

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____ 2015, by and between the City of Merced, a California Charter Municipal Corporation (hereinafter referred to as “City”) and the Merced Zoological Society, a California Nonprofit Corporation (hereinafter referred to as “Society”).

WHEREAS, City has faced a significant reduction in its ability to fund discretionary programs, yet recognizes the value of the Applegate Park Zoo (hereinafter referred to as “Zoo”) as an important part of the quality of life in this community; and,

WHEREAS, Society is a nonprofit organization formed to assist the City with a program of Zoo renovation and expansions so as to provide increased educational and recreational opportunities to visitors of and operations of the Zoo; and,

WHEREAS, Society is willing to make contributions to City to defray the operational cost of the Zoo in exchange for the City’s continued operation of the Zoo.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. Society agrees to pay City all entry fees collected at the Zoo. Society guarantees that entry fees will be at least Seventy Thousand Dollars (\$70,000.00). In the event the total entry fees collected exceeds Seventy Thousand Dollars (\$70,000.00), Society agrees to include the additional entry fees collected in their final payment to the City on June 30, 2016. Society agrees to contribute an additional Fifteen Thousand Dollars (\$15,000.00) to City to help offset the operating budget of the Zoo. While it is anticipated that this revenue will amount to approximately thirty percent (30%) of the operating budget for the Zoo for fiscal year 2015-2016, Society guarantees that the combined entry fees and Society’s contribution will be at least Eighty-Five Thousand Dollars (\$85,000.00). In the event that entry fees and contribution exceed this amount, any additional monies collected in entry fees shall be given to City and used to reduce General Fund expenditures in the Zoo budget. Society agrees to pay to City four (4) equal payments of Twenty-One Thousand Two Hundred Fifty Dollars (\$21,250.00) on September 30, 2015, December 31, 2015, March 30, 2016, and June 30, 2016.

2. In exchange for the payments made by Society, City agrees to continue the operation of the Zoo. Society shall collect an entry fee to the Zoo on behalf of the City and shall operate a gift shop. In addition, it is understood the Society may undertake the following specific activities:

- a. Collect an entry fee to the Zoo on behalf of the City for group tours and special events.
- b. Operate the Bear Creek Nature Store Gift Shop.
- c. Operate the soft drink machines as part of the Gift Shop.
- d. Hold fundraisers and special events such as “Zoo Boo,” “Teddy Bear Days,” Birthday Parties,” “Zoo Camp,” “Animal Adoption,” and the like.
- e. Purchase and sell oat pellets to the public to feed the goats and other domesticated animals.
- f. Offer membership to the Merced Zoological Society and allow free admission to the Zoo for Society Members.
- g. Seek additional sponsorships and donations.

Any proceeds from entry fees shall be credited toward the payments by Society to City as described in paragraph 1 hereof.

3. **RECORDS AND REPORTS.** It is understood and agreed that all records, files, reports, etc. in possession of Society relating to the collection of an entry fee for the City shall be the property of the City and may be reviewed by the City at any time. Society agrees to deliver a report summary of entry fees collected to the City at the end of each month reporting the previous month’s statistics.

4. **INDEPENDENT CONTRACTOR.** It is expressly understood that Society is an independent contractor and that its employees, volunteers and agents shall not be considered employees of or have any contractual relationship with the City in the course of providing services under this Agreement. Society shall indemnify, defend (with legal counsel reasonably agreeable to both City and Society), protect, save and hold the City harmless from any and all claims or

causes of action for death or injury to persons or damage to property resulting from intentional or negligent acts, errors, or omissions of Society's employees, volunteers or agents during performance of this Agreement.

Society shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance, if any. Should Society desire any insurance protection not otherwise required by this Agreement, Society is to acquire the same at its expense.

5. INSURANCE. During the term of this Agreement, Society shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full Workers' Compensation Insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one (1) person.

b. General Liability. Society shall obtain and keep in full force and effect a commercial and general liability of at least Five Hundred Thousand Dollars (\$500,000) combined limit for bodily injury and property damage; provided that the City, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Society and its sub-contractors, and that no other insurance effected by City or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The City will be named as an additional insured using ISO form CG 20 10 11 85 or the same form with an edition date no later than 1990.

c. Certificate of Insurance. Society shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance, or certified copies thereof, evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation, including cancellation for non-payment of premium. In lieu of the ISO form CG20 10 11 85 with an edition date no later than 1990, City will accept certified copies of the insurance policy or policies with the endorsements and cancellation provisions required by this Section 5.

6. INDEMNIFICATION AND SOCIETY'S RESPONSIBILITIES.

Society shall indemnify, protect, defend (with legal counsel reasonably agreeable to both City and Society), and hold harmless City and its officials, officers, employees, agents, and volunteers from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts, errors, or omissions of Society or its employees, subcontractors, or agents, or by the quality or character of their work. The foregoing obligation of Society shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers; and, (2) the actions of Society or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Society to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Society from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Society acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Society or any employee, agent, or subcontractor of Society providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Society shall indemnify, defend, protect, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Society or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

7. NEGOTIATION MEETING. Society and City shall meet at a mutually agreed date on or before March 30, 2016 to negotiate Society's contribution for the next fiscal year if it appears that the parties intend to enter into an agreement for the next fiscal year.

8. SPENDING REVIEW. Society and City shall review the actual expenditures in the 2015-2016 fiscal year at the end of the 2015-2016 fiscal year to determine the appropriate amount of Society's contribution for the next fiscal year if it appears that the parties intend to enter into an agreement for the next fiscal year.

9. CREDITS FOR FUNDS NOT EXPENDED. In the event that the entire amount budgeted by the City for the operation of the Zoo is not expended, the unspent funds will be credited to Society against its Fifteen Thousand Dollar (\$15,000.00) donation to the City. City will exercise its best effort to provide a copy of a report of all City expenditures from the budgeted amount by October 1, 2015. The City expenditures will include all expenses, costs, fees, salaries, and other expenses to the City for the operation of the Zoo, whether including expenditures not reflected in the budget.

10. COMPLIANCE WITH ALL LAWS. Society shall comply with the standard of care regarding all applicable Federal, State and municipal laws and regulations. No discrimination shall be made by Society in the employment of persons to work under this Agreement because of race, color, national origin, ancestry, disability, sex, or religion of such person.

11. PERSONAL LIABILITY. Under no circumstances is any member of the Merced Zoological Society (Executive Board or Members) personally responsible for the quarterly payments that the Society is to make to the City.

12. WAIVER. In the event that either City or Society shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

13. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

14. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

15. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or

contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

16. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

17. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

BY: Kelley Finner 8/20/15
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

MERCED ZOOLOGICAL SOCIETY,
A California Nonprofit Corporation

BY: Marlene Murphy

Title: President

Print Name: Marlene Murphy

BY: JL Lator

Title: TREASURER

Print Name: JUAN CARLOS

Taxpayer I.D. No. 77-0011580

ADDRESS: P.O. Box 408
Merced, CA 95341

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E-MAIL: MERCEDZOO@EMAIL.COM

