

**ZOOLOGICAL SERVICES AGREEMENT BETWEEN  
THE OAKLAND COUNTY ZOOLOGICAL AUTHORITY AND  
THE DETROIT ZOOLOGICAL SOCIETY**

This ZOOLOGICAL SERVICES AGREEMENT (this "Agreement") is made between the **OAKLAND COUNTY ZOOLOGICAL AUTHORITY**, a Michigan public body corporate (the "Authority"), organized pursuant to Articles of Incorporation filed by the County of Oakland, a Michigan municipal corporation ("Oakland County"), and **THE DETROIT ZOOLOGICAL SOCIETY**, a Michigan nonprofit corporation (the "Society").

**WHEREAS**, the Society operates and maintains the Zoo Assets (as defined in the City of Detroit Operating Agreement) pursuant to the terms and conditions of a Memorandum of Agreement between the City of Detroit, a Michigan municipal corporation (the "City of Detroit"), and the Society, dated March 1, 2006, as amended from time to time (the "City of Detroit Operating Agreement");

**WHEREAS**, the Society is seeking to establish a stable funding source from local government to provide for long-term financial stability, which funding is necessary in order for the Society to operate the Zoo Assets;

**WHEREAS**, it is commonplace for nationally accredited zoos to receive public funding from local government or a special tax;

**WHEREAS**, the Oakland County Zoological Authority is authorized by Act 49 of Public Acts of Michigan 2008 (as may be amended from time to time, the "Zoo Act") to contract for zoological services with an accredited zoological institution (as defined in the Zoo Act, an "Accredited Institution") for the benefit of the residents of Oakland County and to pay for such services by levying a special tax if approved by the electors of Oakland County;

**WHEREAS**, the Authority deems it in the best interests of the residents of Oakland County to contract with the Society, as operator of an Accredited Institution, for zoological services pursuant to the terms and conditions of this Agreement as authorized by the Zoo Act in order to provide revenue to the Society to carry out its obligations under the City of Detroit Operating Agreement; and

**NOW, THEREFORE**, it is agreed by the Authority and the Society as follows:

## **I. POWER AND AUTHORITY**

### **1.1 Society's Power and Authority.**

The Society represents and warrants that it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and that the execution, delivery and performance of this Agreement have been authorized by all necessary action.

### **1.2 Authority's Power and Authority.**

The Authority represents and warrants that it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement have been authorized by all necessary action.

## **II. ENGAGEMENT OF THE SOCIETY FOR ZOOLOGICAL SERVICES**

### **2.1 Engagement.**

In exercise of the authority granted to the Authority by the Zoo Act, the Authority hereby engages the Society to perform Zoological Services (as defined below), and the Society hereby agrees to perform Zoological Services in accordance with the terms and conditions of this Agreement. For purposes of this Agreement, "Zoological Services" means the Society performing its obligations under the City of Detroit Operating Agreement that relate to maintaining the public operation of the Zoo Assets during the term of this Agreement.

## **2.2 Independent Contractor Relationship.**

The Society is an independent contractor and as such shall have full authority and responsibility to discharge the duties imposed upon it hereunder without restrictions other than those imposed by or pursuant to this Agreement. Neither the Society nor the Authority shall have the right or authority to bind the other party, without the express written authorization of such other party, to any obligation to a third party. Nothing contained in this Agreement shall constitute the parties as partners or joint venturers for any purpose, it being the express intention of the parties that no such partnership or joint venture exist and that each party has only those duties to the other than are specified in this Agreement.

## **2.3 Governance.**

During the term of this Agreement, the Authority shall have the right to appoint two (2) voting members to serve on the Society's Board of Directors.

## **2.4 Privileges to Oakland County Residents.**

While the parties acknowledge and agree that the primary benefit to be received by the residents of Oakland County under this Agreement is the Society's continued public operation of the Zoo Assets in accordance with Section 2.1 above, the Society agrees that it will also provide the residents of Oakland County with the following special benefits and privileges:

1. Schoolchild rate discounted to be ½ of the standard child admission rate;
2. Free admission to seniors two days per year, which includes one free care giver per senior; and
3. \$10 discount on family-level annual membership

The Society will not provide additional or enhanced benefits and privileges to any other county's residents by agreement with a public body established and organized pursuant to the Zoo Act as compared to those required by this Agreement (as such benefits are measured, in

total, on a per capita basis, based on cost to the Society, as determined in the Society's reasonable discretion), unless the Society also makes such additional or enhanced benefits and privileges available to the Authority.

**2.5 Duty to Submit to Audit.**

Upon reasonable notification, the Society shall submit to an annual financial and/or performance audit pursuant to reasonable parameters set from time to time by the Authority at the Society's expense.

**2.6 Duty to Provide Other Information Requested by the Authority.**

From time to time, the Society shall provide the Authority, within a timely manner, with such other information as the Authority may reasonably request.

**2.7 Duty to Provide Indemnification.**

The Society is liable for and will indemnify, defend and hold the Authority harmless of and from any and all liability from injuries, including disease and death, to a person or damage to property of third parties arising from or claimed to have arisen out of the Society's performance of Zoological Services, providing such injury or damage is alleged to have occurred during the term of this Agreement. The Authority hereby waives any claims of liability that it may have, now or in the future, against the Society, its officers, directors, agents, representatives, heirs and employees except as set forth in this Section. Nothing in this Section 2.7 is intended to limit the rights of the Authority to recover damages it shall have sustained as a result of acts of fraud or embezzlement by a Society employee, as evidenced by a final, non-appealable judgment of a court of competent jurisdiction or a guilty plea.

### **III. OBLIGATIONS OF THE AUTHORITY**

#### **3.1 Authority Commitment Regarding Funding.**

The Authority will levy the proposed .10 mill in each successive year for ten years, starting with 2008. All funds collected under the authority of the levy shall be reserved and transferred solely to the Society within ten business days of receipt of the funds from any local property tax collecting unit, except for reasonable and necessary board operating expenses, election expenses and costs of insurance, legal, auditing and other professional services.

### **IV. JOINT COMMITMENTS OF THE AUTHORITY AND THE SOCIETY**

#### **4.1 Implementation.**

The Authority and the Society agree that they will execute and deliver any assignment agreements, consents or similar documents which may be necessary to implement this Agreement which the parties hereby stipulate sets forth all of the necessary principles of agreement.

#### **4.2 Notice.**

All notices, consents, approvals, requests, reports and other communications required or permitted under this Agreement shall be in writing and sent and addressed as follows:

If to the Authority:	The Oakland County Zoological Authority Care of the Oakland County Board of Commissioners 1200 North Telegraph Road Bldg. 12 East Pontiac, MI 48341
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If to the Society:	The Detroit Zoological Society Attention: Chief Executive Officer P. O. Box 8237 Royal Oak, MI 48068
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Either party to this Agreement may change its address of Notices at any time by giving Notice thereof to the other as herein provided.

**4.3 Term.**

The initial term of this Agreement shall commence on the effective date, which shall be November 30, 2008 and shall run through November 30, 2018.

**4.4 Early Termination.**

In the event that the Society is no longer authorized to operate the Zoo Assets due to the termination of the City of Detroit Operating Agreement, this Agreement shall be terminated effective as the effective date of termination of the City of Detroit Operating Agreement.

**4.5 Entire Agreement; Amendment; Waiver.**

This Agreement is and shall be deemed to be the complete and final expression of the agreement among the parties as to the matters contained in and related to this Agreement and supersedes any previous understandings, dealings and communications, including negotiations, discussions, representations, warranties, information, documents and agreements, among the parties pertaining to such matters. This Agreement shall not be modified or amended except pursuant to a written agreement signed by both parties. Any waiver of any party's rights or obligations under this Agreement must be in writing and must be signed by the party against which such waiver is to be enforced. No party's failure to exercise a right or to invoke a remedy in any particular circumstance shall be construed as a waiver of such right or remedy, and no waiver by either party of any right or remedy in one situation shall constitute a waiver of such party's rights or remedies in any other subsequent situation, whether similar or not.

**4.6 Governing Law.**

This Agreement is governed by and will be construed in accordance with the laws of the State of Michigan.

#### **4.7 Headings.**

The headings of the provisions used in the Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions of this Agreement.

#### **4.8 Severability.**

If any court, agency, commission, legislative body or other authority of competent jurisdiction declares invalid, illegal or unenforceable any portion of this Agreement (including, but not limited to, Section 2.3), or its application to any person, that decision shall not affect the validity of the remaining portions of this agreement.

#### **4.9 No Third Party Beneficiaries.**

Except to the extent expressly contemplated in this Agreement, the obligations undertaken by the Authority and the Society in this Agreement are for the benefit of the Authority and the Society only, and neither any creditor of the Authority or the Society, nor any other party, shall have the right to rely on or enforce the provisions of this Agreement as a third-party beneficiary or otherwise.

#### **4.10 Successors and Assigns.**

This Agreement shall be binding on the Society, its successors and assigns, by merger, sale, transfer, consolidation and lease of either party and it shall not be modified, altered or changed in any respect whatsoever by change of ownership.

#### **4.11 Condition to the Obligations of Each Party to Effect this Agreement.**

The respective rights, duties and obligations of each party under this Agreement shall be subject to the occurrence of both of the following conditions precedent: (i) the passage by the electors of Oakland County of a .10 mill (ten-year) levy proposed by the Authority; and (ii) the

passage by the members of the Society of an amendment to the Society's Bylaws that would allow the Society to comply with its obligations set forth in Section 2.3 above.

**4.12 Effective Date of this Agreement.**

The effective date of this Agreement shall be the date after the conditions pursuant to Section 4.11 have occurred, and the respective parties have signed the Agreement.


**4.13 Authorization and Capacity.**

Each party warrants that the person signing this Agreement is authorized to do so on behalf of its principal and is empowered to bind its principal to this Agreement.



IN WITNESS WHEREOF, the Authority and the Society, by and through their duly authorized officers and representatives, have executed this contract as of the dates of their respective signatures:

WITNESSES:

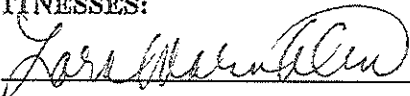
1.   
2. \_\_\_\_\_

THE DETROIT ZOOLOGICAL SOCIETY


By: 

Its: Chairman 7-28-08

WITNESSES:

1.   
2. \_\_\_\_\_

OAKLAND COUNTY ZOOLOGICAL  
AUTHORITY

By:  7-28-08  
Jeffrey L. Hauswirth, Chairman