

## FUNDING AGREEMENT

by and between  
SEDGWICK COUNTY, KANSAS  
and  
SEDGWICK COUNTY ZOOLOGICAL SOCIETY, INC.

This Funding Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between Sedgwick County, Kansas ("County") and the Sedgwick County Zoological Society, Inc., a not for profit corporation duly organized under the laws of the State of Kansas ("Society").

WITNESSETH:

**WHEREAS**, the Society is duly incorporated and empowered to establish, maintain and operate zoological parks and gardens and other collections for the promotion of zoology and for the instruction and recreation of the public; and

**WHEREAS**, by virtue of its purposes and interests, the Society is well suited to plan, establish, construct, supervise, manage and operate the programs and premises consisting of the property described in Exhibit A of the Operating Agreement, commonly known as the Sedgwick County Zoo ("Zoo"), including the selection of species of wildlife and other exhibits to be kept and exhibited in said Zoo; and

**WHEREAS**, the Society has heretofore contributed substantial sums of money, time and effort in connection with the establishment and development of said Zoo, and has assured County that it will continue to contribute and use its resources for various selected species of wildlife, exhibits, structures and improvements, as well as dedicating time and effort in the establishment, operation, maintenance, and development of said Zoo; and

**WHEREAS**, on October 19, 2005, County and Society entered into an Operating Agreement regarding the overall relationship between the parties; and

**WHEREAS**, County and Society most recently entered into a funding agreement on September 11, 2013, subsequently amended on May 13, 2015, and August 12, 2015, and terminated on November 18, 2015, for purposes of defining the financial relationship of the parties in carrying out the Operating Agreement; and

**WHEREAS**, it is in the best interest of the County, the Society and the general public that a new funding agreement which supersedes all other funding agreements be entered into between the parties, redefining the financial relationship of the parties in carrying out the Operating Agreement; and

**WHEREAS**, in consideration for Society's continued partnership in the operation of the Zoo, the parties have agreed on certain levels of County funding to Society

**NOW, THEREFORE**, in consideration of the promises and mutual agreements hereinafter contained, County and Society hereby agree as follows:

**1. Purpose.** The sole purpose of this Agreement is to define the financial relationship between the County and the Society as it relates to funding of Zoo operations by the County.

2. **Term.** The term of this Agreement is for five (5) years commencing January 1, 2018, and ending December 31, 2022. Solely for purposes of the payment to Society to be provided pursuant to Section 3 of this Agreement, County and Society mutually agree that the term of this Agreement shall be extended forty-five (45) days after the end of the term.

3. **County Funding.** In return for Society's performance of duties specified in the Operating Agreement, County agrees to provide funding to or on behalf of Society each year according to the following formula: the entirety of personnel costs of County employees working under the direction of the Zoo Director ("Personnel Costs") plus one-half (1/2) of yearly budgeted and approved capital improvement project expenditures (the "CIP Funds").

- a. **Personnel Costs.** County will have the sole right to determine the number, job classification, pay and benefits of County employees working under the direction of the Zoo Director. While Society will have the right and responsibility to advise County regarding these factors, County's decision will control. Notwithstanding County's sole rights to determine number, classification, pay, and benefits of County employees working under the direction of Zoo Director, County agrees that the County approved staffing table attached as Exhibit B represents the County employees currently employed to operate the Zoo under the terms of the Operating Agreement.

If it is determined by County that Society, in managing County personnel assigned to the Zoo, has caused an expenditure in excess of what was appropriated for Personnel Costs during the entire five (5)-year term of this Agreement, Society shall reimburse County in an amount equal to the over-expenditure upon expiration of this Agreement. Said reimbursement shall be made no later than fifteen (15) days after County requests payment.

- b. **CIP Funds.** In addition, Society will annually prepare and deliver to County a proposed five (5)-year capital improvement plan ("CIP"). The proposed CIP will include, but will not be limited to: (i) a detailed description of the requested project(s); (ii) the need for said project(s), which shall include financial, business and growth considerations; and (iii) the cost estimate of those requested capital projects. County will retain the right to approve, modify or reject any proposed project(s). The parties hereto may, upon mutual agreement, agree to approve, modify or reject any previously approved CIP project(s). County's failure to reject the proposed CIP within forty-five (45) days of its receipt thereof shall be deemed to be County's approval of the CIP.

County will contribute one-half (1/2) of the annual CIP amount to the Society to be held in Fund 12 and such amount will be used only for the projects identified in the CIP and only for the payment of expenditures incurred by Society to design, maintain, repair, improve, expand and construct facilities and improvements as those tasks relate to those projects identified in the CIP. Society will contribute the other one-half of the CIP amount to Fund 21 to fund projects identified in the CIP, and may contribute additional amounts for other projects.

4. **Use of County Funds.** All Personnel Costs shall be expended directly by County. The CIP Funds shall be disbursed by County to Society no later than January 31 of the calendar year for which said Funds are appropriated. Within forty-five (45) days after the end of each calendar year, Society shall provide County with an accounting of how Fund 12 monies were used. Any funds remaining in Fund 12 at the end of a calendar year will be first spent on completing prior CIP projects, or if none, shall be added to the following year's CIP.

If, at any time, Society fails to make payment owed to County pursuant to this or any other agreement between the parties, County will withhold all future disbursements scheduled to be made to Society pursuant to this Agreement until such payments are made by Society, provided that no disbursements by County to pay personnel costs shall be withheld.

**5. Use of Society Funds.** Society agrees to devote the assets and resources of the Zoo as provided in Section 11 of the Operating Agreement.

**6. Supplemental County Funding.** Society may request, but is not guaranteed, supplemental funding from County during County's annual budgeting process under the following conditions:

- a. As of the date of the request, Society is in compliance with all provisions of every agreement between the parties (Operating, Funding and Loan);
- b. An independent certified public accountant certifies that, as of the last day of the calendar year immediately prior to the date of the request, the cash balance in Fund 12 was no greater than the sum of the approved CIP projects and any commitments related to unperformed executed contracts for the goods and services to be paid from Fund 12.

**7. Complete Agreement.** This Funding Agreement supersedes all other agreements between the parties specifically dealing with funding, with the exception of the Loan Agreement and Promissory Note entered into on February 21, 2007, as amended on September 11, 2013, and any other amendments thereto. This Funding Agreement, the Operating Agreement, and the Loan Agreement and Promissory Note (and amendments thereto) contain the complete expression of the agreement between the parties, and there are no other promises, representations, agreements, warranties, or inducements, either expressed verbally or implied between them, except as set forth in such documents.

**8. Modification.** This Agreement cannot be enlarged, modified, or changed in any respect except by written agreement duly executed by and between the parties.

**9. Termination.** Either party may terminate this Agreement by giving written notice by June 1 of any year, which termination will be effective the following January 1. This Agreement will automatically terminate upon the termination or expiration of the Operating Agreement.

**10. Review upon County/City Consolidation.** In the event Sedgwick County and the City of Wichita should consolidate all governmental functions during the life of this Agreement, the new governmental entity and the Society shall schedule a meeting within one (1) year of such consolidation to review this Agreement.

**11. Specific Incorporation of Selected Operating Agreement Provisions.** The following provisions of the Operating Agreement are specifically incorporated by reference into this Funding Agreement as if fully set forth herein:

- |               |                                  |
|---------------|----------------------------------|
| A. Section 20 | Default; Cure                    |
| B. Section 24 | Accounting, Recordkeeping, Audit |
| C. Section 25 | Notice                           |
| D. Section 26 | Change in By-laws                |
| E. Section 27 | Equal Employment Opportunity     |

F. Section 29	Cash Basis and Budget Laws
G. Section 30	Non-Assignability
H. Section 31	Dispute Resolution
I. Section 32	Zoological Foundation
J. Section 33	Extensions

**12. Severability.** The invalidity, unenforceability, or illegality of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement by signature of their duly authorized officers the day and year first above written.

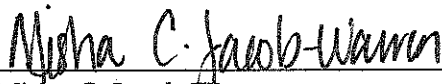
SEDGWICK COUNTY, KANSAS:

\_\_\_\_\_  
David M. Unruh, Chairman  
Commissioner, First District

SEDGWICK COUNTY ZOOLOGICAL  
SOCIETY, INC.

  
\_\_\_\_\_  
Mark DeVries  
President

APPROVED AS TO FORM ONLY:

  
\_\_\_\_\_  
Misha C. Jacob-Warren  
Assistant County Counselor

ATTESTED TO:

\_\_\_\_\_  
Kelly B. Arnold  
County Clerk