Professional Services Agreement for Strategic Planning

This Professional Services Agreement for Strategic Planning (this “**Agreement**”), dated as of [DATE] (the “**Effective Date**”), is entered into by and between [SERVICE PROVIDER NAME], a [STATE OF ORGANIZATION] [ENTITY], with offices located at [ADDRESS] (the “**Service Provider**”) and Tulsa Zoo Management, Inc., (an Oklahoma not-for-profit corporation, with offices located at 6421 E. 36th St. N., Tulsa, OK 74115 (the “**Customer**”).

**WHEREAS**, Customer operates and manages the Tulsa Zoo and intends to enlist the services of a strategic planning consultant to assist with development of a strategic plan for Tulsa Zoo that will define the organization’s direction for the next five years.

**WHEREAS**, Service Provider is in the business of providing strategic consulting services and has the capability and capacity to provide such services for Customer’s benefit; and

**WHEREAS**, Customer desires to retain Service Provider to provide the said services under the terms and conditions hereinafter set forth, and Service Provider is willing to perform such services.

**NOW**, **THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer (hereinafter, collectively, the “**Parties**”, or each, individually, a “**Party**”) agree as follows:

1. Services. Service Provider shall provide to Customer the services (the “**Services**”) set out in one or more statements of work to be issued by Customer and accepted by Service Provider (each, a “**Statement of Work**”). The initial accepted Statement of Work is attached hereto as **Exhibit A**. Additional Statements of Work shall be deemed accepted and incorporated into this Agreement only if signed by the Parties. The Service Provider shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in the respective Statement of Work and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with the highest professional recognized industry standards in Service Provider’s field; and (e) to the satisfaction of the Customer. If the Services fail to meet any of these requirements, Service Provider shall re-perform the Services upon request of Customer at no additional cost to Customer.
2. Service Provider Obligations. Service Provider shall:
	1. Appoint representatives to the following positions after obtaining Customer’s consent, which consent shall not be unreasonably withheld:
		1. A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the “**Consultant**”).
		2. A sufficient number of employees or contractors to perform the Services set out in each Statement of Work, each of whose names, positions, and respective levels of experience and relevant licenses shall be set out in the respective Statement of Work (collectively, with Consultant, “**Provider Representatives**”).
	2. Make no changes in Provider Representatives except either:
		1. With the prior consent of Customer.
		2. At the request of Customer, in which case Service Provider shall use its best efforts to promptly appoint a replacement.
		3. Upon the resignation, termination, death, or disability of the existing Provider Representative.
	3. Assign only qualified, legally authorized (if applicable) Provider Representatives to provide the Services.
	4. Comply with all Customer rules, regulations, and policies of which it has been made aware, in its provision of the Services.
	5. Maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent by Service Provider in providing the Services. During the Term and for a period of three (3) years thereafter, upon Customer’s written request, Service Provider shall allow Customer or Customer’s representative, upon reasonable notice and during regular business hours, to inspect and make copies of such records.
3. Customer Obligations. Customer shall:
	1. Designate one of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “**Customer Contract Manager**”), with such designation to remain in force unless and until a successor Customer Contract Manager is appointed, in Customer’s sole discretion.
4. Fees and Expenses.
	1. In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fee (the “**Fee**”) set forth in the Statement of Work. Payment to Service Provider of such fees and the reimbursement of expenses pursuant to this Section 4 shall constitute payment in full for the performance of the Services, and, Customer shall not be responsible for paying any other fees, costs, taxes or expenses.
	2. Unless otherwise specified in the Statement of Work, Services shall be provided for a fixed price and the total fees for the Services shall be the amount set out in the Statement of Work. The total price shall be paid to Service Provider in installments, as set out in the Statement of Work, with each installment being conditional on Service Provider achieving the corresponding event or task described in the Statement of Work (each, a “**Service Milestone**”), which shall be completed by the relevant date set forth in the Statement of Work. On achieving a Service Milestone, Service Provider shall issue invoices to Customer for the fees that are then payable, together with a detailed breakdown of any expenses incurred in accordance with Section 4.3.
	3. Customer agrees to reimburse Service Provider for all actual, documented and reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services; *provided*, *however*, that such expenses (i) have been approved in advance in writing by Customer.
	4. Service Provider shall issue invoices to Customer only in accordance with the terms of this Section 4, and Customer shall pay all properly invoiced amounts due to Service Provider within sixty (60) days after Customer’s receipt of such invoice, except for any amounts disputed by Customer in good faith. All payments hereunder shall be in U.S. dollars and made by check or wire transfer.
5. Ownership of Work Product. The final work product and all related materials from the Services is to be for the exclusive use of Customer. Customer shall be the sole owner of the work product and all related materials for the sole and unfettered use by Customer.
6. Confidentiality. All non-public, confidential or proprietary information of Customer (“**Confidential Information**”), including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, rebates, or strategic planning considerations, disclosed by Customer to Service Provider, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” in connection with this Agreement is confidential, solely for Service Provider’s use in performing this Agreement and may not be disclosed to any third party unless authorized by Customer in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Service Provider’s breach of this Agreement; (b) is obtained by Service Provider on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; or (c) Service Provider establishes by documentary evidence, was in Service Provider’s possession prior to Customer’s disclosure hereunder. Upon Customer’s request, Service Provider shall promptly return all documents and other materials received from Customer. Customer shall be entitled to injunctive relief for any violation of this Section.
7. Term, Termination, and Survival.
	1. This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work or terminated pursuant to Sections 7.2 or 7.3. The rights and obligations of each section which by its nature should survive the termination or expiration of this Agreement shall so survive including without limitation, indemnity, insurance and confidentiality provisions.
	2. Customer, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, and without liability except for required payment for services rendered, and reimbursement for authorized expenses incurred, prior to the termination date, by providing at least ten (10) days’ prior written notice to Service Provider.
	3. Either Party may terminate this Agreement, effective upon written notice to the other Party (the “**Defaulting Party**”), if the Defaulting Party materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.
	4. Upon expiration or termination of this Agreement for any reason, Service Provider shall promptly:
		1. Deliver to Customer all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Service Provider in the course of performing the Services for which Customer has paid.
		2. Deliver to Customer, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Customer’s Confidential Information.
		3. Provide reasonable cooperation and assistance to Customer, upon Customer’s written request, in transitioning the Services to an alternate service provider if applicable.
		4. On a pro rata basis, repay all fees and expenses paid in advance for any Services which have not been provided.
		5. Permanently erase all of Customer’s Confidential Information from its computer systems.
8. Independent Contractor. It is understood and acknowledged that the Services which Service Provider will provide to Customer hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the Customer.  Service Provider has no authority to commit, act for or on behalf of the Customer, or to bind the Customer to any obligation or liability. Service Provider shall not be eligible for and shall not receive any employee benefits from Customer and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by Service Provider hereunder.
9. Indemnification. Service Provider shall indemnify, defend, and hold harmless Customer, the City of Tulsa, and their respective officers, directors, employees, agents, affiliates, and successors (collectively, “**Indemnified Party**”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including actual attorneys’ fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by Indemnified Party (collectively, “**Losses**”), arising out of or resulting from any claim of a third party or Customer arising out of or occurring in connection with Service Provider’s negligence, willful misconduct or breach of this Agreement. Service Provider shall not enter into any settlement without Customer’s or Indemnified Party’s prior written consent.
10. Compliance with Law. Service Provider is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Service Provider has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement, if any.
11. Insurance. Service Provider shall, at its own expense, maintain and keep in full force and effect insurance with financially sound and reputable insurers, that includes, but is not limited to (i) commercial general liability with limits no less than $1,000,000.00 per occurrence, including bodily injury and property damage, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement, and professional liability insurance with limits no less than $1,000,000.00 per occurrence; (ii) Automobile Liability insurance with a combined single limit of $1,000,000 each occurrence for bodily injury and property damage to include coverage for all owned, non-owned, and hired vehicles; and (iii) workers’ compensation insurance, including, without limitation, statutory workers’ compensation, covering all of Service Provider’s employees providing services under this Agreement as required by applicable law, and employer’s liability with minimum limits of not less than $1,000,000 per person per accident. The term “workers’ compensation” as used herein includes that which is required under any applicable law governing the work being performed by Service Provider. If Service Provider is an individual doing business as a sole proprietor or the partner of a partnership that does not elect to be covered by the Administrative Workers’ Compensation Act, must provide a valid Certificate of Non-coverage issued by the State of Oklahoma. Upon Customer’s request, Service Provider shall provide Customer with certificates of insurance from Service Provider’s insurer(s) evidencing the insurance coverages specified in this Agreement. The commercial general liability certificate of insurance shall name Customer and City of Tulsa as an additional insured. Service Provider shall provide Customer with thirty (30) days’ advance written notice in the event of a cancellation or material change in Service Provider’s insurance policies. Except where prohibited by law, Service Provider shall waive and require its insurer(s) to waive all rights of subrogation against Customer’s insurers and Customer or the Indemnified Parties.
12. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein. In the event of any conflict between the terms and provisions of this Agreement and those of any schedule, exhibit, or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of its exhibits and schedules; (b) second, the Statement of Work; (c) third, any exhibits and schedules to this Agreement; and (d) fourth, the Service Provider Proposal, attached hereto as **Exhibit C**. In the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.
13. Notices. All notices shall be deemed given under this Agreement when delivered in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid) or by electronic mail (with confirmation of delivery).

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| Notice to Customer: | [CUSTOMER ADDRESS]  |
|  |  |
|  | [Email: [EMAIL ADDRESS]]  |
|  | Attention: [TITLE OF OFFICER TO RECEIVE NOTICES] |
| Notice to Service Provider: | Tulsa Zoo Management, Inc.  |
|  | 6421 E. 36th St. N.Tulsa, OK 74115 |
|  | Email: dhammons@tulsazoo.org  |
|  | Attention: Don Hammons, VP of Finance & Administration |

1. Amendments. No amendment to or modification, rescission, termination, or discharge of this Agreement shall be effective unless it is in writing, identified as an amendment to or modification, rescission, termination, or discharge of this Agreement and signed by an authorized representative of each Party.
2. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving.
3. Assignment. Service Provider shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Customer. Any purported assignment or delegation in violation of this Section 16 shall be null and void. No assignment or delegation shall relieve the Service Provider of any of its obligations hereunder. Customer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Service Provider’s prior written consent.
4. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.
5. Choice of Law/Venue. This Agreement and all matters arising out of or relating to this Agreement are governed by, and construed in accordance with, the laws of the State of Oklahoma, without giving effect to the choice of law provisions of the State of Oklahoma or any other jurisdiction. If a party wishes to pursue legal action pertaining to this Agreement, the parties agree that such action shall be commenced and prosecuted in the courts of Tulsa County, Oklahoma, or in the United States District Court for the Northern District of Oklahoma, if appropriate, and each party submits to the exclusive jurisdiction of said courts and waives the right to change venue.
6. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

 [signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

|  |  |
| --- | --- |
|  | [**CUSTOMER NAME**] |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: |
|  | **Tulsa Zoo Management, Inc.** |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: |

Exhibit A

Statement of Work

This Statement of Work (“SOW”), adopts and incorporates by reference the terms and conditions of the Professional Services Agreement (“Agreement”), which was entered into on [DATE], between [NAME OF SERVICE PROVIDER], a [STATE OF ORGANIZATION] [ENTITY] (“Service Provider”) and Tulsa Zoo Management, Inc., an Oklahoma not-for-profit corporation (“Customer,” and together with Service Provider, the “Parties,” and each, a “Party”), as it may be amended from time to time. This SOW is effective beginning on [DATE] (“Start Date”) and will remain in effect until the earlier of completion of the project described below and the expiry of twelve (12) months from the Start Date, unless earlier terminated in accordance with the Agreement. Services performed under this SOW will be conducted in accordance with and be subject to the terms and conditions of this SOW and the Agreement. Capitalized terms used but not defined in this Statement of Work shall have the meanings set out in the Agreement.

1. Defined Terms. For purposes of this SOW, the following terms shall have the following meanings:

“Deliverables” means any oral or written presentation summarizing the results of Service Provider’s work performed under this SOW.

“Project” means the consulting service assignment Customer has hereby retained Service Provider to perform.

1. Scope of Work.

The consultant/consultant team will lead Tulsa Zoo Management, Inc. by conducting a strategic plan process for the development of a five year strategic plan. The plan will articulate Tulsa Zoo Management, Inc.’s vision/mission/core values and include goals, objectives and action steps that will guide the organization for the next five years. The plan will include an assessment of Tulsa Zoo Management, Inc.’s performance in fulfilling its mission and overall goals and how its performance compares to its local competition and the industry. The strategic plan must be designed to strengthen the organization in the near future and beyond in the areas of mission fulfillment, revenue generation and spending, staffing structure and efficiency and governance.

1. Payment Milestones. The relevant milestones, completion dates, and payments associated with this SOW are as follows:

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| --- | --- | --- | --- |
| Milestone | Portion of the Fee Payable | Payment Amount | Achieved Outcome |
| SOW Execution | 1/3 | $[1/3 OF FEE] | Written approval to proceed with the Project. |
| Second meeting with Stakeholders/60 days | 1/3 | $[1/3 OF FEE] | Upon the earlier of Service Provider’s second meeting with Customer’s stakeholders or 60 days after commencement of the Project.  |
| Final Report | 1/3 | $[1/3 OF FEE] | Customer’s acceptance of Service Provider’s final Deliverables.  |

1. Expenses and Pricing. Customer shall reimburse Service Provider for the following approved travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services, *provided*, *however*, such expenses are (i) documented and (ii) reasonable.

|  |  |
| --- | --- |
|  | Pre-approved Expenses |
| 1. |  |
| 2. |  |
| 3. |  |

1. Other SOW-Specific Terms and Conditions.

[Signature Page Follows]

IN WITNESS WHEREOF**,** the Parties hereto have caused this SOW to be executed as of the Start Date by their respective officers thereunto duly authorized.

|  |  |
| --- | --- |
|  | [**CUSTOMER NAME**] |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: |
|  | **Tulsa Zoo Management, Inc.** |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: |

EXHIBIT B

SERVICE PROVIDER PROPOSAL