FOTZ have entered into an "Employee Services Agreement" concerning the rights and responsibilities of such City employees.

**Section 6.2 Bargaining Unit Employees**. Both parties recognize that there are certain City employees who work at the Zoo who are subject to a collective bargaining agreement between the City and the American Federation of Teachers (AFT) ("Bargaining Unit Employees.") The City recognizes that it has a contractual responsibility to advise AFT in advance of the potential elimination of Zoo positions from City employment and to meet and confer with AFT regarding the terms and conditions of affected employees. The meet and confer process concluded with AFT ratification of a Tentative Agreement amending Contract No. 46203 and/or Contract No. 48941.



The City's Governing Body approved the Tentative Agreement on January 12, 2021, resulting in Contract No. 49174, which is attached as Exhibit 1 to the Employee Services Agreement.

**Section 6.3 Non-Bargaining Unit Employees.** The employment options available to non-bargaining unit employees will be set forth in the Employee Services Agreement.

**Section 6.4 Oversight of Zoo Employees.**

(a) Responsibility. Except as expressly set forth in this Agreement and in the Employee Services Agreement, FOTZ agrees to abide by the terms and conditions contained in any existing labor agreement that encompasses those who remain employees of the City in conjunction with its day-to-day supervision of such employees. FOTZ shall control and supervise the conduct, demeanor and appearance of Zoo Employees, who shall be expected to render a high degree of courteous and efficient service to the public. Employees shall be trained in accordance with applicable AZA standards and protocols.

(b) Compliance with Applicable Laws. FOTZ shall comply with all Applicable Laws related to Zoo Employees.

(c) Benefits. FOTZ shall be responsible for providing and processing any employment benefits provided to those Zoo Employees who are employed by FOTZ.

(d) Conflicts. With the exception of Section 6.4(e), in the event of any conflict between this Agreement and the Employee Services Agreement, the Employee Services Agreement shall control.

(e) At Will Employment. Notwithstanding any provision of this Agreement or the Employee Services Agreement, all Zoo Employees employed directly by FOTZ shall be at-will employees.

## **ARTICLE SEVEN REVENUES**

**Section 7.1 Retention of Revenues.** FOTZ shall be entitled to collect, receive, retain and use for the benefit of the Zoo all revenues derived from the operations of the Zoo not explicitly excluded by the terms of this Agreement, including without limitation net proceeds from gate receipts, food and retail concessions, ride revenues/fees, sales tax, memberships, sponsorship opportunities, parking and contributions and/or revenues otherwise received by or on behalf of the Zoo by bequest, gift or otherwise.

**Section 7.2 Fees.**

(a) Admission. The City and FOTZ agree that maintaining affordable pricing for Zoo admission and attractions is an essential component to successful operation of the Zoo. Admission and attraction pricing shall be at the sole discretion of FOTZ; provided, however, that FOTZ shall provide the City Manager with sixty (60) days' prior written notice of any rate increase, understanding that both Parties agree to utilize their best efforts to ensure that access to the Zoo remains an affordable family experience. Governing Body



approval will be required for any rate increase from the Effective Date through the Expiration Date to the extent such rate increase will result in a rate increase of one-hundred twenty percent (120%) of the rate previously in effect.

(b) Membership. Any increases in the price of FOTZ memberships shall be at the sole discretion of FOTZ.

(c) Other. FOTZ shall be responsible for setting prices and/or appropriate fees for all concession, retail, rental, event experiences, sponsorships or other such activities and offerings at the Zoo.

### **Section 7.3     Funds Raised by FOTZ.**

(a) Best Efforts. FOTZ agrees to use its best efforts to secure gifts of cash, property, bequests and endowments for use in paying for operational expenses and capital improvements at the Zoo. To the extent such funds are collected and maintained by FOTZ, then notwithstanding any other provision of this Agreement, such funds shall remain solely FOTZ property should this Agreement be terminated at some future date by either party. Any and all cash or in-kind donations received by FOTZ for the operation of the Zoo, or for preservation or display, shall be retained by FOTZ and shall be used for the stated purpose; provided, however, that a report of such donations shall be made in accordance with this Article Nine.

(b) Materially Different Improvement or Alteration; City Approval. To the extent any donation (in cash, in kind or otherwise) to FOTZ would result, in the commercially-reasonable determination of FOTZ, in changes to the Zoo Premises that would result in an improvement or alteration materially different from the Master Plan or that would materially impact a popular, existing exhibit, FOTZ shall notify the City of such terms and/or conditions within fifteen (15) days of receiving notice of such donation and the City may within thirty (30) days thereafter agree to such terms and conditions that the City deems reasonable. The City reserves the right to object to any terms and/or conditions that are, in the City's sole opinion, unreasonable or inconsistent with City policy by providing written notice to FOTZ setting forth the City's specific objections to the same. In complying with this Section of the Agreement, FOTZ is not required to disclose the source of any donations received by FOTZ; nor will it be required to provide the City with any donor identifying information from the Effective Date through Termination of this Agreement.

(c) Asset Preservation. Consistent with FOTZ's charitable purpose in accordance with Section 501(c)(3) of the Internal Revenue Code, and the parties mutual desire to ensure the long-term sustainability of the Zoo, FOTZ shall take all reasonably prudent actions necessary to ensure that any gifts of cash, property, bequests and endowments received from third parties while this Agreement is in effect, are held and utilized in a manner that will preserve and restrict the subject matter of the gift to the intended use and purpose of the gift, including without limitation and for purposes of illustration only, for the purposes of supporting a specific aspect of Zoo operations, supporting a specific animal habitat, supporting a specific Zoo program, or supporting a specific Capital Infrastructure Project. In the event that this Agreement terminates or

expires, FOTZ's intention is to continue to operate consistent with its charitable purpose in accordance with Section 501(c)(3) of the Internal Revenue Code, and accordingly FOTZ shall continue to hold and utilize any such gifts contemplated by this Section 7.3(c) in a manner that will preserve and restrict the subject matter of the gift to its intended use and purpose. In the event of FOTZ's insolvency or bankruptcy (or if FOTZ is the recipient of an involuntary filing by creditors) or dissolution or ceasing of corporate operations, FOTZ shall take all actions necessary to ensure that any such gifts contemplated by this Section 7.3(c) are held and utilized in a manner that will preserve and restrict the subject matter of the gift to its intended use and purpose and for the benefit of the Zoo.

**Section 7.4 Transfer of Funds Received by City for FOTZ.** Any funds received by the City for the benefit of the Zoo following the Effective Date, including all previously received, but unexpended, and all future donations, gifts and contributions, if any, as well as federal, state, regional, county or local grants from governmental, public, quasi-public or private entities, if any, shall be promptly paid to FOTZ for use in connection with the operations of the Zoo; subject to any terms and conditions relating to such funds. If FOTZ accepts such funds, it shall be responsible for compliance with all conditions of such funds received and responsible for all consequences of any ineligible or inappropriately spent funds and shall indemnify and defend the City from the same.

**Section 7.5 Annual License and Management Fee.**

(a) Annual Amounts. The City shall pay to FOTZ a fixed dollar amount management fee for each year set forth below:

<u>Year</u>	<u>Annual Contribution</u>
2021	\$1,837,895.28
2022	\$1,973,310.46
2023	\$1,991,070.26
2024	\$2,130,013.38
2025	\$2,149,183.50
2026	\$2,291,737.86
2027	\$2,312,363.50
2028	\$2,458,614.28
2029	\$2,480,741.80
2030	\$2,554,151.51
2031	\$2,577,138.87



2032	\$2,600,333.12
2033	\$2,623,736.12
2034	\$2,647,349.75
2035	\$2,671,175.90

(b) Distribution. The City shall distribute the annual License and Management Fee to FOTZ in quarterly payments on or before the 1<sup>st</sup> business day of each January, April, July and October during which the Agreement is in effect in accordance with the percentages listed below; provided, however, that in 2021, the License and Management Fee shall be distributed in three installments on the Effective Date, July 1 and October 1 (or the next succeeding business day) in accordance with the percentages listed below. Reductions to these quarterly payments shall be made as provided in Section 7.5(c) below.

(1) 2021 Quarterly Payments. For the year 2021, the installments shall be provided as follows: Effective Date – 35%; 3<sup>rd</sup> Quarter – 20%; 4<sup>th</sup> Quarter – 20%.

(2) Subsequent Quarterly Payments. For all other years, quarterly installments shall be provided as follows: 1<sup>st</sup> Quarter – 33%; 2<sup>nd</sup> Quarter – 27%; 3<sup>rd</sup> Quarter – 20%; 4<sup>th</sup> Quarter – 20%.

(c) Reductions. Notwithstanding subsection (a) above, the City shall reduce the Annual License and Management Fee paid to FOTZ in the following situations:

(1) Voter-Approved Taxes. In the event of a voter-approved tax that would provide funding specific to the Zoo, the annual License and Management Fee shall be reduced in the amount of the revenue provided by any such future increase; provided, however, that this reduction shall not include any allocation of the Countywide Retailers' Sales Tax made to the Zoo, as described in Section 8.3.

(2) Property Insurance – Zoo Premises. Each of the quarterly installment payments referenced in Section 7.5(b) above shall be reduced, in equal amounts, to reimburse the City for the amount paid to maintain property insurance on the Zoo Premises as described in Section 14.1(b). The City shall generally impose such reductions from the calendar quarter or quarters in which the City makes such insurance payments, (which may be to third-parties or an insurance trust within the City's treasury).

(3) Employee Services Agreement. Each of the quarterly installment payments referenced in Section 7.5(b) above shall be reduced by 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).

No written amendment to this Agreement will be required to effectuate reductions to the annual License and Management Fee set out in this subsection (c).



**Section 7.6 Taxes on Revenue.** FOTZ shall be responsible for payment of all sales or excise taxes (if any) related to revenues that it receives on items or experiences sold at the Zoo.

**Section 7.7 Renewal Periods.** In the event this Agreement is renewed by the City and FOTZ pursuant to Article Three of this Agreement, the Parties intend that the City shall make funds available to FOTZ during the renewal period then in effect as an annual License and Management Fee in an amount and based upon a schedule consistent with Article Three.

## **ARTICLE EIGHT CAPITAL PROJECTS**

**Section 8.1 City's Capital Contributions.** Given City ownership of the Premises, the City agrees to continue funding existing debt service on previously-issued general obligation and/or revenue-secured bonds and notes for Zoo-related Capital Projects. In addition, the City shall make Five Million Seven Hundred Thousand Dollars (\$5,700,000.00) available to FOTZ through the Expiration Date in order to address capital maintenance issues. The City shall establish a drawdown mechanism to ensure that FOTZ has access to the funding related to the Capital Projects within a reasonable time upon written demand to the City's Finance Director; provided the expense (i) meets the City's capitalization threshold (currently \$5,000.00), (ii) is eligible to be capitalized and (iii) is included as part of a project description provided by FOTZ in writing to the City's Finance Director not later than June 1<sup>st</sup> of each year, which description may be amended by the City's bond counsel as required to conform such request with State law, set out in applicable bond documents.

(a) Effective Date through September 30, 2028. From the Effective Date through September 30, 2028, the City shall make Two Million Eight-Hundred Fifty Thousand Dollars (\$2,850,000.00) in taxable bond proceeds available to FOTZ for the purpose of addressing capital maintenance on the Zoo Premises. Such bond proceeds shall be made available to FOTZ as soon as possible within six (6) months of the Effective Date of this Agreement subject to the conditions set forth in Section 8.1, subsections (a)(1) and (a)(2) below.

(1) FOTZ shall, within two (2) months of the Effective Date of this Agreement, provide for City bond counsel review a project description as described earlier in this Section 8.1.

(2) FOTZ may submit a written request, not more than monthly, to the City in order to draw-down bond proceeds. Such written request shall include at least (i) the amount of such draw in dollars, (which amount shall be not less than Fifty Thousand Dollars (\$50,000.00), and (ii) a certification that FOTZ will use the drawn funds on Capital Projects within the scope of the City's bond resolution.

(3) Not later than the end of the month following the month in which a draw request is paid by the City to FOTZ, FOTZ shall provide the City for each draw: (i) a description of each Capital Project on which funds were used; (ii) an itemized list of the expenses for which FOTZ applied the draw organized by Capital Project, (iii) corresponding invoices and (iv) proof of payment (cancelled checks,



copies of bank statements, printouts from online banking portals) for each invoice, including copies of lien waivers from contractors and subcontractors, as applicable. FOTZ may, at its option, pre-fund costs associated with Capital Projects, submitting all required information required in this subsection concurrent with a draw request.

(4) In any month during which FOTZ has not provided the City with the requisite documentation in a timely manner for purposes of substantiating a prior draw, the City may refuse to honor a subsequent FOTZ draw request(s).

(5) If FOTZ uses the proceeds of a draw for an expense that is later determined not to be covered by this Section 8.1, FOTZ shall repay the City the total amount of said expense within thirty (30) days of the date on which the City notifies FOTZ.

(b) 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).

(c) Renewal Periods. In the event this Agreement is renewed by the City and FOTZ pursuant to Article Three of this Agreement, the Parties intend that the City shall make funds available to FOTZ during the renewal period then in effect for the purpose of addressing Capital Projects on the Zoo Premises in an amount and based upon a schedule consistent with Article Three.

**Section 8.2 Parking Area Improvements.** Pursuant to a license agreement entered into between the City and the County on May 13, 2013 (City of Topeka Contract No. 42895), the City provided the County with a revocable license to maintain and improve streets, roadways and sidewalks associated with or attenuated to specified amenities within the “Topeka Zoological Park,” which include the parking area(s) shown on *Exhibit J*.

**Section 8.3 Countywide Retailers’ Sales Tax.** The Parties acknowledge that the countywide retailers’ sales tax that became effective on January 1, 2017, and expires on December 31, 2031, approves the use of sales tax proceeds for the Topeka Zoological Park. The Interlocal Agreement between referenced in Section 1.2(g) allocates up to Ten Million Dollars (\$10,000,000.00) for Zoo Phases 1, 2, 3, 4 and 5, subject to two contingencies: (1) the availability of sales tax funding; and (2) the City of Topeka’s Capital Improvement Plan, which is reviewed annually. Subject to the foregoing contingencies, FOTZ shall be entitled to receive the sales tax revenue for any Capital Infrastructure project associated with Zoo Phases 1, 2, 3, 4 and 5, as outlined in Exhibit B of the Interlocal Agreement, as may be amended from time to time, pursuant to the process delineated in Section 8.4.



**Section 8.4 FOTZ-Funded Capital Improvements.** The Parties contemplate that FOTZ may, from time to time, at FOTZ's sole cost and utilizing the Countywide Retailers' Sales Tax allocated to the Zoo, undertake Capital Infrastructure Projects consistent with the Master Plan, as it may be amended by FOTZ from time to time, subject to the following conditions:

(a) Prior Notice, Approval Required. Prior to making any expenditure of funds for any single Capital Infrastructure improvement or alteration to the Zoo Premises, other than expenditures relating to planning, investigation, and the development of construction plans, drawings, renderings and any other document related to the planning phase, FOTZ shall provide the City Manager with a written proposal detailing the Capital Infrastructure improvement or alteration, along with reasonably sufficient documentation demonstrating FOTZ's commitment to comply with the project criteria set out below in subsection (b), provided, however, that with respect to subsection (b)(4), FOTZ shall only be required to provide the City Manager with a funding and financing proposal. The City Manager will have sixty (60) days after receipt of such documentation to conduct a review and either approve or deny the capital project. Failure of the City Manager to issue a determination within sixty (60) days shall constitute approval. Should the City Manager deny the Capital Project, the City shall provide FOTZ with the reason for such denial in writing. If FOTZ elects to dispute this decision, it shall provide additional documentation related to the specific dispute deficiency within thirty (30) days. Failure by the City to issue a determination on any newly submitted documentation within ninety (90) days shall constitute denial.

(b) Capital Infrastructure Process. Prior to commencing construction of any Capital Infrastructure improvement or alteration to the Zoo Premises, FOTZ shall be required to provide the City Manager with reasonably sufficient documents demonstrating FOTZ's compliance with the project criteria set out below in this subsection (b).

(1) That all proposed improvements are consistent with the then-current master plan.

(2) That all improvements are to be constructed to meet standards for safety and quality of construction as established under Applicable Laws or by AZA, or a similar organization with jurisdiction. All such submissions shall be sufficient enough in detail to enable the City to make an informed judgment concerning the quality of the contemplated improvements and renovations.

(3) That the Zoo's AZA accreditation is in good standing; or FOTZ is actively pursuing the reinstatement of its accreditation by seeking to construct improvements required by the AZA to restore accreditation or otherwise respond to the noted deficiencies.

(4) That FOTZ has the funding necessary to construct the proposed capital project, or that it has other financing commitments sufficient to fund the proposed Capital Project including the Countywide Retailers' Sales Tax allocated to the Zoo; and that it has/will have sufficient resources for operation and maintenance of the capital project. All such financial documentation shall be



sufficient enough in detail to enable the City to make an informed judgment concerning FOTZ's financial capacity.

(5) That FOTZ has submitted to the City a construction plan, drawings and renderings demonstrating conformity to the master plan and project criteria.

(6) That FOTZ has committed to provide certificates, or other acceptable proof of insurance, and payment and performance bonds required by the City regarding the proposed construction or improvement after construction contracts have been entered into following City approval. Proof of insurance and payment and performance bonds must be submitted to the City before any construction or site work can begin.

(c) Compliance; Reporting. Any Capital Infrastructure improvement or alteration to the Zoo Premises made by FOTZ shall comply with Applicable Law, including, but not limited to, K.S.A. 60-1111, which requires a payment bond for public improvements under certain conditions. FOTZ shall be responsible for obtaining any required permits for such improvements or alterations at its expense. FOTZ shall maintain records of all Capital Infrastructure improvements or alterations and provide a report of the same to the Governing Body as part of the annual report required in Article Nine.

## **ARTICLE NINE**

### **BOOKS, RECORDS and REPORTING**

#### **Section 9.1 Books and Records.**

(a) Right to Inspect; Audit. FOTZ shall maintain accurate and complete books and records related to the Zoo and its compliance with this Agreement, including all revenues and expenditures, in accordance with generally accepted accounting principles. Upon five (5) days prior written notice to FOTZ, the City, at its sole expense, shall have the right to inspect and audit such books and records at reasonable times during normal business hours.

(b) Retention and Destruction. All such books and records shall be maintained by FOTZ for a minimum of ten (10) years from the date of creation; but may, thereafter, be destroyed in accordance with a record retention policy, established by the FOTZ Board of Directors, after providing the City at least thirty (30) days' notice of the pending destruction. Provided, however, that the following records of FOTZ shall at all times be preserved and made available to the City (or transferred to the City) upon request:

(1) All records relating to acquisitions and dispositions of capital assets;

(2) Any information related to the operation of the Zoo that FOTZ is required to maintain and/or file with the AZA, the State of Kansas, the USDA or any other entity having jurisdiction over the Zoo;

(3) Records relating to the construction or maintenance of Capital Projects; and



- (4) Any claims made against FOTZ for which FOTZ may or has requested assistance or indemnification from the City.

The inspection and audit rights granted in this Section shall survive the expiration or Termination of this Agreement for a period of two (2) years.

**Section 9.2 Use of Zoo Records.** With the exception of documents that have been classified as attorney-client privilege, FOTZ shall have full rights of access to and use of, all Zoo Records for the purpose of operating and managing the Zoo. For additional records pertaining to the Zoo that may be maintained by the City at City offices, FOTZ shall have access upon reasonable request. FOTZ may add to the Zoo Records in the course of performance of its duties under this Agreement; but may not dispose of any Zoo Records except in accordance with the record retention policy described in Section 9.1 above.

**Section 9.3 FOTZ Reporting.** From the Effective Date through Termination, FOTZ shall submit to the City the following reports:

- (a) Annual Reports. No later than March 31<sup>st</sup> of each year, FOTZ shall furnish an annual written report of its activities in the prior calendar year to the City. This report shall include, at a minimum, the following items:

- (1) Fundraising activities in the past year; provided, however, that FOTZ shall not be required to provide the identities or any identifying information of its donors;
- (2) Attendance during the past year (paid and unpaid);
- (3) Number and type of memberships issued (paid and unpaid);
- (4) A summary of major educational programming in the past year;
- (5) Any acquisitions or dispositions of Zoo Animals or Zoo Personal Property in the past year;
- (6) The scheduled hours of operation of the Zoo in the current year and a report on compliance with the schedule of hours provided to the City in the previous annual report;
- (7) A basic profit/loss statement and balance sheet; and
- (8) An itemized schedule of all insurance policies and coverage amounts that name the City as an additional insured.

- (b) Quarterly Reports. FOTZ shall provide the City Manager with a Quarterly Report, which shall be shared with the Governing Body, containing (at a minimum) the following information:



- (1) Admission Fee Data;
- (2) Attendance Data;
- (3) Capital Infrastructure Improvement or Alteration Data; and
- (4) Year-to-Date Budget Performance Data.

(c) Independently Audited Financial Statements. By no later than April 1<sup>st</sup> of each year, FOTZ shall provide independently audited financial statements signed by a certified public accountant detailing year-end revenues (public, earned, contributed); expenditures (operating and capital); liabilities; and fund balances. This deadline may be extended by up to sixty (60) days with approval by the City. The audit must be performed in accordance with the following standards, where applicable:

- (1) Generally accepted auditing standards, as promulgated by the American Institute of Certified Public Accountants;
- (2) The Kansas Municipal Audit Guide publication.
- (3) The current revision of the Government Auditing Standards, issued by the Comptroller General of the United States.
- (4) The current AICPA industry audit guide titled Audits of State and Local Governmental Units.
- (5) The Single Audit Act and all amendments thereto.
- (6) Title 2, CFR Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

If the City receives federal funds which it, in turn, passes to FOTZ as a sub-recipient of such funds, FOTZ shall obtain a financial and compliance audit of such funds provided by the State pursuant to this Agreement. Such audit shall be conducted by an independent public or certified public accountant and shall be performed in accordance with the Single Audit Act and all amendments thereto. FOTZ is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Agreement. Audits conducted pursuant to this Section must be submitted no later than nine (9) months following the close of FOTZ's fiscal year. FOTZ agrees to provide the State with an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is FOTZ, and not of a parent, member or subsidiary corporation of FOTZ, except to the extent such an expanded audit may be determined to be in the best interests of the City. The audit shall include a statement from the Auditor that the Auditor has reviewed this Agreement and that FOTZ is not out of compliance with the financial aspects of this Agreement.

(d) Litigation; Claims. FOTZ shall provide notice to the City as soon as reasonably possible after it receives a notice that litigation has been commenced, a written



threat of litigation from an attorney or a written notice of a claim or incident, involving a serious personal injury to any person or animal at the Zoo.

(e) Property Damage. As soon as reasonably possible after learning of damage in excess of Fifty Thousand Dollars (\$50,000.00) to the Zoo, FOTZ shall provide a report detailing such material damage to, or loss of, property. Such report shall include a summary of any damage to any item at, or on, the Zoo; together with detailed information concerning the underlying incident.

(f) Escape of Animal(s). In the event an animal(s) capable of causing injury to humans escapes from its enclosure, FOTZ will follow its emergency protocols, which include immediately notifying the Topeka Police Department, other emergency authorities and the City, and will keep the City informed of developments in a timely manner.

(g) Ability to Manage, Operate Zoo. FOTZ will, upon notice or receipt of notice, make the City aware of any matters that might jeopardize FOTZ's ability to manage and operate the Zoo; including, but not limited to, its ability to exhibit the Zoo Collection, including, but not limited to, the following (and providing copies of all related documents) to the extent applicable:

(1) Reports to, and correspondence with, the AZA that pertain to the Zoo's accreditation;

(2) Reports related to USDA licensing, such as site visit reports and/or annual inspection reports;

(3) Reports to, and correspondence with, other applicable organizations or entities that pertain to the Zoo's operation and ability to exhibit the Zoo Collection;

(4) Any notice of intent to place a lien of any kind, or levy a tax on, the Zoo Premises or the Zoo Collection;

(5) Any notice of any kind, whether generated by a third party or based on information known to FOTZ from any other source, including FOTZ itself, that FOTZ will be unable to meet its regular financial obligations, its obligations to creditors, its obligations to manage and operate the Zoo or will be filing any form of insolvency or bankruptcy (or be the recipient of an involuntary filing by creditors) or will cease corporate operations.

**Section 9.4 City Reporting**. From the Effective Date through Termination, the City shall submit the following information to FOTZ as soon as reasonably possible after:

(a) Claims. Receipt of any notification, report or claim related to personal injury or property damage received by the City, which involves the Zoo;

(b) Litigation. Receipt of any notice that litigation has been commenced, or receipt of any written threat of litigation from an attorney, which involves the Zoo;



(c) Financial Commitments. The City has knowledge that its ability to meet financial commitments made to FOTZ under this Agreement might be significantly compromised;

(d) Accreditation; Licensing. Receipt of any reports or notices from AZA, USDA or other accreditation or licensing agencies; or

(e) Ability to Operate. Notice or receipt of notices of any matters that might jeopardize FOTZ's ability to exhibit its animal collection or otherwise operate the Zoo.

## **ARTICLE TEN**

### **ACCREDITATION; LICENSING AND PERMITS**

**Section 10.1 Accreditation.** The City and FOTZ acknowledge and mutually agree that continuing accreditation of the Zoo by the Association of Zoos and Aquariums ("AZA") is of critical importance to the Zoo's success. From the Effective Date through the Termination of this Agreement, the City and FOTZ shall cause the Zoo to be at all times accredited and in good standing with the AZA. At least one year prior to each scheduled AZA accreditation review, the parties agree to meet to review and discuss, and in good faith address, all issues that may require attention to ensure continued accreditation of the Zoo. In the event the Zoo loses its AZA accreditation, FOTZ shall immediately take all necessary actions to re-obtain accreditation and in the event FOTZ fails to re-obtain accreditation within the later of one (1) year or the conclusion of an application to re-obtain accreditation, then this Agreement shall immediately terminate.

**Section 10.2 Exhibitors License.** From the Effective Date through Termination of this Agreement, FOTZ shall maintain an Exhibitors License through the USDA. In the event FOTZ's Exhibitor's License is revoked by the USDA, this Agreement shall immediately terminate.

**Section 10.3 Must Stay Current.** Attached hereto and incorporated herein as ***Exhibit K*** is a list of all contracts, permits, registrations, certifications, memberships, accreditations, licenses, permits and/or any other applicable documents or instruments currently held by the City or FOTZ in connection with operation of the Zoo. To the extent any such license or permit is currently in the name of the City, FOTZ is hereby authorized to perform such services under said licenses or permits, as required, until such time as those licenses and permits can be transferred to FOTZ as set out in Section 10.4 below, or in the event assignment or transfer is not available, then within such reasonable period of time as FOTZ can obtain a replacement license or permit. FOTZ shall ensure that all items listed in ***Exhibit K*** remain current from the Effective Date of this Agreement through Termination, as may be deemed necessary to provide continuity of operations.

**Section 10.4 Assignment and/or Transfer.**

(a) Initial Assignment and/or Transfer to FOTZ. The City hereby assigns and/or transfers any and all contracts, permits, registrations, certifications, memberships, accreditations, licenses and any other applicable documents or instruments listed in ***Exhibit K*** to FOTZ, with the same deemed necessary to provide continuity of operations. FOTZ shall have the right to reject any such documents or instruments for good cause. In the event such documents cannot be transferred for any reason, FOTZ shall be responsible for



obtaining suitable replacements for such documents and shall bear any costs related thereto. FOTZ will indemnify the City from any and all obligations under any contracts that are assigned and/or transferred from the Effective Date of this Agreement through Termination. Following the initial assignment and/or transfer of such documents and instruments to FOTZ, it will be the sole responsibility of FOTZ to renew any existing, or acquire any additional, documents and instruments necessary to fully perform its obligations under this Agreement, at its sole cost and expense, as well as comply with all Applicable Laws related to such documents and instruments.

(b) Subsequent Transfer upon Termination. Upon Termination of this Agreement, FOTZ will engage in all actions required to transfer all contracts, permits, registrations, certifications, memberships, accreditations, licenses and any other applicable documents or instruments listed in *Exhibit K* back to the City, as may be necessary to provide continuity of operations.

## **ARTICLE ELEVEN**

### **REPRESENTATION ON FOTZ BOARD OF DIRECTORS**

**Section 11.1 City Directors.** From the Effective Date through Termination of this Agreement, as evidence of the public-private partnership between the City and FOTZ, one (1) City council member representative of the City shall be appointed to the FOTZ Board of Directors as a voting member and two (2) staff members of the City shall be appointed as ex officio members to FOTZ's Board of Directors ("City Directors") as more specifically set out below:

(a) Elected Officials. The Governing Body shall elect one (1) council member representative (to serve as a voting member) as City Director in conjunction with the election of other established Governing Body standing committees. The length of the council member representative's term shall be in accordance with the FOTZ bylaws.

(b) Staff Representatives. The City Manager shall appoint two (2) individuals to serve as ex officio (non-voting) members from the Effective Date through the Termination of this Agreement. More specifically, the Director of Administrative and Financial Services and the Director of Public Works, or their designee.

The City Directors shall not be subject to recommendation of the FOTZ Nominating Committee, or similar subset of the FOTZ Board of Directors.

### **Section 11.2 Notice of Meetings; Access to Documents.**

(a) Access to Records; Notice of Meetings. The City Directors shall have full access to FOTZ's records to the same extent as other members of FOTZ's Board and shall be entitled to notice of FOTZ's activities, including meetings, to the same extent as any other member of FOTZ's Board.

(b) FOTZ Organizational Documents. The FOTZ Board of Directors shall revise its By-Laws, and/or other governing documents, for the purpose of demonstrating the existence of the City Director positions and exempting them from the "giving requirement" established for members of the FOTZ Board. This Section 11.2(b) cannot be



nullified by any change or amendment to FOTZ's organizational documents from the Effective Date through Termination of this Agreement.

**Section 11.3 Binding Effect.** Except as otherwise stated herein, the City Directors shall enjoy and be subject to all rights, obligations and incidents which accrue to or are binding upon any director of FOTZ. Accordingly, the City Directors shall be subject to FOTZ's Articles of Incorporation, Bylaws, resolutions and any other duty or policy that the FOTZ Board of Directors are subject to, including, but not limited to, FOTZ's conflict of interest policy.

## **ARTICLE TWELVE UTILITIES**

FOTZ shall pay One Hundred Percent (100%) of the costs associated with all water, sewer, gas, electricity, lighting, trash collection and all other types of utility services used at, or provided to, the Zoo.

## **ARTICLE THIRTEEN TRANSITION**

### **Section 13.1 Responsibilities.**

(a) The City will remain responsible for all expenses, costs, claims and liabilities, subject to any and all defenses and immunities available to the City, incurred or arising prior to the Effective Date in connection with the City's ownership, operation and maintenance of the Zoo. If, on or after the Effective Date, an expense, cost, claim or liability which occurred prior to the Effective Date is submitted to FOTZ, the City shall be responsible for the same.

(b) FOTZ will remain responsible for all expenses, costs, claims and liabilities, subject to any and all defenses and immunities available to FOTZ, incurred or arising prior to the Effective Date in connection with FOTZ's activities, including contracts, if any, executed by FOTZ concerning the Zoo, its donors, vendors, volunteers, renters or any other person or entity.

**Section 13.2 Zoo Liaison – Notice to FOTZ.** The City Manager shall provide FOTZ with notice of the particular staff member(s) he or she has designated to serve as the Zoo Liaison between the City and FOTZ during the transition on matters that include, but are not limited to, financial administration, employment, personal property, information technology and compliance with USDA regulations or AZA accreditation standards.

## **ARTICLE FOURTEEN INSURANCE**

**Section 14.1 Coverage Required.** From the Effective Date through Termination of this Agreement, FOTZ shall procure and maintain in full force and effect, at its own cost and expense,



the insurance coverages detailed in the subsections below from companies licensed to do business in the State of Kansas and rated A- or better by A.M. Best, or a similar rating agency.

(a) General Liability Insurance. Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain throughout the life of this Agreement General Liability Insurance Coverage with limits of liability in an amount not less than Two Million Dollars (\$2,000,000.00) in the aggregate during each policy period, which shall be no longer than one (1) year, and in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, with an umbrella of Five Million Dollars (\$5,000,000.00). Such insurance shall be issued by an insurer authorized to do business in Kansas deemed acceptable to the City and shall provide that the City, its officers, employees, agents and volunteers are to be named as "Additional Insureds" under the policy. The policy shall stipulate that such insurance shall operate as Primary Insurance coverage. Any other applicable City insurance policy shall operate only as excess coverage. The policy shall not include any exceptions for amusement rides or animal liability. The insurance shall be an "occurrence" policy, not a "claims-made" policy.

(b) Property Insurance. Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain property insurance coverage for all its assets, including vehicles. The City shall provide and maintain property insurance coverage for all its owned assets, including the Zoo Premises, and may elect to be self-insured; provided, however, that FOTZ shall be responsible for (i) reimbursing the City in the amount the City pays to maintain such property insurance coverage as set out in Section 7.5(c)(2) and (ii) paying the initial Twenty-Five Thousand Dollars (\$25,000.00) of the deductible associated with any property losses that may occur in accordance with the City's property insurance policy.

(c) Professional Liability (Errors and Omissions). Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain professional liability insurance coverage for the performance of the services set out in this Agreement with a combined single limit of liability in an amount not less than Two Million Dollars (\$2,000,000.00) in the aggregate during each policy period, which shall be no longer than one (1) year, and in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. FOTZ shall be required to maintain such coverage relating to FOTZ's actions or non-actions under this Agreement for a minimum of three (3) years following completion of the performance or attempted performance of the provisions of this Agreement.

(d) Workers' Compensation Insurance. Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain during the life of this Agreement Workers' Compensation Insurance in accordance with all applicable statutes of the State of Kansas.

(e) Motor Vehicle Insurance. Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain during the life of this Agreement Motor Vehicle Insurance, including Kansas No-Fault Coverages, with limits of liability not



less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

#### **Section 14.2 Certificates of Insurance.**

(a) Required. Prior to execution of this Agreement by the City, FOTZ shall (i) provide Certificates of Insurance demonstrating compliance with this Article Fourteen; (ii) ensure that all insurance certificates and any endorsements specify the name and address of the issuing insurance company, the policy limits and any exclusions; and (iii) provide all insurance certificates and any endorsements to the Zoo Liaison, who shall provide copies to the City's Department of Human Resources and Division of Contracts and Procurement.

(b) Failure to Provide Certificate of Insurance. Failure to provide a Certificate of Insurance or to obtain and maintain required insurance coverage shall constitute a material breach of this Agreement and the City may, at its determination, procure the required coverage and invoice FOTZ or deduct the cost of such insurance from any amount owed to FOTZ under this Agreement for said insurance or provide FOTZ thirty (30) days' notice of the City's intent to terminate this Agreement; which termination shall be effective without further action unless FOTZ provides the required Certificate of Insurance within said notice period.

#### **Section 14.3 Prior Notice Required—Change in Coverage; Expiration; Cancellation.**

Any alteration or material change affecting any policies or certificates of insurance required by this Agreement, (including, but not limited to, any change in coverage, expiration dates or cancellation) shall require FOTZ to provide the City with copies of the corresponding notice from its insurance carrier within three (3) business days of receipt of such notice.

#### **Section 14.4 Periodic Review by City; Proof of Insurance.**

(a) Periodic Review; Notification of Changes. FOTZ agrees to provide insurance coverages that are customary and commercially reasonable, with all required provisions and minimum limits as set forth in Section 14.1. The City shall review applicable insurance limits and coverages on an annual basis. Following this review, the City shall notify FOTZ of any requested changes in the minimum limits and the Parties shall endeavor in good faith to agree to any change in the minimum limits. If the parties cannot come to agreement, Section 17.1 may be applied.

(b) Failure to Provide Proof of Insurance. FOTZ's failure to provide the City with any Certificate of Insurance for any of the policies specified herein, which properly evidence naming the City and its agents as additional named insureds shall be deemed a material breach of this Agreement. The City may request complete copies of any of the insurance policies specified in Section 14.1 for review on an annual basis. FOTZ's failure to provide the City with complete copies of such policies within thirty (30) days of the City's written request shall be deemed a material breach of this Agreement.



**Section 14.5 Fire or Other Damage to Premises; Obligation to Replace.** In the event of a fire and/or other casualty to the Zoo Premises that causes damage or destruction, the Parties shall comply with applicable State law. The Parties shall cooperate by submitting timely claims for any damaged property under any potentially applicable insurance policy so that any damaged property is replaced.

## **ARTICLE FIFTEEN INDEMNIFICATION**

**Section 15.1 FOTZ's Duty to Indemnify.** FOTZ shall indemnify and save harmless, the City, its elected officials, officers, employees, volunteers and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments and expenses of every type and description, including any attorney's fees and/or costs of the City's legal staff or outside attorneys reasonably incurred by the City (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, by reason of, or resulting from, directly or indirectly, any act or omission of FOTZ, its Board members, officers, employees, volunteers or agents in connection with the performance or nonperformance of the Agreement, its management and operation of the Topeka Zoo and Conservation Center, and all activities therein, or its care, use and maintenance of the Zoo Premises and Zoo Collection, whether or not such liabilities are litigated, settled or reduced to judgment. FOTZ shall, upon the City's request, defend at FOTZ's sole cost and expense any action, claim or suit which asserts or alleges any claim, whether well founded or not, that is based, in whole or in part, directly or indirectly, upon any act or omission of FOTZ, its Board members, officers, employees volunteers or agents in connection with the performance or nonperformance of this Agreement, its management and operation of the Topeka Zoo and Conservation Center, and all activities therein, or its care, use and maintenance of the Zoo Premises and Zoo Collection, or breach of representations or warranty under the Agreement. In the event that a final decision is rendered by a court of competent jurisdiction, including the resolution of any appeals, or a judgment allocates liability by determining that any portion of damages awarded is attributable to the City's gross negligence or willful misconduct, the City shall pay the portion of damages, including attorney fees and costs, which is allocated to the City's gross negligence or willful misconduct. As used herein, the phrase "gross negligence or willful misconduct" shall not include any act or omission by the City, its officers, employees, volunteers or agents occurring in connection with, or related to, the review, approval or acceptance of any service or work product performed or provided by FOTZ that is alleged to have caused, or has caused, personal injury or property damage.

**Section 15.2 City's Duty to Indemnify.** Without waiving the City's right to state a defense based on governmental immunity to any claim brought by a third party, the City shall indemnify and save harmless, FOTZ, its officers, employees, volunteers and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments and expenses of every type and description, including any attorney's fees and/or costs of FOTZ's legal staff or outside attorneys reasonably incurred by FOTZ (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, by reason of, or resulting from, directly or indirectly, any act or omission of the City, its employees, volunteers or agents in connection with the performance or nonperformance of the Agreement, whether or not such liabilities are litigated, settled or reduced to judgment. The City shall, upon FOTZ's request, defend at the City's sole cost and expense any action, claim or suit which asserts or alleges any claim, whether well founded or not, that is based, in whole or in part, directly or indirectly, upon any act or omission



of the City, its officers, employees volunteers or agents in connection with the performance or nonperformance of this Agreement. In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to FOTZ's gross negligence or willful misconduct, FOTZ shall pay the portion of damages, including attorney fees and costs, which is allocated to FOTZ's gross negligence or willful misconduct. As used herein, the phrase "gross negligence or willful misconduct" shall not include any act or omission by FOTZ, its officers, employees or agents occurring in connection with, or related to, the review, approval or acceptance of any service or work product performed or provided by the City that is alleged to have caused, or has caused, personal injury or property damage.

**Section 15.3 Kansas Tort Claims Act.** To the extent possible and available, the City and/or FOTZ shall assert that any alleged loss is subject to the Kansas Tort Claims Act.

## **ARTICLE SIXTEEN REPRESENTATIONS AND WARRANTIES**

**Section 16.1 As Is, Where Is, with All Faults.** All property (real and personal) and all rights transferred or conveyed pursuant to this Agreement are made available to FOTZ strictly and only on an "AS IS, WHERE IS CONDITION BASIS WITH ALL FAULTS KNOWN OR UNKNOWN, OBVIOUS OR LATENT." The City disclaims warranties and representations concerning the condition (but not the ownership) of the Zoo. FOTZ acknowledges that it has had full opportunity to inspect the Zoo and obtain facility assessment reports. FOTZ accepts the Zoo subject to this Agreement in AS IS, WHERE IS CONDITION.

**Section 16.2 Representations of the City.** The City represents and warrants that it has the power and authority to execute and deliver this Agreement and also to perform obligations listed hereunder. The City represents and warrants that the license conveyed to FOTZ by this Agreement is permissible with respect to the real estate deed of conveyance dated May 31, 1899, between the City and Louisa H. Gage, et al. Further, the City represents and warrants that the execution, delivery and performance of this Agreement has been authorized by all necessary actions, which has been obtained prior to the Effective Date hereof. The City represents and warrants that, as of the Effective Date, it is not a party to any agreement or understanding that would prevent, limit or hinder in any material manner its performance of any obligation under this Agreement.

**Section 16.3 Representations of FOTZ.** FOTZ represents and warrants that it is a tax exempt non-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code, as amended, and has the power and authority to execute, deliver and perform its obligations under this Agreement and that the execution, delivery and performance of this Agreement has been authorized by appropriate corporate action. FOTZ further represents and warrants that it will maintain its (i) existence as a corporation, (ii) qualification to do business in Kansas and (iii) status as a tax exempt non-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code from the Effective Date of this Agreement through Termination of the same.

FOTZ represents and warrants that as of the Effective Date of this Agreement it is not a party to any agreement or understanding that would prevent, limit or hinder in any material manner its performance of any obligation under this Agreement. FOTZ represents and warrants that as of the Effective Date of this Agreement it has no interest, and that it shall not acquire any interest



through Termination of this Agreement, that would conflict in any manner or degree with the performance of obligations under this Agreement and further agrees not to employ any person or entity it knows has such an interest unless full disclosure of the conflict has been made in advance to the City and the consent of the City is obtained.

**Section 16.4 Pending Litigation.** Nothing in this Agreement shall impact the rights of the parties concerning any pending litigation.

**Section 16.5 Mutual Representations and Warranties.** The City represents to FOTZ and FOTZ represents to the City as follows:

(a) Neither party has knowledge of, or reasonable grounds to know of, any basis for the assertion against that Party, as of such dates, of any liability of any nature or in any amount relating to the Zoo that is not fully disclosed to the other.

(b) There are no actions, suits, claims, investigations or legal, administrative or arbitration proceedings pending or, to the best of each Party's knowledge, threatened or likely to be asserted by or against that Party or relating to the Zoo, this Agreement and/or the transactions contemplated hereby, before any court, governmental agency or other body, including any quasi-judicial or administrative forum, and no judgement, order, writ, injunction, decree or other similar command of any court, governmental agency or body has been entered against or served upon that Party.

(c) Each Party acknowledges: (i) that each Party does not assume any employee benefits of the other Party whatsoever; and (ii) neither Party shall have any obligation to provide specific employee benefits prospectively and (iii) each Party remains responsible for all wages and benefits of its employees accrued prior to the Effective Date.

(d) To the best of each Party's knowledge, there is no hazardous material in, on or under the Zoo Premises. In addition, there are no presently pending or threatened administrative or enforcement actions, investigations, compliance orders, claims, demands, actions or litigation based on environmental laws or regulations or otherwise related to the presence of hazardous material, in, on or under the Zoo Premises. Neither Party makes any other environmental representations or warranties.

(e) The performance of this Agreement is not in violation of any laws, statutes, local ordinances, state or federal regulations, court or administrative order or ruling.

(f) Each Party represents and warrants that neither this Agreement, nor any other information furnished by a Party in connection with the transactions contemplated by this Agreement, contain any untrue statement of material fact, or omit to state any material fact, necessary to make the statements contained therein misleading; considering the circumstances under which they were made.

(g) Both Parties have, to the best of each Party's knowledge, complied with all of the provisions of all contracts and commitments pertaining to the Zoo. There are no outstanding contracts or commitments for which either Party will become obligated other than those set forth in *Exhibit K*.



## ARTICLE SEVENTEEN TERMINATION

**Section 17.1 Early Termination by the City.** This Agreement may be terminated by the City after the Effective Date and prior to the Expiration Date, or any subsequent renewal periods, under any of the following circumstances:

(a) Termination due to Default. A Default by FOTZ that is not cured within the period of time prescribed in Section 17.3.

(b) Termination due to Other Circumstances.

(1) Appointment of a receiver, trustee, liquidator, custodian or similar official of all or a substantial part of, FOTZ assets; or

(2) Insolvency of FOTZ; or

(3) Filing of a voluntary petition in bankruptcy by FOTZ; or

(4) Filing of an involuntary petition in bankruptcy against FOTZ that is not dismissed within ninety (90) days thereafter; or

(5) A general assignment for the benefit of FOTZ creditors; or

(6) FOTZ's inability to pay its debts as they become due; or

(7) Dissolution of FOTZ; or

(8) In the event that the City's title to the Zoo Premises is adjudged by a court of competent jurisdiction to be in question, or to be such that the City is prohibited from allowing the use of the Zoo Premises as contemplated under this Agreement by virtue of the Louisa Gage Deed restrictions, the Parties shall immediately endeavor in good faith to amend this Agreement in order to allow FOTZ to continue to operate and manage the Zoo; provided, however, that if this Agreement cannot be cured to allow FOTZ to continue to operate and manage the Zoo, then this Agreement shall terminate. In the event this Agreement terminates under this Section 17.1(b)(8), the Parties shall meet to discuss the transition, including payment of FOTZ's actual expenses in transitioning operation of the Zoo back to the City; or

(9) In accordance with Section 10.1 or 10.2 of this Agreement; or

(10) Pursuant to an election by the City to revoke the license to FOTZ to operate and manage the Zoo Premises without cause; provided, however, that in the event the City elects to revoke the license of FOTZ under this Section 17.1(b)(10), then the City shall reimburse FOTZ in the amount of One Hundred Thousand Dollars (\$100,000.00), which represents the amount of FOTZ's estimated start-up



costs that will not be covered by the Annual License and Management Fee, or the actual amount of FOTZ's start-up costs, whichever is less.

**Section 17.2 Early Termination by FOTZ.** This Agreement may be terminated by FOTZ after the Effective Date and prior to the Expiration Date, or any subsequent renewal periods, under any of the following circumstances:

(a) Termination due to Default. A Default by the City that is not cured within the period of time prescribed in Section 17.3.

(b) Termination due to Failure to Pay Annual Fee; Fund Capital Contribution. If, for any fiscal year, the City fails to appropriate sufficient funds for payment to FOTZ of the required Annual License and Management Fee as provided in Article Seven of this Agreement and make funding available for the Capital Contribution, as provided in Article Eight of this Agreement; provided, however, if the failure to make any such appropriation is for the reason that the City intends to implement closure, transfer or sale of the Zoo, (not including sale or transfer to FOTZ in which case the fees during transition shall be negotiated), FOTZ shall continue to manage and operate the Zoo for six (6) months from the date of the failure to make the appropriation only if the City agrees to pay FOTZ and does actually pay FOTZ the portion of the Annual License and Management Fee and Capital Contribution FOTZ would otherwise have received for the six (6)-month time period.

**Section 17.3 Conflict; Dispute Resolution.** If the Parties cannot reach resolution on a matter related to, or arising out of, this Agreement involving a potential Default, the Parties shall pursue the following dispute resolution process:

(a) Notice of Conflict. A Party who believes there is a conflict arising under this Agreement that may involve a potential Default may provide written notice (a "Notice of Conflict") to the other Party. Such Notice of Conflict shall include a detailed statement of the conflict and a clear indication of the Party's position with regard to the conflict.

(b) Resolution of Conflict or Notice of Default; Opportunity to Cure.

(1) Within five (5) days after the Notice of Conflict described in subsection (a) above is provided, the Parties will initiate good faith discussions to resolve the subject matter of the Notice of Conflict. Such discussions will be conducted between the Parties' chief executive officers or appropriate executive level designees (each an "Executive Representative"). Each Executive Representative shall possess the necessary authority to resolve the subject matter of the Notice of Conflict. The Executive Representatives shall have thirty (30) days from the Notice of Conflict to resolve the conflict.

(2) If the Parties' Executive Representatives are unable to resolve the conflict within the thirty (30) day period after the date on which the first meeting was held, then the Executive Representative of the Party who believes a Default has occurred may provide written notice (a "Notice of Default") to the other Party.



(3) No legal proceedings against the claimed defaulting Party shall be instituted nor shall the claiming Party be entitled to damages if, within sixty (60) business days from the receipt of a Notice of Default, the claimed defaulting Party undertakes acts to cure, correct or remedy such claimed Default, proceeds with due diligence to complete such cure, correction or remedy and such cure, correction or remedy is completed within sixty (60) business days of the date such claimed defaulting Party received the Notice of Default. The Parties may agree to extend the time to cure, correct or remedy the alleged Default.

(4) In addition to specific provisions of this Agreement, performance by a Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to a Force Majeure Event or a Default by the other Party. The time of performance hereunder shall be extended for the period of any delay or delays caused by or resulting from any Force Majeure Event or Default by the other Party. FOTZ shall provide notice to the City if and when any such Force Majeure Event or Default occurs and FOTZ may be granted such extensions based upon the period of such Force Majeure Event or Default.

(c) Failure to Resolve Conflict or Cure Default. In the event of a Default that is the subject of a Notice of Default cannot be cured within the sixty (60) business day time period set out in subsection (b)(3) above, or within any mutually agreed-upon extension period, then, prior to any Party commencing litigation against the other, any dispute arising out of the terms or performance of this Agreement shall be first submitted to mediation before a mediator agreeable to each Party. The Parties agree to split the cost of such mediator on a 50/50 basis. Should mediation not successfully resolve the issue(s) between the Parties, litigation may be commenced. In any legal proceeding, each Party knowingly, intentionally and voluntarily waives the right to trial by jury in any action, counterclaim, dispute or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims arising against all parties to such actions and proceedings. In the event of any litigation or mediation between the Parties regarding an alleged breach of this Agreement, neither party shall be entitled to attorney fees.

**Section 17.4 Notice of Termination.** If the City or FOTZ elects to terminate this Agreement as set forth in Sections 17.1 or 17.2 above, excluding Termination under Section 17.1(b)(9) above, it shall provide written notice of termination to the other Party specifying the date on which termination is to become effective; which date shall not be less than ninety (90) days following the date on which notice of termination is provided. Termination of this Agreement by any non-defaulting Party as set forth in Sections 17.1 and 17.2 above shall not relieve the defaulting Party of responsibility or liability for any loss, damage or expense caused by the defaulting Party's failure to perform its duties and obligations under this Agreement; provided, however, that in no event shall the City incur any liability to FOTZ for failure to appropriate sufficient funds for the payment of the License and Management Fee to FOTZ other than the amounts the City is obligated to pay FOTZ under this Agreement for the period of time FOTZ continues to operate and manage the Zoo.



The election by FOTZ to terminate this Agreement pursuant to Section 17.2 is subject to FOTZ's conditional obligation to continue to operate and manage the Zoo for an additional time period as set forth in Section 17.2.

**Section 17.5 Effect of Expiration or Termination.** Upon the Expiration Date of this Agreement, or, in the event of early Termination pursuant to Sections 17.1 and 17.2, on the specified effective date of any such Termination of this Agreement, or, if reasonably necessary, within five (5) business days after the specified effective date of such early Termination, the following actions shall occur:

(a) Zoo Premises. FOTZ shall provide the City with sole possession, custody and control of the Premises as required by this Agreement, in no worse condition than it was in at the Effective Date or applicable subsequent date of acquisition, allowing for normal wear and tear. Similarly, FOTZ shall provide the City with sole possession of the Zoo Collection, together with subsequent additions or subtractions thereto, and subject to deterioration that occurred despite the exercise of reasonable care in accordance with standard practices employed by established AZA accredited zoos.

(b) Zoo Collection. FOTZ shall return to the City the possession, custody and control of the Zoo Animals, Loaned Animals and Zoo Personal Property, allowing for normal wear and tear; provided, however, that the possession, custody and control of any personal property FOTZ obtained for use at the Zoo from the Effective Date through Termination of this Agreement shall be determined in accordance with Section 5.4 of this Agreement.

(c) Records. FOTZ will surrender and return to the City (or otherwise make available to the City at the Zoo Premises) all Zoo Records.

(d) Responsibility for Claims.

(1) The City will assume all responsibility and liability for the management and operations of the Zoo immediately upon Termination of this Agreement except where FOTZ continues to manage and operate the Zoo under Section 17.2. The City will be responsible for any claims relating to the Zoo and Zoo operations that arise beginning from the Expiration Date or date of Termination of this Agreement, or upon the date that FOTZ ceases to manage and operate the Zoo under Section 17.2.

(2) FOTZ will continue to be responsible and liable for any claims relating to the Zoo and Zoo operations that arose prior to the Termination of this Agreement for which FOTZ would be responsible under the terms of this Agreement, including the obligation to indemnify and defend the City and, to the extent necessary, to maintain any insurance policy required under this Agreement so as to protect the availability of insurance proceeds for any such claim.

(e) Outstanding Obligations. The Parties will undertake to resolve in good faith, and make payment for, any obligations outstanding under this Agreement on the Expiration Date or the date of Termination.



(f) Employee Services Agreement. Termination of this Agreement shall also act to terminate the Employee Services Agreement without further notice and shall serve to terminate.

**Section 17.6 Use of Remaining Funds.** Upon the Termination of this Agreement, FOTZ shall first be entitled to use any remaining portion of the License and Management Fee or funding for capital projects received from the City to cover FOTZ's reasonable costs and expenses associated with ceasing to manage and operate the Zoo. Any then-remaining portion of the License and Management Fee or funding for capital projects obtained by FOTZ shall be forwarded to the City upon the date FOTZ ceases to operate the Zoo.

**Section 17.7 Removal of Property upon Termination.** Upon the Expiration Date, or sooner termination of this Agreement as permitted by the Agreement, FOTZ may remove, at its own expense, its own furniture, furnishings, equipment, inventory and trade fixtures. It is agreed that the City, or the City's assignees, during the thirty (30) day period following the date of termination, shall have the first right to purchase any furniture, furnishings, equipment and trade fixtures of FOTZ, which FOTZ will not use for its post-Termination operations, for the same price that FOTZ would be willing to sell said goods to any other person. Should FOTZ fail to remove said items not purchased by the City within thirty (30) days after the period of the City's option expires, it shall lose all right, title and interest in and to said items and the City may elect to keep them or dispose of them without notice or liability to FOTZ.

## **ARTICLE EIGHTEEN MISCELLANEOUS**

**Section 18.1 Non-Appropriation; Available Funds; Cancellation.** In accordance with the Kansas Cash Basis Law, payments by the City are subject to annual appropriation by its Governing Body. When the City makes a written determination that funds are not appropriated or otherwise available to support continued performance of this Agreement, this Agreement shall be cancelled. A determination by the City that funds are not appropriated or otherwise available to support continued performance of this Agreement shall be final and conclusive.

**Section 18.2 No Liens.** FOTZ will not suffer, or through its actions cause to be filed upon the Zoo Premises, any lien or encumbrance of any kind.

**Section 18.3 Intellectual Property.** Any and all intellectual property associated with marketing of the Zoo, including, without limitation, advertising campaigns, membership materials, leadership campaigns, special events, trademarks, trademark applications, copyrights and copyright applications, shall be the exclusive property of FOTZ, to which FOTZ shall have the entire right, title and interest.

**Section 18.4 Force Majeure.** Either Party shall be excused from the performance under this Agreement for any period of time during which the party is prevented from performing its obligations hereunder as a result of a Force Majeure Event. Such non-performance shall not constitute grounds for default.

**Section 18.5 Successors and Assigns.**



(a) The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the City and FOTZ and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third party beneficiaries to this Agreement.

(b) Other than in the ordinary course of business, FOTZ shall not, without the advance written consent of the City, assign any of its rights or obligations hereunder; *provided, however*, that any such assignment must be (i) to a tax exempt non-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code or (ii) approved by written opinion of the City's bond counsel.

(c) Absent explicit written agreement by the City, no assignment shall release or terminate FOTZ's responsibility to the City for the performance of all obligations contained in this Agreement.

(d) The foregoing is not intended to limit the right of FOTZ to enter into subcontracts for the performance of portions of its obligations hereunder, including, but not limited to, concessions or equipment leasing transactions (such as for new technology equipment, vehicles or other equipment) so long as such transactions (i) do not create any liability, contingent or otherwise, to the City and (ii) are with a tax exempt non-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code or are approved by written opinion of the City's bond counsel.

**Section 18.6. No Tenancy.** FOTZ shall not by virtue of this Agreement be deemed to have become a tenant of the City, or the Zoo Premises, or have acquired any legal or equitable interest in the Zoo Premises; rather, FOTZ is merely a licensee permitted to be on the Zoo Premises solely for the purpose of exercising therein the rights granted in this Agreement. Upon Termination of this Agreement, the City shall have the right through such means as it sees fit to remove and exclude therefrom FOTZ, and any of FOTZ's employees, without being deemed guilty of any unlawful entry, trespass or injury of any sort whatsoever.

**Section 18.7 Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

**Section 18.8 Compliance with Applicable Law.** In conducting all activities under this Agreement, and in its operation of the Zoo, FOTZ shall comply with all applicable federal, state and local laws, including, but not limited to, those governing occupational health and safety and the treatment and well-being of the Zoo Collection.

**Section 18.9 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected unless amended or modified by mutual consent of the parties.

**Section 18.10 Headings.** All headings in this Agreement are for convenience only and shall not affect the interpretation or enforcement of this Agreement in any way whatsoever. Words



used in the singular shall include the plural and words used in the masculine shall include the feminine in all cases where such would apply.

**Section 18.11 Entire Agreement; Amendment in Writing; Waiver.**

(a) This Agreement contains the sole and entire Agreement of the parties with respect to the subject matter of the Agreement and, unless expressly provided herein, no prior or contemporaneous oral or written representation or agreement between the parties shall have any legal effect.

(b) This Agreement may not be amended or modified except by written agreement executed by the Parties, their respective successors, permitted assigns or legal representatives. This Agreement and the rights to payment hereunder shall not be assignable or transferrable to any other party without the prior written consent of the other party hereto.

(c) No provision in this Agreement shall be waived unless such waiver is expressly made in writing and signed by an authorized representative of each Party.

**Section 18.12 Non-Collusion and Acceptance.** The undersigned persons acting on behalf of FOTZ, affirm, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of FOTZ, that he/she has not, nor has any other member, employee, representative, agent or officer of FOTZ, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

**Section 18.13 Binding Authority.** The City and FOTZ confirm to one another through the signatures to this Agreement that each has full power and authority to enter into this Agreement. The action contemplated by this Agreement has been duly authorized by all actions necessary for the City and FOTZ. No other action is necessary on the part of either the City or FOTZ to authorize execution of this Agreement.

**Section 18.14 No Binding Authority.** Except as provided in this Agreement, no Party shall have the authority, express or implied, to bind the other Party to any obligation whatsoever and shall indemnify and defend the other Party from any claims arising from any such action.

**Section 18.15 Relationship of Parties.** The services to be rendered by FOTZ pursuant to this Agreement are as an independent contractor only and the relationship between FOTZ and the City is solely that of licensor and licensee and owner and contractor. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, a joint management relationship or a relationship of employment or agency.

**Section 18.16 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be taken to be one in the same instrument, for the same effect as if all of the parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counter part of this Agreement without impairing the legal effect of any signatures thereon and may attach to



another counterpart of this Agreement identical in form hereto; but having attached to it one or more additional signature pages.

**Section 18.17 Construction of Agreement.** Each Party and its respective legal counsel has had an opportunity to review, revise and have input into this Agreement. Neither Party, nor their respective legal counsel, shall be construed to be the drafter or primary drafter of this Agreement. In the event of a dispute regarding the construction of this Agreement, ambiguities or questions of interpretation shall not be construed more in favor of one Party than the other; rather, questions of interpretation shall be construed equally as to each Party.

**Section 18.18 Other Necessary Acts.** Each Party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the purposes and intents of this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges provided in this Agreement.

**Section 18.19 No Third Party Beneficiaries.** In no event shall any person or entity that is not a party to this Agreement be an expressed, implied or intended third-party beneficiary of this Agreement.

## **ARTICLE NINETEEN NOTICES**

**Section 19.1 City to FOTZ.** All notices from the City to FOTZ shall be deemed duly served if mailed, postage prepaid, by registered or certified U.S. Mail to FOTZ at the following address, or at such other address or to such other addresses as FOTZ may designate in writing from time to time:

FOTZ Board President  
635 SW Gage Blvd  
Topeka, KS 66606

*With a copy to:*  
Timothy D. Resner  
FOTZ Board Attorney  
1414 SW Ashworth Place, Suite 201  
Topeka, KS 66604

**Section 19.2 FOTZ to City.** All notice from FOTZ to the City shall be deemed duly served if mailed, postage prepaid, by registered or certified U.S. Mail to the City at the following address:

City Manager  
City of Topeka, Kansas  
City Hall  
215 SE 7<sup>th</sup> Street  
Topeka, Kansas 66603

*With a copy to:*  
City Attorney  
City of Topeka, Kansas  
City Hall  
215 SE 7<sup>th</sup> Street  
Topeka, Kansas 66603

**CITY OF TOPEKA, KANSAS**

**FRIENDS OF THE TOPEKA ZOO**



Brent Trout  
Brent Trout  
City Manager

ATTEST:

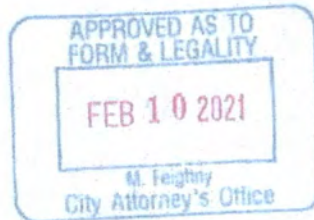
Brenda Younger  
Brenda Younger  
City Clerk



Fred Patton  
Fred Patton  
President, Board of Directors

ATTEST:

Kelly D. Kelsey  
Print Name: Kelly D. Kelsey  
Secretary, Board of Directors





# EXHIBIT A

## Employee Services Agreement



3A.



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
www.topeka.org  
February 9, 2021

DATE: February 9, 2021  
CONTACT PERSON: Brent Trout, City Manager  
DOCUMENT: 49244  
SECOND PARTY/SUBJECT: Friends of the Topeka Zoo  
PROJECT #:  
CATEGORY/SUBCATEGORY 006 Communication / 005 Other  
CIP PROJECT: No  
ACTION OF COUNCIL: Discussion 02-02-21. JOURNAL #: 2021  
Approved on 2/9/2021  
PAGE #:

**DOCUMENT DESCRIPTION:**

APPROVAL of the terms and conditions of a License and Management Agreement with the Friends of Topeka Zoo ("FOTZ") that will provide for the operation and management of the Topeka Zoo and Conservation Center by FOTZ as part of a proposed Public Private Partnership.

**Voting Requirement:** At least six (6) votes of the Governing Body is required.

**VOTING REQUIREMENTS:**

At least six (6) votes of the Governing Body is required.

**POLICY ISSUE:**

Whether to approve the terms and conditions of a License and Management Agreement with FOTZ, which will provide for the operation and management of the Topeka Zoo and Conservation Center by FOTZ as part of a proposed public private partnership.

**STAFF RECOMMENDATION:**

Entering into a public private partnership with FOTZ to operate and manage the Topeka Zoo and Conservation Center is a policy decision for the Governing Body.

**BACKGROUND:**

The subject of Zoo governance has been discussed during multiple Governing Body meetings: June 4, 2019; December 3, 2019; March 2, 2020; October 6 and 13, 2020; November 10, 2020 and December 1 and 8, 2020. At the December 8th meeting, the Governing Body directed the City Manager to pursue a public private partnership with FOTZ and bring forward a License and corresponding Management Agreement for its consideration.



**BUDGETARY IMPACT:**

The current budget impact is unknown at this time.

**SOURCE OF FUNDING:**

This is under review.

**ATTACHMENTS:**

**Description**

License and Management Agreement Overview REVISED as of Feb 8, 2021  
Revisions to Proposed License and Management Agreement Considered by the GB on Feb 2, 2020 (REVISED as of Feb 8, 2021)  
License and Management Agreement (Clean Version) REVISED as Feb 8, 2021  
Exhibit A - (Employee Services Agreement - Jan 21, 2021)  
Exhibit B - (Loaned Animals as of Feb 4, 2021)  
Exhibit C - (Aerial Map of Topeka Zoo and Conservation Center)  
Exhibit D - (Aerial Map of Topeka Zoological Park)  
Exhibit E - (Zoo Animals as of Feb 4, 2021)  
Exhibit G (FOTZ Master Plan) Updated Feb 9, 2021  
Exhibit F - (Zoo Personal Property as of Feb 4, 2021)  
Exhibit H - (Gage Park Deed)  
Exhibit I - (License Agreement between the City and Shawnee County - May 13, 2013)  
Exhibit J - (Aerial Map of Area Maintained and Improved in Accordance with Terms of Exhibit I)  
Exhibit K - (Contracts, Permits, Licenses, etc. as of Feb 4, 2021)  
Question/Answer Summary (Received through Feb 9, 2021)  
Question/Answer Summary (Received through Feb 4, 2021)  
Dec 8, 2020 Financial Services Memo (Includes FOTZ Response Summary Document)  
Columbia Capital Memo - Financial Pro Forma - Dec 8, 2020  
Zoo Operating Cost Focus - Pro-Forma  
Question/Answer Summary (Received through Feb 1, 2021)  
FOTZ Resolution Feb 8, 2021



*(Exhibit A to License and Management Agreement)*

**CITY OF TOPEKA CONTRACT NO. 49244  
Employee Services Agreement**

This Employee Services Agreement is by and between the City of Topeka, Kansas, ("City"), a municipal corporation, and Friends of the Topeka Zoo, ("FOTZ"), a Kansas non-profit corporation. The Effective Date of this Employee Services Agreement is February 9, 2021, the date on which the Governing Body approved the License and Management Agreement with FOTZ.

WHEREAS, the Effective Date of the License and Management Agreement has been established as April 3, 2021, and is intended to be the date on which the management and operational duties and responsibilities of the Topeka Zoo and Conservation Center (hereinafter "Zoo") transfer to FOTZ; and

WHEREAS, a separate and earlier Effective Date is necessary for this Employee Services Agreement in order to allow sufficient time for City employees assigned to the Zoo to consider and make elections pertaining to future employment options with the City or with FOTZ.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL CONVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

Section 1. Zoo Employees Transitioning to FOTZ Employment. Within seven (7) calendar days of the date on which the Governing Body approves a License and Management Agreement with FOTZ, FOTZ will extend offers of employment to all City employees who are actively employed on a full time basis at the Zoo.

(a) FOTZ Offers of Employment. The FOTZ offers of employment will include the position, grade and step offered to the City employee; and will designate a regular rate of pay for each employee that is between two percent and three percent (2% and 3%) higher than the City employee's regular rate of pay on the date the offer is made to the employee.

(i) The FOTZ offers of employment to AFT bargaining unit employees will provide, at a minimum, the information specified in Attachment A-Class I and Attachment A-Class II to the Supplemental Agreement to City of Topeka Contract No. 48941 (hereinafter "Supplemental Agreement"). AFT bargaining unit employees will have a minimum of twenty-one (21) days to accept employment with FOTZ. The Supplemental Agreement is attached hereto as EXHIBIT 1 and incorporated herein.

(ii) The FOTZ offers of employment to non-union employees will provide, at a minimum, the information specified in EXHIBIT 2. In order to accept



employment with FOTZ, the "Election Regarding Zoo Employment for Non-Union Employees," attached as EXHIBIT 3, must be completed within twenty-one (21) days after the FOTZ offers of employment are provided to non-union employees.

(iii) FOTZ agrees that during the first six months of FOTZ employment, no City employee who transitions to FOTZ employment will have his or her hourly rate of pay or salary reduced except pursuant to a legitimate disciplinary reason.

(b) Commencement of FOTZ Employment. City employees who accept the FOTZ offer of employment will commence employment with FOTZ on between April 3 and April 5, 2021.

(c) Combined Seniority. For employment benefits that take seniority into account, FOTZ will credit transitioning City employees with the time those employees had been employed continuously by the City.

(d) Vacation Accruals. Each Employee who timely accepts the FOTZ offer of employment may elect to transfer accrued, unused, unpaid vacation in an amount that is equivalent to a maximum of fifty percent (50%) of the allowable FOTZ "Paid Time Off" calendar year allotments for 2021 (which allotments are set forth in ¶ 12(a) of Exhibit 1).

(i) Vacation accruals that transfer to FOTZ will be credited to the Employee's PTO bank.

(ii) The City will pay to FOTZ the dollar equivalent of the vacation accruals that any employee elects to transfer to the FOTZ PTO bank. The dollar equivalent will be based on the Employee's regular rate of pay as of the date City employment terminates.

(e) Accrued Sick Leave. Each Employee who timely accepts the FOTZ offer of employment may transfer up to a maximum of 240 hours of accrued, unused, unpaid sick leave to a Short-term Disability Bank maintained by FOTZ.

(i) The transfer of sick leave hours is an unfunded liability and will not be paid out upon the termination of FOTZ employment.

(ii) While vacation and sick leave under the FOTZ PTO program is combined and must be exhausted prior to utilization of the Short-term Disability Bank maintained by FOTZ, FOTZ agrees to the following exception related to absences caused by a Covid-19 event: If an employee's PTO bank is decreased to a level below ten (10) days due to a Covid-19 event, such employee will be allowed to use accumulated time in his/her Short-term Disability Bank for the remainder of the Covid-19 related absence.

(f) Severance Pay. For each City employee who accepts FOTZ's offer of employment, FOTZ will provide severance pay, at FOTZ's expense, if the employee is



terminated by FOTZ due to a reduction in force that occurs within one year of the employee's commencement of employment with FOTZ. Severance pay will be based on the Employee's combined ZOO seniority with the City and FOTZ and will be calculated using the employee's regular base hourly wage:

- (i) Less than one (1) year seniority: no severance pay.
- (ii) One (1) year or more and up to ten (10) years seniority: One week salary for each of the first ten (10) complete years of service.
- (iii) Over ten (10) years seniority: One week salary for each of the first ten complete years of service and two (2) weeks' salary for each complete year of service in excess of ten (10) years of service up to a maximum of one (1) year's salary.

(g) KPERS Penalties. The Parties acknowledge that KPERS has provided an opinion that City employees retiring and commencing employment with FOTZ shall not trigger a statutory penalty or liability pursuant to KSA 74-4914(5)-(10), and the Parties have relied upon this assumption in entering into this Agreement. In the event KPERS assesses any KPERS contribution rate pursuant to KSA 75-4914(5)-(10) for those employees who transition from City employment to FOTZ employment under the terms of this Agreement, the Parties shall negotiate allocation of the responsibility of any such increased contribution rate in good faith.

Section 2. City Employees Assigned to the Zoo. Certain AFT employees, as described in the Supplemental Agreement, are provided the option to remain employed by the City in a Zoo position; and each management and executive employee is provided the option to remain employed by the City in a Zoo position. This Section applies to any City employee who is provided the option to retain City employment in a Zoo position and elects to exercise that option.

(a) Any City employee in a Zoo position shall retain his or her City salary and benefits, including seniority. Leave will be granted based on seniority whether the employee is a FOTZ employee or a City employee.

(b) City is responsible for the payroll processing of all compensation and employment benefits for City employees assigned to the Zoo. On a quarterly basis, the dollar amount of the compensation and benefits provided by the City to City employees in a Zoo position will be deducted from the FOTZ Quarterly License and Management Fee payments provided these employees continue to be employed by the City and assigned to a Zoo position. The City will provide FOTZ with a written schedule detailing the dollar cost of compensation and benefits for these City employees at least thirty days prior to each quarterly disbursement date.

(c) City employees assigned to the Zoo will be supervised by whomever FOTZ assigns to supervise them. FOTZ employees who supervise City employees must attend



training deemed appropriate by the City's Director of Human Resources. City employees may supervise FOTZ employees, if deemed appropriate by FOTZ.

(d) City employees assigned to the Zoo will receive annual performance evaluations by their supervisor in accordance with city procedures in effect at the time. Upon completion, performance evaluations will be forwarded to the City's Director of Human Resources who will determine any annual merit wage increase to be given the employee based on the performance evaluation, taking into consideration comparable wage increases given to other City employees.

(e) Discipline of City employees will be governed by the AFT Labor Agreement for bargaining unit employees and the City's Personnel Manual for non-bargaining unit employees.

(f) FOTZ will make City employees assigned to the Zoo reasonably available for City training requested by the City's Director of Human Resources and will provide these employees with all City policies provided to FOTZ by the City.

(g) City shall be responsible for providing workers compensation benefits for City employees assigned to the Zoo. FOTZ will immediately notify the City's Risk Management Division of any injury to any City employee in accordance with Risk Management's procedures and shall comply with state and local laws and procedures.

### Section 3. Miscellaneous.

(a) FOTZ will hire and employ such other personnel as shall, in its judgment, be required to operate, manage and maintain the Zoo in accordance with the provisions of the License and Management Agreement. FOTZ will have sole responsibility for all decisions relating to the hiring, supervision, discipline, and termination of such personnel, all of whom shall be employees of FOTZ except those City employees covered by Section 2 above.

(b) FOTZ will have sole authority and responsibility to determine the personnel policies and procedures applicable to its employees, subject to the provisions of subsections (i) and (ii) below.

(i) FOTZ will adopt reasonable personnel policies prohibiting employment discrimination and harassment, violence in the workplace, and drug and alcohol use; and provide and maintain reasonable "whistleblower" protections for its employees.

(ii) Without limiting FOTZ's responsibility for the hiring of personnel, FOTZ agrees that it will obtain a criminal background check prior to hiring any new employee who is not transitioning from City employment to FOTZ employment.



(c) As a contractor of the City, FOTZ shall comply with Topeka Municipal Code 3.30.470 with respect to its work performance.

IN WITNESS WHEREOF, the Parties have hereto executed this Agreement as of this  
10th day of February, 2021.



ATTEST:

Brenda Younger  
Brenda Younger, City Clerk

CITY OF TOPEKA, KANSAS

Brent Trout  
Brent Trout, City Manager

APPROVED AS TO FORM AND LEGALITY

DATE \_\_\_\_\_ BY \_\_\_\_\_

FRIENDS OF THE TOPEKA ZOO

Fred Patton  
Fred Patton, President





**EXHIBIT 1**

CITY OF TOPEKA CONTRACT NO. 49174

*Supplement Agreement to City of Topeka Contract Nos. 46203 and 8941*



4B.



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
www.topeka.org  
January 12, 2021

---

DATE: January 12, 2021  
CONTACT PERSON: Jacque Russell, Human Resources Director DOCUMENT #: 49174  
SECOND PARTY/SUBJECT: AFT Kansas Local 6406 PROJECT #:  
CATEGORY/SUBCATEGORY 007 Contracts and Amendments / 020 Employee Agreements  
CIP PROJECT: No  
ACTION OF COUNCIL: JOURNAL #: 2021  
Approved on 1/12/2021 PAGE #:

---

**DOCUMENT DESCRIPTION:**

APPROVAL of a Supplemental Agreement to City of Topeka Contract No. 48941 between the City of Topeka and AFT Kansas Local 6406 amending certain terms and conditions of employment pertaining to zoo employees.

**Voting Requirement:** At least six (6) votes of the Governing Body is required.

*(Approval would establish the process for AFT employees to transition to employment with Friends of the Topeka Zoo ("FOTZ") in the event the Governing Body approves a License and Management Agreement with FOTZ.)*

**VOTING REQUIREMENTS:**

At least six (6) votes of the Governing Body is required.

**POLICY ISSUE:**

Whether to approve a tentative agreement that amends the current AFT labor agreement to allow for a transition of zoo bargaining unit employees to FOTZ employment.

**STAFF RECOMMENDATION:**

Staff recommends the Governing Body move to approve the supplemental agreement.

**BACKGROUND:**

Once discussions commenced with the Governing Body about a potential Public-Private Partnership with FOTZ related to the operation and maintenance of the Topeka Zoo, representatives of the City and of AFT engaged in the meet and confer process to identify a potential transition process for zoo employees to transfer to FOTZ employment. A tentative agreement was reached and has been ratified by AFT members. The tentative



agreement, titled "Supplemental Agreement to City of Topeka Contract No. 48941," is now presented to the Governing Body for approval.

**BUDGETARY IMPACT:**

The budgetary impact will be determined by the terms of a License and Management Agreement between the City and FOTZ. If a License and Management Agreement is not approved by the Governing Body by March 31, 2021, the tentative agreement with AFT is rendered null and void.

**SOURCE OF FUNDING:**

Presently unknown.

**ATTACHMENTS:**

**Description**

AFT Supplemental Agreement  
Contract No. 48941

CITY OF TOPEKA CONTRACT NO. 49174

SUPPLEMENTAL AGREEMENT TO CITY OF TOPEKA CONTRACT NO. 48941

THIS SUPPLEMENTAL AGREEMENT to City of Topeka Contract Nos. 46203 and 48941 is entered into on this 10<sup>th</sup> day of February, 2020, by and between the City of Topeka, a duly organized municipal corporation hereinafter referred to as "City" and AFT Kansas Local 6406, hereinafter referred to as "Union."

WHEREAS, City and Union previously entered into City of Topeka Contract No. 46203 which governs terms and conditions of the employment relationship between the City and the Union through December 31, 2020; and City of Topeka Contract No. 48941 was recently approved by the Governing Body, to be effective January 1, 2021.

WHEREAS, it is in the best interest of both parties to agree upon additional conditions in the event the Governing Body approves a proposed License and Management Agreement between the City and Friends of the Topeka Zoo ("FOTZ"), whereby City would contract with FOTZ to manage and operate the Topeka Zoo and Conservation Center ("Zoo").

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Whenever the term "Effective Date" is used in this Supplemental Agreement, it shall mean the date the Governing Body approves a License and Management Agreement with FOTZ. If a License and Management Agreement is not approved and executed on or before March 31, 2021, these amendments are null and void.

2. AFT employees working in positions assigned to the Topeka Zoo (excluding Public Works Facilities' positions) will be offered comparable positions by FOTZ in the event a License and Management Agreement with FOTZ is approved. These employees



are hereinafter referred to as "Impacted Employees" and all Impacted Employees will be provided an offer of employment from FOTZ no later than one week after the Effective Date.

3. For purposes of this Supplemental Agreement, there will be two classes of Impacted Employees:

(a) Class I Impacted Employees consist of employees assigned to the Topeka Zoo who are not eligible, within three years of the Effective Date of this Agreement, to draw a retirement benefit through KPERS. Class I Impacted Employees will have the option to accept the FOTZ offer of employment on a date and time specified within the FOTZ offer of employment, which date shall be no sooner than three (3) weeks after the offers of employment are provided to Employees.

(b) Class II Impacted Employees consist of employees assigned to the Topeka Zoo who are eligible, within three years of the Effective Date of this Agreement, to draw a retirement benefit through KPERS. Class II Impacted Employees will have the option to make an election to either remain in their current city position or accept the offer of employment from FOTZ. The election deadline will be on a date and time specified within the FOTZ offer of employment, which date shall be no sooner than three (3) weeks after the offers of employment are provided to Employees.

4. Each FOTZ offer of employment to Class I Impacted Employees will provide the information specified in Class I-Attachment A and will include an election form as set forth in Class I-Attachment B.

5. Each FOTZ offer of employment to Class II Impacted Employees will provide the information specified in Class II-Attachment A and will include an election form as set forth in Class II-Attachment B.

6. For a period of time beginning on the Effective Date and ending five weeks thereafter, Class I Impacted Employees will be provided the option to apply for open AFT or other non-bargaining unit positions under a preferential hiring process. Under this preferential hiring process, Zoo employees who meet the minimum qualifications for an

open AFT or non-bargaining unit position will be selected for the position and will be subject to a six-month interim probationary period.

7. For the time period beginning on the Effective Date and ending five weeks thereafter, the parties agree that the requirements of Article 14 Section 1(a) and the selection criteria set forth within the first paragraph of Article 14 Section 1(b) shall be amended as follows: A preferential hiring process for Class I Impacted Employees, as set forth in paragraph 6 directly above, shall take priority over other contractually-stated promotion criteria during the time period set forth in this paragraph.

8. The parties agree that the benefits of continued employment to all Impacted Employees and the preferential hiring process offered to Class I Impacted Employees render the Article 8 Section 1, Reduction in Force; Lay Off provisions inoperable.

9. The parties agree that the purpose of Article 8 Section 2 Severance Pay is to provide "temporary relief" to employees who have lost employment. The parties further agree that temporary relief is not required and the severance pay provision shall be considered inoperable for Impacted Employees because all Impacted Employees have the option to transition their employment with the City to employment with FOTZ.

10. Impacted employees who fail to timely complete and return their election form (Class I or II-Attachment B) will be considered to have voluntarily resigned their employment with the City.

11. Pursuant to an agreement between City and FOTZ, FOTZ will provide severance pay to any employee who transfers to FOTZ employment under the terms of these amendments but who is terminated by FOTZ as a result of a reduction in force that occurs within one year of the employee's commencement of employment with FOTZ. Severance pay will be based on the Impacted Employee's combined ZOO seniority with the City and FOTZ and will be calculated using the employee's regular base hourly wage:

- (a) Less than one (1) year seniority: no severance pay.
- (b) One (1) year or more and up to ten (10) years seniority: One week salary for each of the first ten (10) complete years of service.
- (c) Over ten (10) years seniority: One week salary for each of the first ten complete years of service and two (2) weeks' salary for each complete year of service in excess of ten (10) years of service up to a maximum of one (1) year's



salary.

12. Each Impacted Employee who timely accepts the FOTZ offer of employment may elect to transfer accrued, unused, unpaid vacation in an amount that is equivalent to a maximum of fifty percent (50%) of the allowable FOTZ "Paid Time Off" calendar year allotments. The election must be made on the applicable Attachment B.

(a) The FOTZ "Paid Time Off" calendar year allotments for 2021 will be as follows:

Full-time employees are credited PTO based on the following schedule:

<b>Years of Completed Service With City of Topeka</b>	<b>Annual PTO Days (Hours)</b>
Less than one year	15 (120)
One and Two years	18 (144)
Three and Four years	19 (152)
Five and Six years	20 (160)
Seven and Eight years	21 (168)
Nine and Ten years	22 (176)
Eleven and Twelve years	23 (184)
Thirteen and Fourteen years	24 (192)
Fifteen and Sixteen years	25 (200)
Seventeen and Eighteen years	26 (208)
Nineteen years and thereafter	27 (216)

(b) Transferred accruals will be credited to an Impacted Employee's PTO bank maintained by FOTZ on the date the employee commences employment with FOTZ.

(c) If an Employee elects to transfer vacation to FOTZ, any remaining accrued, unused, unpaid vacation will be paid out by the City as part of the Employee's final pay.

13. Each Impacted Employee who timely accepts the FOTZ offer of employment will transfer up to a maximum of 240 hours of accrued, unused, unpaid City Sick leave to a Short-term Disability Bank maintained by FOTZ. Both parties understand that there is no intention that hours in the FOTZ Short-term Disability Bank will be paid out upon separation of employment with FOTZ.

14. City shall seek to include language within the proposed Employee Services

Agreement between City and FOTZ that would provide:

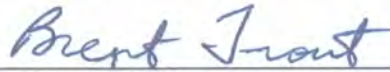
(a) During the first six months of FOTZ employment, no City employee who transitions to employment with FOTZ shall receive a reduction in their hourly rate of pay or salary, except pursuant to a legitimate disciplinary reason.

(b) If an employee's PTO bank with FOTZ is decreased to a level below ten (10) days due to a Covid-19 event, such employee will be allowed to use accumulated time in his/her short-term disability bank for the remainder of the Covid-19 related absence.

15. All other terms and conditions of City of Topeka Contract Nos. 46203 and 48941 not specifically amended herein shall remain in full force and effect.

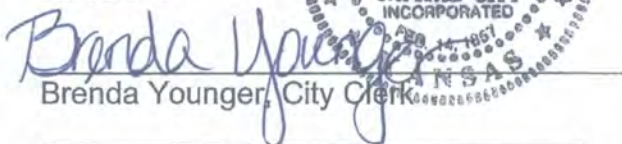
IN WITNESS WHEREOF, the parties have hereto executed this Amendment as of the day and year first above written.

CITY OF TOPEKA, KANSAS



Brent Trout, City Manager

ATTEST:



Brenda Younger, City Clerk

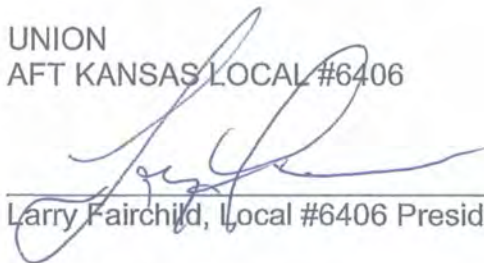


APPROVED AS TO FORM AND LEGALITY

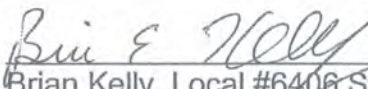
DATE \_\_\_\_\_ BY \_\_\_\_\_



UNION  
AFT KANSAS LOCAL #6406



Larry Fairchild, Local #6406 President



Brian Kelly, Local #6406 Steward



**CLASS I - ATTACHMENT A**  
**NOTICE OF EMPLOYMENT OPTION WITH FOTZ**

Dated: \_\_\_\_\_

Dear AFT Employee [individual letters to each zoo employee]:

Please consider the following actions that are time-sensitive:

1. You have the opportunity to transfer your employment to FOTZ, effective \_\_\_\_\_, in the position of [specify position]. Your transfer to employment with FOTZ pursuant to the terms set forth within Attachment B requires execution of Attachment B on or before 5:00 p.m. on \_\_\_\_\_. The option to transfer employment to FOTZ will expire at 5:01 pm on \_\_\_\_\_.
2. If you choose to exercise your option to accept employment with FOTZ per the terms set forth in paragraph 1, you will also be given preferential hiring opportunities during the time period of \_\_\_\_\_ through \_\_\_\_\_, for any open AFT position or other non-bargaining unit city position for which you meet the minimum qualifications.
3. In the event you do not timely accept a position with FOTZ in accordance with paragraph 1 or obtain another city position in accordance with paragraph 2, you will be considered to have voluntarily resigned your employment with the City of Topeka, effective \_\_\_\_\_.

**CLASS I - ATTACHMENT B**

Friends of the Topeka Zoo (FOTZ) offers to employ \_\_\_\_\_ NAME \_\_\_\_\_ in the position of \_\_\_\_\_ POSITION/TITLE \_\_\_\_\_ at \_\_\_\_\_ GRADE/STEP \_\_\_\_\_ at the hourly wage rate of \$ \_\_\_\_\_ HOURLY PAY RATE \_\_\_\_\_. (FOTZ will be requested to provide position description and 2021 FOTZ pay matrix.)

The OFFER above is open until 5:00 p.m. on \_\_\_\_\_. In order to accept the position, the following ELECTION must be executed and returned to the City of Topeka's Human Resources Department no later than 5:00 p.m. on \_\_\_\_\_.

I, \_\_\_\_\_ NAME \_\_\_\_\_, elect to: (please select one of the boxes below)

**BOX A** ☐ accept employment with FOTZ in the position described above effective \_\_\_\_\_, 2020. This election includes the following terms:

\*FOTZ will credit my \_\_\_\_\_ years of service with the City of Topeka toward years of service with FOTZ for any employment benefits that take seniority into account, including the allotment of "Paid Time Off" and the approval process for "Paid Time Off."

\*I authorize the City of Topeka to transfer \_\_\_\_\_ hours of my vacation accruals to FOTZ; and I understand that the maximum number of hours that I may transfer is \_\_\_\_\_ hours.

\*I authorize the City of Topeka to provide a copy of my Personnel File to FOTZ.

\*I agree to provide **written notification** to FOTZ should I elect to commence drawing KPERS retirement benefits while employed by FOTZ and I understand that **receipt of KPERS retirement benefits may result in up to a 30% reduction in pay or termination of my employment** with FOTZ.

**BOX B** ☐ decline employment with FOTZ because I have secured a new position with the City or, if not, resign my employment with the City effective \_\_\_\_\_<sup>1</sup>.

\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

STATE OF KANSAS  
COUNTY OF SHAWNEE

Signed \_\_\_\_\_ or attested \_\_\_\_\_ before me \_\_\_\_\_ on \_\_\_\_\_, 2020, by  
«Name» \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public Signature

My commission expires: \_\_\_\_\_

<sup>1</sup> Date will be inserted that reflects one day earlier than the effective date of FOTZ employment within Box A above.



**CLASS II - ATTACHMENT A**  
**NOTICE OF EMPLOYMENT OPTION WITH FOTZ**

Dated: \_\_\_\_\_

Dear AFT Employee [individual letters to each zoo employee]:

Please consider the following actions that are time-sensitive:

1. You have the opportunity to transfer your employment to FOTZ, effective \_\_\_\_\_, in the position of [specify position]. Your transfer to employment with FOTZ pursuant to the terms set forth within Attachment B requires execution of Attachment B on or before 5:00 p.m. on \_\_\_\_\_. The option to transfer employment to FOTZ will expire at 5:01 pm on \_\_\_\_\_.
2. Because you are an employee eligible to draw a retirement benefit through KPERS within three (3) years of the Effective Date of this Agreement, you have the alternative option not to transfer your employment to FOTZ per the terms set forth in paragraph 1 above, and remain an employee of the City of Topeka in accordance with City of Topeka Contract No. 46203 with AFT Kansas Local 6406, including amendments. This election choice is provided within Attachment B and must be made on or before 5:00 pm on \_\_\_\_\_.
3. In the event you fail to make a timely election specified within Attachment B, you will be considered to have voluntarily resigned your employment with the City of Topeka, effective \_\_\_\_\_.

CLASS II - ATTACHMENT B

Friends of the Topeka Zoo (FOTZ) offers to employ \_\_\_\_\_ NAME \_\_\_\_\_ in the position of \_\_\_\_\_ POSITION/TITLE \_\_\_\_\_ at \_\_\_\_\_ GRADE/STEP \_\_\_\_\_ at the hourly wage rate of \$ \_\_\_\_\_ HOURLY PAY RATE \_\_\_\_\_. (FOTZ will be requested to provide position description and 2021 FOTZ pay matrix.)

The following ELECTION must be executed and returned to the Human Resources Department no later than 5:00 p.m. on \_\_\_\_\_.

I, \_\_\_\_\_ NAME \_\_\_\_\_, elect to: *(please select one of the boxes below)*

☐ accept employment with FOTZ in the position described above effective \_\_\_\_\_. This election includes the following terms:

\*FOTZ will credit my \_\_\_\_\_ years of service with the City of Topeka toward years of service with FOTZ for any employment benefits that take seniority into account.

\*I authorize the City of Topeka to transfer \_\_\_\_\_ hours of my vacation accruals to FOTZ; and I understand that the maximum number of hours that I may transfer is \_\_\_\_\_ hours

\*I authorize the City of Topeka to provide a copy of my Personnel File to FOTZ.

\*I will provide **written notification** to FOTZ should I elect to commence drawing KPERS retirement benefits while employed by FOTZ and I understand that **receipt of KPERS retirement benefits may result in up to a 30% reduction in pay or termination of my employment** with FOTZ.

OR

☐ remain a city employee in my current position of \_\_\_\_\_ pursuant to AFT Contract No. 48941.

\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

STATE OF KANSAS  
COUNTY OF SHAWNEE

Signed or attested before me on \_\_\_\_\_, 2020, by  
«Name» \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public Signature

My commission expires: \_\_\_\_\_



## EXHIBIT 2

### NOTICE OF FOTZ EMPLOYMENT OPTION FOR NON-UNION EMPLOYEES

Dated: \_\_\_\_\_

Dear \_\_\_\_\_ [Mgmt Employee]:

1. You have the opportunity to transfer your employment to FOTZ, effective \_\_\_\_\_, in the position of [specify position]. Your transfer to employment with FOTZ pursuant to the terms set forth within Attachment B requires execution of Attachment B on or before 5:00 p.m. on \_\_\_\_\_. The option to transfer employment to FOTZ will expire at 5:01 pm on \_\_\_\_\_.
2. In the event you do not timely accept a position with FOTZ in accordance with paragraph 1, you will continue in your current employment position with the City of Topeka at your current compensation level, but you may be assigned a different working title and your immediate supervisor will be assigned by FOTZ.

### EXHIBIT 3

#### ELECTION REGARDING ZOO EMPLOYMENT FOR NON-UNION EMPLOYEES

Friends of the Topeka Zoo (FOTZ) offers to employ \_\_\_\_\_ NAME \_\_\_\_\_ in the position of \_\_\_\_\_ POSITION/TITLE \_\_\_\_\_ at \_\_\_\_\_ GRADE/STEP \_\_\_\_\_ at the hourly wage/salary rate of \$ \_\_\_\_\_ HOURLY PAY RATE \_\_\_\_\_.

The following ELECTION must be executed and returned to the Human Resources Department no later than 5:00 p.m. on \_\_\_\_\_.

I, \_\_\_\_\_ NAME \_\_\_\_\_, elect to: *(please select one of the boxes below)*

☐ accept employment with FOTZ in the position described above effective \_\_\_\_\_. This election includes the following terms:

\*FOTZ will credit my \_\_\_\_ years of service with the City of Topeka toward years of service with FOTZ for any employment benefits that take seniority into account.

\*I authorize the City of Topeka to transfer \_\_\_\_\_ hours of my vacation accruals to FOTZ; and I understand that the maximum number of hours that I may transfer is \_\_\_\_\_ hours.

\*I authorize up to a maximum of 240 hours of accrued, unused, unpaid Sick leave to be transferred to a Short-term Disability Bank maintained by FOTZ.

\*I authorize the City of Topeka to provide a copy of my Personnel File to FOTZ.

**OR**

☐ remain a city employee in the position of \_\_\_\_\_ at my current compensation level pursuant to policies and procedures governing City employment, as well as applicable provisions within the License and Management Agreement between FOTZ and City.

\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

STATE OF KANSAS  
COUNTY OF SHAWNEE

Signed \_\_\_\_\_ or attested before me on \_\_\_\_\_, 2020, by  
«Name» \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

My commission expires: \_\_\_\_\_



# EXHIBIT B

## List of Loaned Animals

(as of 02-04-21)

Animals in on Loan

- 1 Three Banded Armadillo
- 2 Giraffe
- 2 North American Black Bear
- 1 Nicobar Pigeon
- 1 Sumatran Tiger
- 2 African Painted Dog
- 1 Blue Crowned Motmot
- 3 Black and White Ruffed Lemur
- 1 Greater Malayan Chevrotain
- 5 Golden Lion Tamarin
- 1 East African Crowned Crane
- 2 Eurasian Eagle Owl
- 2 Pronghorn
- 1 Bornean Orangutan
- 1 American Alligator
- 1 Patas Monkey
- 1 Black Footed Ferret
- >60 Salt Creek Tiger Beetles

Animals out on Loan

- 1 Western Lowland Gorilla
- 1 Leopard Tortoise
- 1 Furrowed Wood Turtle



# EXHIBIT C

## Map of Topeka Zoo and Conservation Center

# Exhibit "C"



While the City of Topeka, KS makes every effort to maintain and distribute accurate information, NO WARRANTIES AND/OR REPRESENTATIONS OF ANY KIND are made regarding information, data, or services provided. In no event shall the City of Topeka, Kansas be liable in any way to the users of this data. Users of the data shall hold the City of Topeka, Kansas harmless in all matters and accounts arising from the use and/or accuracy of this database.



Map Author: NJF  
Date Created:  
1/26/2021 4:33 PM

0.02  
Miles



Topeka Zoo and  
Conservation Center  
Exhibit "C"



# EXHIBIT D

## Map of Topeka Zoological Park

# Exhibit "D"



While the City of Topeka, KS makes every effort to maintain and distribute accurate information, NO WARRANTIES AND/OR REPRESENTATIONS OF ANY KIND are made regarding information, data, or services provided. In no event shall the City of Topeka, Kansas be liable in any way to the users of this data. Users of the data shall hold the City of Topeka, Kansas harmless in all matters and accounts arising from the use and/or accuracy of this data.



Map Author: NJF  
Date Created:  
1/26/2021 10:28

0.03 Miles



Topeka Zoo and  
Conservation Center  
Exhibit "D"



## Topeka Zoological Park Legal Description

A tract in the Northeast Quarter of Section 34, Township 11 South, Range 15 east of the 6<sup>th</sup> P.M., in the City of Topeka, Shawnee County, Kansas, described as:

Beginning at the Southeast corner of said Northeast Quarter; thence South 87°47'10" West, North American Datum 1983, Kansas North Zone basis, on the South line of said Northeast Quarter, 737.21 feet; thence North 2°08'07" West, 177.94 feet; thence westerly on a non-tangential curve concave northerly, having a radius measure of 592.96 feet and an arc length of 18.73 feet, the chord of which bears North 83°02'04" West, 18.73 feet; thence North 82°07'12" West, 19.19 feet; thence westerly on a curve concave northerly having a radius measure of 504.73 feet and an arc length of 118.40 feet, the chord of which bears North 75°24'00" West, 118.12 feet; thence northwesterly on a curve concave northeasterly having a radius measure of 428.86 feet and an arc length of 311.47 feet, the chord of which bears North 47°52'28" West, 304.67 feet; thence North 27°04'04" West, 5.67 feet; thence northerly on a curve concave easterly having a radius measure of 484.89 feet and an arc length of 420.15 feet, the chord of which bears North 2°14'41" West, 407.13 feet; thence North 22°34'42" East, 215.10 feet; thence northerly on a curve concave westerly having a radius measure of 164.60 feet and an arc length of 102.13 feet, the chord of which bears North 4°48'03" East, 100.50 feet; thence northerly on a curve concave easterly, having a radius measure of 380.22 feet and an arc length of 144.66 feet, the chord of which bears North 2°04'28" West, 143.79 feet; thence North 3°05'23" East, 566.02 feet; thence South 86°54'37" East, 28.00 feet; thence North 3°05'23" East, 137.67 feet; thence northerly on a curve concave easterly having a radius measure of 496.23 feet and an arc length of 191.13 feet, the chord of which bears North 14°07'25" East, 189.95 feet; thence North 25°09'27" East, 123.30 feet; thence North 64°50'33" West, 12.00 feet; thence northerly on a curve concave westerly, having a radius measure of 250.70 feet and an arc length of 120.45 feet, the chord of which bears North 11°23'35" East, 119.30 feet; thence North 2°22'24" West, 257.63 feet; thence North 87°37'08" East on the North line of said Northeast Quarter, 825.97 feet to the Northeast corner of said Northeast Quarter ; thence South 1°20'15" East on the East line of said Northeast Quarter, 2654.15 feet to the point of beginning.

Contains 59.385 acres, more or less.

# EXHIBIT E

## List of Zoo Animals

(as of 02-04-21)



Taxonomy Class	Common Name	Sex Type	House Name
Amphibia	Tiger salamander	Male	Hulk
Amphibia	Vietnamese mossy frog	0.0.2	
Arachnida	Brazilian black tarantula	Undetermined	
Arachnida	Brazilian blue tarantula		
Arachnida	Chaco golden knee tarantula	Male	
Arachnida	Curlyhair tarantula	Undetermined	
Arachnida	Red-kneed tarantula	Female	Maria
Arachnida	Pink toe tarantula	0.0.1	
Arachnida	Salmon pink bird eater tarantula		
Arachnida	Striped knee tarantula	0.0.1	
Arachnida	Ecuadorian olive tarantula		
Arachnida	Striped bark scorpion	0.0.1	
Arachnida	Asian forest scorpion	0.0.1	
Arachnida	Wolf spider	Undetermined	
Aves	American golden eagle	Male	Chockey
Aves	Bali myna	Female	
Aves	Bali myna	Male	
Aves	Black crane	Male	
Aves	Black crane	Male	
Aves	Blue-grey tanager	Male	
Aves	Blue-grey tanager	Male	
Aves	Blue-grey tanager	Male	
Aves	Blue-grey tanager	Male	
Aves	Blue-throated piping-guan	Male	Rowdy Roddy
Aves	Common ostrich	Female	Purple
Aves	Common ostrich	Male	Red
Aves	East African grey crowned-crane	Female	Kuanga
Aves	Eastern screech owl	Female	Alula
Aves	Eastern screech owl	Female	Charlotte
Aves	Great horned owl	Female	Cheyenne
Aves	Grey-necked wood rail	Male	
Aves	Hamerkop	Female	Natasha
Aves	Hamerkop	Male	Boris
Aves	Harlan's red-tailed hawk	Female	Gatsby
Aves	Helmeted guineafowl	Female	
Aves	Helmeted guineafowl	Undetermined	
Aves	Helmeted guineafowl	Undetermined	
Aves	Helmeted guineafowl	Undetermined	
Aves	Helmeted guineafowl	Undetermined	
Aves	Nicobar pigeon	Female	Lemon Drop
Aves	Nicobar pigeon	Female	Peppermint Pattie
Aves	Nicobar pigeon	Female	Jolly Rancher
Aves	Nicobar pigeon	Female	

Aves	Nicobar pigeon	Male	
Aves	Nicobar pigeon	Male	
Aves	Nicobar pigeon	Male	Laffy Taffy
Aves	Nicobar pigeon	Male	
Aves	Nicobar pigeon	Male	Jaw Breaker
Aves	Nicobar pigeon	Male	Hot Tamale
Aves	Nicobar pigeon	Undetermined	
Aves	Purple glossy starling	Female	
Aves	Purple glossy starling	Male	
Aves	Rainbow Lorikeet	Female	Olive
Aves	Rainbow Lorikeet	Female	Delta
Aves	Rainbow Lorikeet	Female	Articuno
Aves	Rainbow Lorikeet	Female	Jack
Aves	Rainbow Lorikeet	Female	Clementine
Aves	Rainbow Lorikeet	Female	Echo
Aves	Rainbow Lorikeet	Female	Grape
Aves	Rainbow Lorikeet	Female	Starly
Aves	Rainbow Lorikeet	Female	Brandy
Aves	Rainbow Lorikeet	Female	Farfetch'd
Aves	Rainbow Lorikeet	Female	Alejandro
Aves	Rainbow Lorikeet	Female	Kiwi
Aves	Rainbow Lorikeet	Male	Zazu
Aves	Rainbow Lorikeet	Male	Starburst
Aves	Rainbow Lorikeet	Male	Rose
Aves	Rainbow Lorikeet	Male	Jazi
Aves	Rainbow Lorikeet	Male	Quila
Aves	Rainbow Lorikeet	Male	Swablu
Aves	Rainbow Lorikeet	Male	Melon
Aves	Rainbow Lorikeet	Male	Rona
Aves	Rainbow Lorikeet	Male	Alfalfa
Aves	Rainbow Lorikeet	Male	Charly
Aves	Red-capped cardinal	Male	Paul
Aves	Red-capped cardinal	Male	Mitchell
Aves	Red-capped cardinal	Male	
Aves	Red-collared widow bird	Female	
Aves	Red-collared widow bird	Male	
Aves	Red-tailed hawk	Male	Red
Aves	Ringed teal	Male	
Aves	Roseate spoonbill	Female	Zsa Zsa A05
Aves	Roseate spoonbill	Female	
Aves	Scarlet ibis	Female	
Aves	Scarlet ibis	Female	
Aves	Scarlet macaw	Male	Roscoe
Aves	Scarlet macaw	Male	Dusty
Aves	Silver-beaked tanager	Male	
Aves	Taveta golden weaver	Male	
Aves	Taveta golden weaver	Male	
Aves	Taveta golden weaver	Male	
Aves	Temminck's tragopan	Female	
Aves	Troupial	Female	
Aves	Troupial	Female	



Aves	Troupial	Male	
Aves	Troupial	Male	
Aves	Trumpeter swan	Female	
Aves	Trumpeter swan	Female	
Aves	Trumpeter swan	Female	Sedna
Aves	Trumpeter swan	Male	Silla
Aves	Turkey vulture	Female	Lily
Aves	Violet turaco	Female	
Aves	Whistling duck	Male	
Aves	Whistling duck	Male	
Aves	Whistling duck	Male	
Aves	Whistling duck	Undetermined	
Aves	White-cheeked pintail	Male	
Aves	White-cheeked pintail	Male	
Aves	Wild turkey	Female	Pink
Aves	Wild turkey	Male	Floyd
Chilopoda	Vietnamese centipede		
Diplopoda	Giant African millipede	0.0.6	
Diplopoda	Millipede	1 units	
Insecta	Annam Stick Insect	1 units	
Insecta	Chinese mantis	Undetermined	
Insecta	Cockroach, Peppered	1	
Insecta	Honeybee	1 units	
Insecta	Honeybee	1 units	South Hive 2
Insecta	Honeybee	1 units	
Insecta	Jungle Nymph	1 units	
Insecta	Madagascar hissing cockroach	1	
Insecta	Sabah thorny stick insect	1 units	
Insecta	Toe biter	0.0.1	
Insecta	Two-spotted assassin bug	1 units	
Insecta	Two-striped walkingstick	1 units	
Mammalia	African elephant	Female	Tembo
Mammalia	African hunting dog	Male	Kellan
Mammalia	African lion	Female	
Mammalia	American Jacob sheep	Male	Jake
Mammalia	Asian elephant	Female	Cora
Mammalia	Cape porcupine	Male	Spike
Mammalia	Cougar	Female	Cassy
Mammalia	Cougar	Male	Dakota
Mammalia	Four-toed hedgehog	Female	Pinecone
Mammalia	Giraffe	Female	Elizabeth
Mammalia	Giraffe	Female	Hope
Mammalia	Giraffe	Male	Sgt Peppers
Mammalia	Hippopotamus	Male	Tank
Mammalia	Hoffmann's two-toed sloth	Female	Jackie

Mammalia	Hoffmann's two-toed sloth	Female	Sago
Mammalia	Indian flying fox	Female	Barbara
Mammalia	Indian flying fox	Female	Pamela
Mammalia	Indian flying fox	Female	Selena
Mammalia	Indian flying fox	Female	Harley
Mammalia	Indian flying fox	Female	Zatanna
Mammalia	Indian flying fox	Female	Martha
Mammalia	Indian flying fox	Male	Damien
Mammalia	Indian flying fox	Male	Bruce
Mammalia	Indian flying fox	Male	Belmont
Mammalia	Indian flying fox	Male	Jason
Mammalia	Kirk's dik-dik	Male	KRACKLE
	Lesser Madagascar		
Mammalia	hedgehog tenrec	Female	Sophie
Mammalia	Llama	Female	Gertie Gertie/B12
Mammalia	Malayan sun bear	Male	Ho Ho
Mammalia	Nigerian dwarf goat	Female	Cocoa
Mammalia	Nigerian dwarf goat	Male	Oreo
Mammalia	North American river otter	Male	Albert
Mammalia	North American river otter	Male	Tony
Mammalia	Northwest Bornean orangutan	Female	Rudy
Mammalia	Northwest Bornean orangutan	Male	Bumi
Mammalia	Patas monkey	Female	Pili
Mammalia	Patas monkey	Female	Siku
Mammalia	Patas monkey	Female	Freedra
Mammalia	Patas monkey	Female	Emma
Mammalia	Patas monkey	Male	Harry
Mammalia	Pronghorn	Female	Sassafras
	Southern three-banded		
Mammalia	armadillo	Female	Erin
Mammalia	Striped skunk	Female	Phoebe
Mammalia	Sumatran tiger	Female	Zayana
Mammalia	Sumatran tiger	Male	Badar
Mammalia	Sumatran tiger	Male	Kansa Raja Raja
Mammalia	Sumatran tiger	Male	Bintang
Mammalia	Sumatran tiger	Male	Sanjiv
Mammalia	Virginia opossum	Female	Jill
Osteichthyes	Amur carp	0.0.50	
Reptilia	African spurred tortoise	Male	Dafina
	Argentine black and white		
Reptilia	tegu	Male	Alphie
Reptilia	Boa constrictor	Undetermined	Rocky Balboa
Reptilia	Children's python	Male	Dhakhan
Reptilia	Crested gecko	Male	Vanuatu
Reptilia	Dwarf caiman	Male	Pat
Reptilia	Leopard tortoise	Female	Shelda
Reptilia	Leopard tortoise	Male	Speedy
Reptilia	Milksnake	Male	Bessie



Reptilia	New Guinea blue-tongued skink	Undetermined	Steve
Reptilia	Ornate box turtle	Female	Mshike
Reptilia	Painted turtle	Female	Mona Lisa
Reptilia	Red-footed tortoise	Male	Big Red
Reptilia	Royal/ball python	Male	Garrus
Reptilia	Royal/ball python	Male	Grunt
Reptilia	Royal/ball python	Male	Reggie
Reptilia	Speckled kingsnake	Undetermined	Freckles
Reptilia	Spiny softshelled turtle	Male	Keshtoga
Reptilia	Three-toed box turtle	Female	Koyake
Reptilia	Western hingeback tortoise	Female	Inkisi
Reptilia	Western ratsnake	Undetermined	William Snakespeare
Reptilia	Yellow-spotted Amazon River turtle	Male	Davy Jones
Reptilia	Yellow-spotted Amazon River turtle	Male	Captain Barbossa
Reptilia	Yellow-spotted Amazon River turtle	Male	Jack Sparrow

# EXHIBIT F

List of

Zoo Personal Property

(as of 02-04-21)



Type	UNIT #	Year	MAKE MODEL	VIN/SN	TAG #	CLASS TYPE	MILES/ HOURS	DATE RC'D	Zoo Name
Vehicle	30052	1996	1996 FORD F350F	2FDKF37H2TCA05584	55656	MT/C3	104,787	01/11/1996	dump truck AM
Vehicle	30005	2002	CHEV Express Van	1GNFG15M521182838	59080	VAN/FULL	98,808	03/21/2002	white van
Vehicle	30012	2002	2002 CHEV C1500	1GCEC19V22E177379	54383	LT/C1	63,875	12/28/2001	Vet Truck
Vehicle	30010	2006	2006 DODGE CARAVAN	1D4GP25E06B682579	55497	VAN/MINI	76,826	04/25/2006	ed van
Vehicle	30022	2006	2006 CHEV C1500	3GCEC14X56G201150	66565	LT/C1	25,615	02/01/2006	AC truck
Cart	30023	2008	EZ-GO RVX- 48V	5012564	NONE	LE/GC	0	1/11/2021	DT Cart
Cart	30024	2008	EZ-GO RVX-48V	5114756	NONE	LE/GC	0	1/11/2021	NR Cart
Cart	30026	2003	Club Car DS 48V	AQ0307-255729	NONE	LE/GC	0	1/11/2021	CZ cart
Cart	30025	2003	Club Car DS 48V	AQ0525-513139	NONE	LE/GC	0	1/11/2021	EVS cart
Cart	30032	1999	1999 CLUB CAR TURF II	RG9905743646	NONE	PC/GC	3,740	06/10/2005	hort cart
Cart	30033	2001	2001 CLUB CAR CARRYALL I	FG0109-996260	NONE	PC/UC	0	12/01/2005	hort cart
Cart	30034	2001	2001 CLUB CAR TURF II	RG0103-982477	NONE	PC/UC	0	01/20/2006	vet cart
Cart	30037	2003	2003 EZ-GO C303 TXT STD	1583399	NONE	PC/GC	0	05/22/2013	Ed cart
Cart	30027	2004	2004 VILLAGER CLUB CAR	FQ0405365919	NONE	LE/GC	0	02/10/2011	office
Cart	30036	2005	2005 EZ-GO ST 350	2306664	NONE	PC/GC	0	05/22/2013	AM cart
Cart	30038	2006	2006 EZ-GO GOLF CART TXT	2379209	NONE	LE/GC	0	09/25/2015	RF cart
Cart	30039	2006	2006 EZ-GO GOLF CART	2379213	NONE	LE/GC	0	09/25/2015	CA Cart
Cart	30040	2006	2006 EZ-GO GOLF CART TXT	2300981	NONE	LE/GC	0	12/16/2015	ADT cart
Cart	30041	2006	2006 EZ-GO GOLF CART TXT	2379302	NONE	LE/GC	0	12/16/2015	keeper cart
Cart	41022	2000	2001 CLUB CAR TURF 6	JG0032 916855	NONE	PC/UC	0	01/01/2001	Maint Flat Bed
Cart	41023	2000	2001 CLUB CAR TURF 6	O99822	NONE	PC/UC	0	01/01/2001	Maint Box
Mower	30035	2006	2006 CUB CADET GT1554	1E016H30126	NONE	MW/RM	18	05/17/2006	mower
Industrial	30004	1995	1995 JOHN DEERE 955	CH3048D014424	NONE	TR/AG	336	05/10/1995	john deere
Industrial	30109	1995	1995 GRASSHOPPER 721 MOWER	45-4380	NONE	MW/RM	1,356	04/04/1995	mower
Industrial	30108	2002	2002 GRASSHOPPER 928D	5216019	NONE	MW/RM	2,441	04/02/2002	blower
Industrial	30007	2006	2006 BOBCAT S185	530313278	NONE	HE/SL	1,516	04/10/2006	skid loader

Trailer	30008	1977	1977 SERTA Trailer	0415077	15402	TL/TL	0	05/22/1978	
Trailer	30101	1984	1984 RAWHIDE HT TRAILER	1674	15403	TL/TL	0	12/20/1984	horse trailer
Trailer	30102	1990	1990 STARLITE 165CR TRAILER	1EYF21629LC028657	16171	TL/TL	0	12/12/1989	flat bed/red
Trailer	30002	2008	2008 CARRY-ON 4X6 FLAT BED	4YMUL06128M023581	74217	TL/TL	0	01/30/2009	
Industrial	30104	2008	2008 LINCOLN Bobcat	LJ400005H	NONE	SE/WE	0	02/01/2009	welder
Industrial	30112	2012	2012 PACIFIC PG-7500D	PDG06634	NONE	HE/GE	0	04/20/2012	generator



Item	Replacement Cost	Model
Gas Sterilizer	6,899	AN74i EO
Dental Machine	7,797	VetPro 1000
Anesthesia Machine	8,298	Titanxl - Radiology
X-ray Unit	78,124	Dxeaco
X-ray Plate	24,659	Radiology
X-ray Digital Portable	49,341	portable vetrocket
Surgery Table	6,995	Surgery
Ultrasound Portable	22,875	Siemens
Ultra-low	11,478	VWR
Carnivore/Ape Shipping Crate	5,500	Custom built
Elephant Strap Spreader Bar	7,200	Custom built

# EXHIBIT G

FOTZ Master Plan

For Zoo





# EXHIBIT H

Real Estate

Deed of Conveyance

between

City and

Louisa H. Gage, et al.

Dated May 31, 1899



## Deed.

Louisa H. Gage, et al, to The City of Topeka.

Filed June 14, 1899 at 2:40 P. M.

This indenture made this 31st day of May 1899 by and between Mrs. Louisa H. Gage of Topeka, Shawnee County, Kansas, widow of the late Guilford G. Gage, deceased, Stephen T. Gage, widower, of Oakland, California, Caroline E. Kenny and her husband, Moses R. Kenny, of Hilledale County, Michigan, Chestina E. Stevens, widow, of Ashtabula County, Ohio, and Norris L. Gage unmarried, of Ashtabula County, Ohio, being the only heirs and devisees of the real estate of said G. G. Gage, deceased, parties of the first part, and the City of Topeka, in Shawnee County, State of Kansas, party of the second part.

Witnesseth, that said parties of the first part, in consideration of their regard for said city and in order as nearly as possible to carry out the wishes of said G. G. Gage, deceased, do hereby, solely upon the conditions and for the special purposes hereinafter named, grant and convey to the said City of Topeka and its successors forever the following described real estate situate in the County of Shawnee and State of Kansas, to wit:

The east eighty (80) acres of the north east quarter of section thirty four (34) in township eleven (11) of range fifteen (15) east of the sixth principal meridian:

For the purpose and upon the express condition that the said City of Topeka shall at all times, own, control, improve, and use the said real estate as a public Park, to be known as "Gage Park", for the benefit of the health, comfort and recreation of the citizens of Topeka and their friends, and such other orderly persons as may resort thereto.

And said real estate shall be inalienable by said city of Topeka, either by way of deed, conveyance, lease, or in any other manner, and shall be forever held and used for the purposes aforesaid, except that said city may lease, for such time and upon such terms and conditions as may be determined by its proper authorities, a portion thereof, of or in the south end thereof not extending further north than forty (40) rods from the south line and not exceeding twenty (20) acres, to "The Country Club" of Topeka, or such other organization or society for the promotion of health, comfort and recreation, as may improve and use the same for such purposes and upon the express condition that the same shall be used for such purposes.

And upon violation of, or default in, or non-compliance with any of the conditions aforesaid, the grant hereby made shall be forfeited, and said land and every right thereto or therein shall revert to and become the absolute and exclusive property of said parties of the first part, their heirs and assigns.

In Witness whereof, said parties of the first part have hereunto set their hands the day and year aforesaid.

Louisa H. Gage  
Norris L. Gage  
Chestina E. Stevens  
Stephen T. Gage  
Caroline E. Kenny  
Moses R. Kenny



# EXHIBIT I

## License Agreement between the City and Shawnee County

Dated May 13, 2013



City of Topeka Contract No. 42895

Shawnee County Contract No. C259-2013

### TOPEKA ZOOLOGICAL PARK IN GAGE PARK LICENSE

THIS LICENSE is entered into as of this 13<sup>th</sup> day of May 2013 ("Effective Date") by and between The City of Topeka, Kansas, ("Licensor") having an address of 215 SE 7<sup>th</sup> Street, Topeka, Kansas 66603-3914 and Shawnee County, Kansas, ("Licensee") having an address of 200 SE 7<sup>th</sup> Street, Topeka, Kansas 66603-3914.

#### STATEMENT OF PURPOSE

WHEREAS, on January 1, 2012, Licensor and Licensee consolidated the operations, functions, and programs of the City of Topeka Parks and Recreation Department with the Shawnee County Parks and Recreation Department under the control of the Licensee; and

WHEREAS, the consolidation agreement (City of Topeka Contract No. 41460/Shawnee County Contract No. C304-2011) excludes the Topeka Zoological Park (Zoo Property) which remains under the ownership, direction and control of Licensor; and

WHEREAS, the Licensor, as owner of the Zoo Property, is required to adhere to the alienation restrictions set forth in the real estate deed of conveyance dated May 31, 1899, between Louisa H. Gage, et al., and the Licensor, filed of record on June 14, 1899, in book 258, page 250 by the Register of Deeds of Shawnee County, Kansas (hereinafter the "Louisa Gage deed") (attached, incorporated and made part hereof as if fully set forth herein) which restrictions apply to the Zoo Property, and

WHEREAS, Licensor is willing to grant a license to Licensee to access, use, maintain and improve specific amenities on Zoo Property for park and recreational activities upon the conditions granted herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Grant of License. Licensor grants a revocable license to Licensee to access, use, maintain and improve specific amenities located on the property with the following legal description:

A tract in the Northeast Quarter of Section 34, Township 11 South, Range 15 east of the 6<sup>th</sup> P.M., in the City of Topeka, Shawnee County, Kansas, described as:



Beginning at the Southeast corner of said Northeast Quarter; thence South 87°47'10" West, North American Datum 1983, Kansas North Zone basis, on the South line of said Northeast Quarter, 737.21 feet; thence North 2°08'07" West, 177.94 feet; thence westerly on a non-tangential curve concave northerly, having a radius measure of 592.96 feet and an arc length of 18.73 feet, the chord of which bears North 83°02'04" West, 18.73 feet; thence North 82°07'12" West, 19.19 feet; thence westerly on a curve concave northerly having a radius measure of 504.73 feet and an arc length of 118.40 feet, the chord of which bears North 75°24'00" West, 118.12 feet; thence northwesterly on a curve concave northeasterly having a radius measure of 428.86 feet and an arc length of 311.47 feet, the chord of which bears North 47°52'28" West, 304.67 feet; thence North 27°04'04" West, 5.67 feet; thence northerly on a curve concave easterly having a radius measure of 484.89 feet and an arc length of 420.15 feet, the chord of which bears North 2°14'41" West, 407.13 feet; thence North 22°34'42" East, 215.10 feet; thence northerly on a curve concave westerly having a radius measure of 164.60 feet and an arc length of 102.13 feet, the chord of which bears North 4°48'03" East, 100.50 feet; thence northerly on a curve concave easterly, having a radius measure of 380.22 feet and an arc length of 144.66 feet, the chord of which bears North 2°04'28" West, 143.79 feet; thence North 3°05'23" East, 566.02 feet; thence South 86°54'37" East, 28.00 feet; thence North 3°05'23" East, 137.67 feet; thence northerly on a curve concave easterly having a radius measure of 496.23 feet and an arc length of 191.13 feet, the chord of which bears North 14°07'25" East, 189.95 feet; thence North 25°09'27" East, 123.30 feet; thence North 64°50'33" West, 12.00 feet; thence northerly on a curve concave westerly, having a radius measure of 250.70 feet and an arc length of 120.45 feet, the chord of which bears North 11°23'35" East, 119.30 feet; thence North 2°22'24" West, 257.63 feet; thence North 87°37'08" East on the North line of said Northeast Quarter, 825.97 feet to the Northeast corner of said Northeast Quarter; thence South 1°20'15" East on the East line of said Northeast Quarter, 2654.15 feet to the point of beginning.

Contains 59.385 acres, more or less.

## 2. License Conditions

Licensee may enter onto, use, manage, improve, and otherwise maintain the following amenities located on Zoo Property:

- A. The Big Gage Shelter House with the proviso Licensor may use the facility at no charge if scheduled at least ninety (90) days prior to event; Licensor scheduling and use within ninety (90) days is subject to availability and consistent with established public reservation policies;
- B. The Helen Hocker Theater Compound consisting of the Theater, the Theater Ticket Office and its Parking Lot, and the Theater Storage Facility;
- C. The Horseshoe Play Complex including the Horseshoe Pits and parking area, the Horseshoe Storage Building, Horseshoe Play Structure, and the Horseshoe Restroom facility all in conjunction with the Topeka Horseshoe Association;



D. The Trolley Shelter;

E. Steak Grill;

F. Hill's Pet Nutrition Bark Park;

G. Softball Field Gage No. 1 in conjunction with area softball league and tournament play as scheduled by Shawnee County Parks and Recreation Department;

H. Munn Memorial (circa 1923), with the proviso that the historic pioneer tribute memorialized thereby be respected and maintained;

I. All War Memorial, with the proviso that the patriotic gratitude memorialized thereby be respected and maintained;

J. Stone Entrance Arch (circa 1910), vicinity Sixth and Gage, with the proviso that the historic nature of the arch be respected and maintained; and

K. All interior streets, roadways, and sidewalks associated with or attenuated to the above amenities for the purposes of maintaining, managing, using, and improving the subject property as a public park/public recreational area.

3. No Interest Acquired. By grant of this REVOCABLE LICENSE, the Licensor does not convey and the Licensee does not receive any estate or proprietary interest in the subject property. Licensee acquires no right of possession superior to that of Licensor. Accordingly, the property shall not be maintained, managed, used, or improved by the Licensee except as allowed by the terms of this license.

4. Permission; Construction. Licensee is prohibited from constructing new or additional facilities, amenities, or structures, hereinafter "qualifying structures", without the express written approval of the Licensor. Licensee is prohibited from modifying, remodeling, and/or renovating existing amenities without the express written approval of the Licensor.

5. Signage. Licensor grants to Licensee authority to construct, maintain, and operate an electronic sign at the corner of Tenth Street and Gage Boulevard or a similarly suitable location. Design and placement of any such sign must have prior written approval of Licensor, and must suitably identify Licensor as owner of the subject property. Licensor shall be entitled to no less than one-third use of such electronic message display board for municipal purposes, defined as one-third of operating time per twenty-four hour period. Except as provided hereinabove, Licensee is prohibited from erecting or displaying any and all signage except as specifically directed, approved, and controlled by the Licensor by written agreement. Such use will not be unreasonably withheld, consistent with the Statement of Purpose above.

6. Expansion. Licensor will make a reasonable effort to provide the Licensee at least a twelve (12) month notification if Licensor plans to expand the existing fenced perimeter of the



Topeka Zoo. In such event, the Licenser will provide the Licensee an adequate opportunity to remove any affected qualifying structures.

The Licenser hereby grants the Licensee this license to maintain, manage, use, and improve the above-listed amenities on Zoo property, and the Licenser grants to the Licensee the authority to contract with other parties in order to effectuate the maintenance, management, use, and improvement of the amenities consistent with this license. Any party that contracts with the Licensee for the purposes set out in this license shall also have the privilege to enter onto the subject property for said purposes. Any contract or agreement for the aforesaid use must be in conformance with the standards and restrictions as set forth in the Louisa Gage deed and this license and contain the following recitation: "All parties to this agreement understand and are bound by the restrictions, responsibilities, and limitations set out in City of Topeka Contract No. ~~428957~~ Shawnee County Contract No. ~~25913~~ [insert #'s from this license] as well as the terms of the deed conveying title to the subject property to the City of Topeka filed of record June 14, 1899, in book 258, page 250 by the Register of Deeds of Shawnee County, Kansas."

#### CONSIDERATION

This permission is given to the Licensee in return for and acknowledgment of the following consideration(s):

- A. Licensee agrees to operate, use, keep in good repair, and otherwise maintain the listed amenities at Licensee's cost, except as provided for herein.
- B. Licensee agrees to reimburse Licenser for costs of insurance maintained by Licenser on the above-listed amenities upon proof provided of such costs.
- C. Licensee agrees to maintain all interior streets, roadways, parking lots, and sidewalks associated with or attenuated to the above amenities at Licensee's cost.
- D. Licensee agrees to assume responsibility for electrical, water, heating and cooling, communication, and any other utility contracts and services relating to the licensed property and amenities denominated in this license at Licensee's cost.
- E. Licensee agrees to prohibit use of the facilities for any purpose other than as agreed upon in this license and any use restrictions as expressed on any properly recorded deeds of conveyance on the above-described property.

Retention of Revenues. The Licenser hereby agrees that the Licensee shall retain all revenues, fees, and all other monies generated through the Licensee's operation of listed amenities on Zoo Property as a public park/recreational area, except as provided for herein.

The Licensee hereby agrees that it will receive no right of payment or any type of financial support from the Licenser for its operation of the property as a result of this specific license, except as provided for herein.

#### TERM OF LICENSE

This license shall become effective upon the signatures by both parties and shall remain in continuous effect at the discretion of the Licenser. The Licenser in good faith agrees to allow



the Licensee to maintain, manage, use, and improve the listed amenities on Zoo Property as a public park/public recreational area under this license so long as the Licensor agrees to and does in good faith maintain, manage, use, and improve the property as a public park/public recreational area, subject to the needs of the Licensor for any or all of the property and/or the amenities thereon.

#### TERMINATION OF LICENSE

Inherent in the nature of a license, the Licensor retains the right to unilaterally cancel this license at any time. Additionally, the Licensor hereby provides notice that, should the Licensee at any time cease to operate the amenities on the Zoo Property as a public park/public recreational area, the Licensor may cancel this license and will be not liable for any debts owed by the Licensee to any third party resulting from the cancellation of this license.

It is mutually agreed by the parties hereto that in the event title of the Licensor to any land or portion of land to be used by Licensee hereunder is adjudged by a court of competent jurisdiction to be in jeopardy, or to be such that the Licensor is prohibited from allowing such use as is contemplated hereunder, then, and in that event, this license shall terminate forthwith, and Licensee shall, from such time thereafter, have no right, interest, or claim against the Licensor whatsoever.

#### DISCLAIMER OF LIABILITY

Nothing in this license shall be construed that the Licensor holds harmless or otherwise indemnifies the Licensee for any cause of action arising out of the Licensee's activities in connection with Zoo Property. Licensee shall exercise its privileges hereunder at its own risk and irrespective of any negligence of Licensor, Licensor shall indemnify Licensor against all liability for damages, costs, losses, and expenses resulting from, arising out of, or in any way connected with, the occupation or use of the premises by Licensee, or the Licensor's invitees, or guests of Licensee, or the failure on the part of Licensee to perform fully all and singular Licensee's responsibilities as enumerated and agreed to herein.

#### ASSIGNABILITY

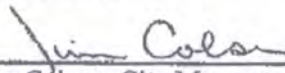
Licensee's privileges hereunder shall not be assignable in whole or in part.

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

Attest:



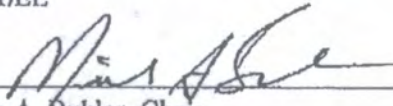
CITY OF TOPEKA, KANSAS  
LICENSOR

  
\_\_\_\_\_  
Jim Colson, City Manager

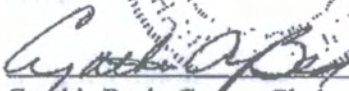
APPROVED AS TO FORM AND LEGALITY  
DATE 5-13-13 BY JG

  
\_\_\_\_\_  
CITY CLERK

SHAWNEE COUNTY BOARD OF COMMISSIONERS  
LICENSEE

  
Michele A. Buhler, Chair,

Attest:

  
Cynthia Beck, County Clerk  
5/13/2013





# ADMINISTRATIVE ACTION FORM

Contact Person:	Judy Olander	Date:	5.13.13
Document:	Contract/Agreement	Document #	42895
Second Party/Subject:	Shawnee County	Project #:	n/a
Originating Department:	Legal - ATTY	CIP Project:	
Category/Subcategory:	007 Contracts and Amendments / 018 Other		

## Requested Action:

Approve as presented

File with the City Clerk

License agreement for use of various facilities in Topeka Zoological Park by Shawnee County Parks and Recreation

MAY 17 2013

## Approval/Action Routing: (See Routing Instructions on Sheet 2).

Approved by:	Housing and Neighborhood Development	Date:	
Approved by:	City Controller	Date:	
Approved by:	Judy Olander	Date:	5-13-13
Approved by:	D. Younger	Date:	5-13-13
Approved by:	City Clerk	Date:	
Approved by:		Date:	
Approved by:		Date:	
Return to:	Tammy Fisher in Legal	Date:	

# EXHIBIT J

Map of  
Area within which  
specific amenities  
to be maintained and  
improved in  
accordance with  
terms of Exhibit I



# Exhibit "J"



While the City of Topeka, KS makes every effort to maintain and distribute accurate information, NO WARRANTIES AND/OR REPRESENTATIONS OF ANY KIND are made regarding information, data, or services provided. In no event shall the City of Topeka, Kansas be liable in any way to the users of this data. Users of the data shall hold the City of Topeka, Kansas harmless in all matters and accounts arising from the use and/or accuracy of this database.



Map Author: NJF  
Date Created:  
1/26/2021 4:35 PM

0.02  
Miles



Topeka Zoo and  
Conservation Center  
Exhibit "J"

# EXHIBIT K

List of Current  
Contracts,  
Permits, Licenses,  
etc.

as of 02-04-21



**Contracts:**

- 2 Equipment Rental Agreements between the City of Topeka and Century Business Solutions, City of Topeka Contract No. 46677 dated March 7, 2018, and City of Topeka Contract No. 45725 dated February 10, 2017

**Permits:**

- United States Department of Interior, US Fish and Wildlife Service Eagle Exhibition Permit, Permit Number MB710293-0
- United States Department of Interior, US Fish and Wildlife Service - Waterfowl Sale and Disposal Permit, permit number MB690675-0
- United States Department of Interior, US Fish and Wildlife Service – Kansas Special Canada Goose Permit, permit number 19-SN-BMR-007
- State of Kansas Scientific, Education, or Exhibition Wildlife Permit, Permit No. SC-018-2019 (re-application pending)
- United States Department of Interior, US Fish and Wildlife Service – List of Authorized Individuals for Threatened and Endangered Species Permit, relating to permit number TE053961-1 held by Henry Doorly Zoo
- United States Department of Agriculture – Permit to Move Live Plant Pests, Noxious Weeds, and Soil, permit number P526P-18-02578
- State of Alaska, Department of Fish and Game – Live Exhibition Permit for Black Bear “Val”, permit number 14-186

**Licenses, Registrations and Certificates:**

- United States Department of Agriculture – Animal Welfare Act Class C Exhibitors License, Certificate Number 48-C-0003
- Kansas Department of Agriculture, Kansas Live Plant Dealer License, Dealer # 11967 (renewal application pending)
- Federal Communications Commission – Radio Station Authorization, Registration Number 0002402998
- Kansas Department of Health and Environment – Outdoor Summer Camp School Age Program Childcare License No. 0073657-007
- Kansas State Board of Veterinary Examiners, Veterinary Premise Registration Number 1339
- Kansas Department of Health and Environment, Bureau of Community Health Systems, Radiation Control Program - KDHE X-ray Equipment Registration Number 2684

**Letters of Authorization:**

- LOA for possession of Black-Footed Ferret, Studbook Number 8337, from the Department of Interior, US Fish and Wild Life Service, dated February 23, 2020
- LOA for possession of Black Bear “Indie,” from the State of Oregon Department of Fish and Wildlife, dated May 30, 2014

**Accreditations:**

- Association of Zoos and Aquariums Certificate of Accreditation for the Topeka Zoo and Conservation Center, dated September 10, 2017

**Institutional Memberships:**

- World Association of Zoos and Aquariums
- Association of Zoos and Aquariums
- Association of Zoological Horticulturists
- Elephant Managers Association