

## SPONSORSHIP AGREEMENT

by and between

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

This Sponsorship Agreement ("Agreement") is made and entered into this 30th day of January, 2019, 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").

WHEREAS, the County has been a partner with the Society for many years, providing management and funding for the Sedgwick County Zoo;

WHEREAS, the County recognizes that the Sedgwick County Zoo is a valued element of this community in terms of quality of life and tourism;

WHEREAS, an opportunity exists for County to support the construction of the Visitor Entry Center (defined below) at the Sedgwick County Zoo by providing financing to the Society for this public purpose;

WHEREAS, the Visitor Entry Center will provide for more efficient guest arrivals, enhance the membership experience and allow for considerable growth opportunities for providing a premier level of guest experience for years to come; and

WHEREAS, pursuant to the terms of the operating agreement between the parties, all buildings and exhibits at the Sedgwick County Zoo shall be in the ownership of the County; and

WHEREAS, the County, under its home rule authority granted by K.S.A 19-101a *et seq.* and amendments thereto, is authorized to provide such financial support.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and intending to be legally bound hereby, the County and Society agree as follows:

- (1) **Term of Agreement.** This Agreement shall commence upon the execution by each of the parties hereto ("Effective Date") and shall continue in full force and effect until completion of the Visitor Entry Center, unless terminated earlier as provided below.
- (2) **Sponsorship.** County shall be the primary sponsor of the Visitor Entry Center (and as provided in paragraph (7) below, others may also be sponsors), subject to the terms and conditions set forth herein.

- (3) **Description of Visitor Entry Center.** The Visitor Entry Center will entail the design and construction of a facility to be used for both guest and membership services, including retail opportunities for guests exiting the zoo campus, plus additional space on the second floor of the building for office and conference rooms for zoo management and operations. The second floor will also have a permanent board room for Society meetings. The total square footage of the Visitor Entry Center is estimated to be 22,250. Society will provide County with periodic updates regarding Society's design and construction of the Visitor Entry Center.
- (4) **Sponsorship Fee.** The total fee for the sponsorship rights and privileges granted pursuant to this Agreement shall be \$6,000,000 which shall be paid by County to Society in three separate yearly installments of \$2,000,000 each; the first installment to be paid on or before June 30, 2019; the second installment to be paid on or before June 30, 2020; and the final installment to be paid on or before June 30, 2021.
- (5) **Best Efforts by Society.** Society commits to using its best efforts to market the Visitor Entry Center and will spearhead the community effort to raise public contributions to the Society for the benefit of the Visitor Entry Center.
- (6) **Signage and Marketing Materials.** Society agrees that it will not use naming or branding identification or signage (collectively "Signage") for the Visitor Entry Center unless jointly approved by the County and Society under paragraph (8) below.
- (a) Signage. Any and all design, construction or installation costs of Signage for the Visitor Entry Center shall be paid by Society.
- (b) Marketing. Any and all design, creation or distribution cost of marketing materials and press releases for the Visitor Entry Center shall be paid by Society.
- (7) **Limitation of Other Sponsors.** County recognizes that the Society may permit other persons or entities to sponsor portions of the Visitor Entry Center, subject to the provisions of this Agreement. County will have the right to review and approve Visitor Entry Center related naming opportunities offered by the Society.
- (8) **Design Elements for Sponsorship Identification.** The specific design of all Signage contemplated by this Agreement, including but not limited to the size, color and location thereof, is subject to the following provisions:
- (a) Subject to the allocation of responsibility for costs set forth in paragraph 6 above, County and Society shall work together in a commercially reasonable manner to develop the design of the identifications and signage contemplated by this Agreement.
- (b) The design shall be subject to the mutual approval of the County and Society which approvals shall not be unreasonably withheld or delayed.
- (c) The design shall be subject to the requirements of (and any required approval by) any governmental authority(ies) having jurisdiction over the same, other than the County.

- (d) The County and Society shall work together in a commercially reasonable manner to obtain any third-party approvals which may be required for the design of the Signage.
  - (e) Upon final approval of the design for the applicable Signage and receipt of any required third-party approvals, Society or the County, as provided in paragraph 6 herein, shall cause such approved Signage to be created and installed consistent with the approved design.
  - (f) As used herein, design shall include usual and customary art work, schematic drawings, and specifications for fabrication, construction, and installation.
  - (g) All changes to the approved designs shall be subject to the same approval process as the originally approved designs, and the cost of any such changes shall be paid by the party responsible for the cost of such signage as provided in paragraph 6 herein.
- (9) **Public Relations Efforts During Start-Up; Operations.** From the Effective Date until the grand opening ceremony of the Visitor Entry Center, the County and Society shall coordinate public relations efforts respecting the Visitor Entry Center and shall allow each other to review and comment upon promotional materials prior to the use thereof.
- (10) **Property Rights.** In accordance with the "Operating Agreement" between the parties, the Visitor Entry Center shall be the property of the County upon completion.
- (11) **Binding Effect.** This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their successors and assigns.
- (12) **Termination.**
- (a) Defaults and Material Breaches. Each of the following shall constitute a breach and material default of this Agreement:
    - (i) The failure by County to cure a payment default under this Agreement within thirty days.
    - (ii) Either party's failure to correct, remedy, or cease failure or violation of this Agreement as provided in Subsection (b) below.
    - (iii) The commencement of bankruptcy or insolvency proceedings by or against Society which has not been dismissed with ninety days of the commencement thereof. Upon the occurrence of such event, the County has the right to immediately sell any and all rights contained herein.
  - (b) Termination For Failure to Correct, Remedy, or Cease Failure or Violation of Agreement. In the event either Party to this Agreement fails to perform any

obligation hereunder, or violates any provision of this Agreement, the other Party may give written notice to such Party of such failure and demand the performance of such Party's obligations hereunder or compliance with the terms and conditions hereof within a reasonable period after the date of such notice, which period shall not exceed thirty days. In the event County is the Party receiving notice of such failure or violation and County does not correct, remedy, or cease such failure or violation within the reasonable time specified in such notice, the Society may terminate this Agreement, but notwithstanding such termination, the payments due to the Society will continue and Society will not be obligated to recognize County's sponsorship of the Visitor Entry Center. In the event the Society is the Party receiving such notice, County shall have no obligation to make any payment to the Society for the period from the date of the notice until the failure or violation is cured.

(c) Remedies Available upon Termination of a Party's Rights.

- (i) County's Remedies. In the event that the Society's rights under this Agreement are terminated by County pursuant to this Section, in addition to any other remedies which may be available to County at law or in equity, County shall have no obligation to make any payment to the Society that is due after the date of the effective date of the termination. Such termination shall not relieve Society from liability to the County for any damages caused by Society's default and breach.
- (ii) Society Remedies. In the event that County's rights under this Agreement are terminated by Society pursuant to this Section, in addition to any other remedies which may be available to Society at law or in equity, the Society, without any further proceedings, may grant and license the sponsorship rights to the Visitor Entry Center to one or more other persons or entities and receive sponsorship revenue therefore. In the event that County's rights under this Agreement are terminated pursuant to this Section, the Society shall make a good faith effort to obtain the fair market value for the sponsorship rights.

- (13) **Approvals.** Whenever an approval is required by County pursuant to any action as contemplated by this Agreement, such approval will not be unreasonably delayed or withheld.
- (14) **Indemnification.** To the fullest extent permitted by law, the Society shall defend, indemnify, and hold harmless the County, its officials and employees from and against all liabilities, claims, damages, losses, and expenses, including but not limited to attorney's fees arising or resulting from performance under the Agreement, providing such claim damage, loss or expense is caused in whole or in part by an act or omission of the Society, anyone directly or indirectly employed by the Society or anyone for whose acts the Society may be responsible or liable for, regardless of whether or not it is caused by a party indemnified hereunder.

However, the amount of such indemnification by Society shall not exceed \$1,000,000 for any number of claims arising out of any single occurrence or accident. Such indemnification shall survive the termination or expiration of this Agreement. Subject to the provisions of the Kansas Tort Claims Act, County will to the extent legally permissible indemnify Society in the same manner and amount.

- (15) **Force Majeure.** In the event that either Party to this Agreement is unable to perform its obligations hereunder or to enjoy any of its benefits because of the substantial damage or destruction of the Visitor Entry Center due to any cause, including a natural disaster, or action or decree of a governmental body with appropriate jurisdiction ("Force Majeure Event"), the Party that has been so affected shall immediately give written notice to the other Party of such fact and shall do everything possible to resume its performance. Upon receipt of such notice, each Party's obligations hereunder shall be suspended for the period of such Force Majeure Event and, if applicable, the payment provided in Section 3 shall be reduced pro rata. If the Force Majeure Event lasts for a period of two or more years after the date the other Party receives notice of such Force Majeure Event and the Party that provided such notice has been able to perform its obligations hereunder during the Force Majeure Event, the Party that received such notice may terminate this Agreement by giving notice to the other Party.
- (16) **Notices.** Any notice or communication to be given by one Party to the other under this Agreement must be in writing; and if given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the third business day following the date on which a registered or certified letter containing such notice or communication, properly addressed, with postage prepaid, is deposited in the United States mail, but if given otherwise than by registered or certified mail, it shall be deemed to have been given when received by the Party to whom it is addressed. Such notices or communications shall be delivered or sent to the following respective addresses or to such other addresses as the parties, from time to time, may specify in writing:

If to the County: County Manager  
Sedgwick County, Kansas  
525 N. Main, Suite  
Wichita, KS 67203

With copy to: County Counselor  
Sedgwick County, Kansas  
525 N. Main, Suite 359  
Wichita, KS 67203

If to Society: Sedgwick County Zoological Society, Inc.  
Kevin Arnel, President  
5555 Zoo Blvd  
Wichita, KS 67212

With copy to: Dr. Jeff Ettling, Ph.D.  
Executive Director  
Sedgwick County Zoo  
5555 Zoo Blvd  
Wichita, KS 67212

- (17) **Amendments.** No addition to, deletion from or other modification of any of the provisions hereof shall be valid unless made in writing and signed by an authorized representative of each of the parties hereto.
- (18) **Applicable Law; Venue; Miscellaneous Provisions.**
- a. This Agreement shall be construed under the Laws of the State of Kansas.
  - b. The venue for any action brought hereunder shall be in the District Court of the State of Kansas in and for Sedgwick County.
  - c. This is not a third-party beneficiary contract.
  - d. No person or entity other than a Party signing this Agreement shall have any rights under this Agreement.
- (19) **Independent Contractor.** Nothing in this Agreement shall be construed to create a partnership or joint venture, nor to authorize any Party hereto to act as agent for or representative of any other Party hereto. Each Party hereto shall be deemed an independent contractor and no Party hereto shall act as, or hold itself out as acting as, an agent for any other party hereto.
- (20) **Captions.** The titles of the articles, sections, and subsections of this Agreement are for convenience only, and do not define or limit the contents.
- (21) **Waivers.** No action other than a written notice by one Party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other Party. No such waiver notice from either Party shall waive the other Party's failure to fully comply with any other term, condition, or provision of this Agreement, irrespective of any knowledge any County or Society officer, employee, or agent may have of any breach or default of, or noncompliance with such other term, condition, or provision. No waiver of full performance by either Party shall be constructed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The payment or acceptance of fees or charges for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.
- (22) **Cumulative Rights.** All remedies available at law or in equity to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- (23) **Entire Agreement.** The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship thereof. This Agreement constitutes the entire agreement between the Parties respecting the subject matter hereof and there are no understandings or agreements between them respecting the subject matter hereof, written or oral, other than as set forth herein.
- (24) **Agreement Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect and may be delivered by electronic delivery of a digitized signature or by facsimile.
- (25) **Cash Basis and Budget Laws.** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
- (26) **Representations and Warranties.** The Parties hereby represent that:
- a. Each has full authority to execute, deliver and perform the obligations of this Agreement; and
  - b. Each has taken all actions, and obtained all approvals, in accordance with and as required by all applicable law to make this Agreement a fully binding and legally enforceable obligation.

[Remainder of page left blank intentionally]

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.

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

SEDGWICK COUNTY ZOOLOGICAL  
SOCIETY, INC. ("SOCIETY")

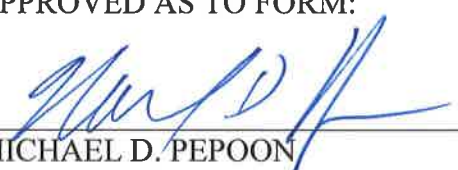
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DAVID T. DENNIS, Chairman  
Commissioner, Third District

  
\_\_\_\_\_  
KEVIN ARNEL, President

ATTEST:

\_\_\_\_\_  
KELLY B. ARNOLD, County Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MICHAEL D. PEPOON  
Interim County Counselor