CONTRACTED SERVICES AGREEMENT

THIS CONTRACTED SERVICES AGREEMENT ("**Agreement**") is entered into on the \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the "**Effective Date**") by and between Tulsa Zoo Management, Inc., an Oklahoma not-for-profit corporation ("**Tulsa Zoo**'') and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for itself and on behalf of its present and future affiliated entities (collectively “**Contractor**”).

1. **SCOPE OF AGREEMENT**.

1.1 This Agreement shall control and govern all work performed or to be performed by Contractor for Tulsa Zoo, as more fully described in the attached **Exhibit “A”** and pursuant to those written specifications attached hereto as **Exhibit “B”** (the “**Work**”) at the location identified on **Exhibit “A”** (the “**Site**”).

1.2 Tulsa Zoo may, by submittal to Contractor of a properly authorized written change order (collectively, “**Change Order**”), request changes in the Work, authorize additional Work, or reduce the scope of the Work. No additional or changed Work shall be commenced prior to the issuance of a properly authorized Change Order. Contractor shall not be entitled to any compensation for any changes or additions in the scope of the Work to be performed unless such changes or additions have been so authorized by Tulsa Zoo. If a change or addition has been properly authorized and the dollar amount or character of the Work is affected, Contractor must, within 10 business days from receipt of a properly authorized Change Order, advise Tulsa Zoo of any impact or adjustment of Contractor's compensation which shall be determined in one of the following ways: (i) by mutual acceptance of an adjusted lump sum price based on Contractor's submission of a written estimate of the cost of the change or additional Work, which shall include the cost of the Work and the impact costs, if any, of adding the Work or extending the schedule; or (ii) on a rate basis, as provided in this Agreement.

1.3 Unless the parties otherwise agree in writing, Contractor shall be responsible for furnishing, procuring, transporting, receiving, unloading, moving, storing, protecting, and paying for all labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary to complete the Work. Contractor shall assign a competent supervisor who shall be in attendance at the Site during performance of the Work and who shall be Contractor's authorized representative for all purposes under this Agreement (the “**Supervisor**”). All Work shall be performed in a timely manner by competent, experienced, efficient, and properly qualified personnel in strict conformity with the highest industry standards and practices. Reports shall be furnished by Contractor of the status of Work provided as requested by Tulsa Zoo.

1. **TERM, SUSPENSION AND CANCELLATION**.

2.1 Tulsa Zoo may at any time and for any reason immediately cancel this Agreement, or suspend further performance under it, in whole or in part, by giving notice to Contractor. Upon receipt of said notice of termination or suspension, Contractor shall immediately stop Work and take all steps to minimize further costs, loss or damage. Tulsa Zoo will pay to Contractor, in satisfaction of Tulsa Zoo's entire liability to Contractor, amounts owed for Work rendered prior to the termination date plus reasonable costs incurred by Contractor as a direct result of the termination. In the case of suspension, Tulsa Zoo will pay Contractor's actual and direct start-up costs if Tulsa Zoo requests Contractor to recommence performance of the Work.

2.2 Upon notice to Contractor, Tulsa Zoo shall have the right to terminate this Agreement if Contractor breaches any of its material obligations hereunder or if Tulsa Zoo has reasonable grounds to conclude that such a breach will occur or if Contractor makes a general assignment for the benefit of creditors, becomes insolvent, if a receiver is appointed for Contractor or its assets, or if reorganization or arrangement proceedings are filed by or against Contractor. In the event of such termination, Tulsa Zoo may do all things necessary, including using Contractor's tools and materials at the Site and retaking possession of all Tulsa Zoo materials and equipment, to complete the Work. If Tulsa Zoo terminates this Agreement pursuant to this paragraph, Contractor shall not be entitled to receive any further payment for the Work under this Agreement.

2.3 Notwithstanding anything to the contrary herein, termination or suspension under this Section 2 or under any other provision of this Agreement shall not relieve or release either party hereto from any rights, liabilities, or obligations (including payment obligations) which it has accrued prior to the date of such termination or suspension, and shall not relieve Contractor of any indemnity obligations under this Agreement. Tulsa Zoo's rights and remedies specified in this Agreement shall not be exclusive, but it shall have such other rights and remedies available under applicable laws or in equity.

2.4 Promptly upon expiration or termination of this Agreement, if requested to do so by Tulsa Zoo, Contractor shall: (a) return all apparatus, equipment and unexpended material furnished by the Tulsa Zoo; and (b) return all originals and copies of documents, including but not limited to access keys, drawings, designs and specifications, and software programs to which Tulsa Zoo has provided Contractor access, or which Contractor has prepared as part of the Work, provided that this requirement does not include Contractor or third party subcontractor copyrighted materials.

# PAYMENT. The consideration to be paid by Tulsa Zoo to Contractor shall be in the amount and/or pursuant to the rates set forth in the attached Exhibit “C”. Payments to Contractor may be withheld, in whole or in part, by Tulsa Zoo if (i) Contractor fails to furnish proof satisfactory to Tulsa Zoo showing that all bills for material and labor have been fully paid by Contractor and its subcontractors, (ii) the Work was not performed satisfactorily to Tulsa Zoo, (iii) all goods, equipment, and facilities to which such payment relates are not satisfactory to Tulsa Zoo, or (iv) Contractor has not provided proof that all liens and privileges of Contractor’s suppliers and subcontractors arising out of Work have been fully released. Tulsa Zoo shall pay all undisputed amounts to Contractor for the appropriate Work, goods, equipment, or facilities delivered as requested by Tulsa Zoo within forty-five (45) days of Tulsa Zoo’s receipt of an invoice delivered by Contractor. Such payment by Tulsa Zoo of Contractor’s invoices shall be without prejudice to Tulsa Zoo’s rights to subsequently challenge the correctness thereof. Invoices shall be submitted in such form and accompanied by such certification and documentation as Tulsa Zoo may reasonably request.

# INSPECTIONS. All Work performed by Contractor must meet with the approval of Tulsa Zoo and shall be subject to Tulsa Zoo’s general right of inspection, including all locations where any portion of the Work is performed. The inspection or non-inspection of any portion of the Work by Tulsa Zoo shall not constitute approval thereof. Notwithstanding the foregoing, the detailed manner and method of performing the Work shall be under the exclusive control of Contractor, Tulsa Zoo being interested only in the results obtained.

# INDEPENDENT CONTRACTOR. Contractor is an independent contractor as to all Work performed under the Agreement and neither Contractor, its subcontractors, nor anyone employed by either Contractor or its subcontractors shall be deemed for any purpose to be an employee, agent, servant, or representative of Tulsa Zoo. Contractor and its subcontractors shall be solely responsible for any and all salaries, employee benefit plans, taxes, insurance, and any and all other compensations and responsibilities for their respective employees. Neither Contractor, its subcontractors, nor any of their employees are authorized to act or appear to act as agents or representatives of Tulsa Zoo, whether in performing the Work or otherwise. If the performance of the Work includes the use by Contractor or its subcontractors of Tulsa Zoo’s facilities, equipment, or other resources, such use is permitted only to the extent necessary for the performance of the Work and not for any other purpose. Nothing in this Agreement shall be construed or interpreted to create a partnership or joint venture between Tulsa Zoo and Contractor.

# TAXES, PERMITS, AND LICENSES. Unless otherwise agreed in writing by the parties, Contractor shall secure all licenses and permits, make all cash and other deposits, provide all bonds, and give all notices required either by law, regulation, ordinance, or permit in connection with any Work performed under the Agreement. Contractor agrees to pay, promptly when due, all license fees, duties, tariffs, and assessments and all sales, use, excise, import, export, re-export, and other taxes or charges (including any interest and penalties), now or hereafter imposed by any governmental body or agency upon any materials, supplies, equipment, or services provided by Contractor pursuant to the Agreement. Unless otherwise agreed in writing by the parties, Contractor shall prepare and file promptly with the appropriate offices any and all tax and other similar returns required to be filed with respect to the Work and send copies thereof to Tulsa Zoo or, if requested by Tulsa Zoo, notify Tulsa Zoo of such requirement and furnish Tulsa Zoo with all necessary information so that it may effect such filing.

# CONTROL OF PREMISES. Tulsa Zoo may, in its sole discretion, request that Contractor, its subcontractors, or any of their respective employees or invitees be removed from the premises. If Tulsa Zoo makes such a request, Contractor or its subcontractors shall remove such individual or individuals from Tulsa Zoo’s premises and not allow their return until such return is approved in writing by Tulsa Zoo. Tulsa Zoo may condition such individual’s return upon Contractor or its subcontractors providing proof satisfactory to Tulsa Zoo that the individual (i) has tested negative for drugs and/or alcohol and/or (ii) has met any other conditions Tulsa Zoo may impose.

# SUBCONTRACTING.

# 8.1 Contractor shall not subcontract any portion of the Work or allocate Work among Subcontractors without the prior written consent of Tulsa Zoo. Such consent, or the use of Subcontractors, shall not relieve Contractor of its responsibilities under this Agreement. Contractor shall use commercially reasonable efforts to ensure that the terms and conditions of each subcontract complies with and corresponds to the terms and conditions of this Agreement. Contractor shall coordinate and monitor the services of all Subcontractors and, if any Subcontractor commits any act or omits any act which would constitute a breach of this Agreement if committed by Contractor, Contractor shall take such actions as may be appropriate to immediately remedy such situation, including the removal of the Subcontractor from the Site and termination of the subcontract.

# 8.2 Tulsa Zoo shall have no duty or obligation to any Subcontractor except as Tulsa Zoo may have expressly assumed in writing. "Subcontractor" shall mean (a) any business or non-business entity or person, excluding Tulsa Zoo, who furnishes materials, labor, tools, supplies, services, facilities, supervision, or administration to fulfill an obligation to Contractor to perform all or part of the Work required by this Agreement; and (b) in the event of several tiers of subcontracting, any business or non-business entity or person, excluding Tulsa Zoo, who furnishes materials, labor, tools, supplies, services, facilities, supervision, or administration to fulfill an obligation to an entity or person who meets the definition of "Subcontractor" under (a), to perform all or part of the Work required hereunder or to furnish materials for the Work required hereunder.

# PROHIBITED ARTICLES. Contractor, its subcontractors, and each of their respective employees and invitees shall not possess or bring onto Tulsa Zoo’s premises any illegal drugs, prescription drugs for which the individual has no prescription, legal drugs in excessive amounts, drug paraphernalia, alcoholic beverages, firearms and other weapons, contraband, or stolen property. If any of the above articles are brought onto Tulsa Zoo’s premises, the individual possessing the prohibited articles will be ordered off the premises and may not, in Tulsa Zoo’s sole discretion, be permitted to re-enter. Tulsa Zoo’s personnel may conduct inspections and searches of any individual or property on Tulsa Zoo’s premises without prior announcement at such times and at such locations as Tulsa Zoo considers appropriate.

# SAFETY/ENVIRONMENTAL. In performing all Work under the Agreement, Contractor represents and warrants that (i) it, its employees, and its Subcontractors shall comply with all applicable safety, health, and environmental laws, regulations, permits, licenses, and ordinances, (ii) Contractor shall provide its employees and Subcontractors with appropriate safety, health, and environmental training and equipment, and (iii) Contractor shall ensure that its employees and Subcontractors comply with the requirements of this Section 10. All operations of Contractor, including without limitation storage of tools, equipment, and materials on Tulsa Zoo's property, shall be confined to areas authorized or approved by Tulsa Zoo. Contractor shall, at all times, keep the portions of the Site relating to the performance of the Work free of waste, and upon completion, restore those portions of the Site to their original condition.

# PERFORMANCE OF WORK.

## Performance. Contractor represents and warrants that it will perform the Work (i) diligently; (ii) in a thorough, safe, good, and workmanlike manner; (iii) in a manner that is in full compliance with the Agreement and all applicable laws, rules, regulations, ordinances, permits, licenses, lease terms, or other contracts applicable to the Work; and (iv) in a manner that meets or exceeds the specifications and requirements provided by Tulsa Zoo or, if none are given, the highest recognized standards of good practice in the industry utilized by reputable persons or firms which specialize in providing services similar to the Work. Contractor represents and warrants that it has the experience, skill, and ability in such fields and related disciplines as may be necessary to perform all Work required by this Agreement with a high standard of quality.

## Goods and Equipment. Unless otherwise agreed in writing by the parties, Contractor represents and warrants that all goods or equipment furnished by Contractor in the performance of the Work or necessary to the construction or completion of the Work shall be new; of the best quality; fit for their respective purposes; free from defects; merchantable; and inspected, tested, and properly maintained. For third party equipment or goods, Contractor shall provide Tulsa Zoo with all manufacturer’s operating, maintenance, repair, and similar manuals and warranties and will assign all such warranties to Tulsa Zoo. If such warranties are not assignable, Contractor will provide Tulsa Zoo reasonable assistance in the enforcement of such warranties at Tulsa Zoo’s cost and expense. Tulsa Zoo may, but is not required to, inspect and test all goods or equipment provided, or to be provided, by Contractor; provided, however, that Tulsa Zoo’s inspection and testing shall not relieve Contractor from any responsibility regarding defects or other failures, or exclude, waive, or invalidate any warranty.

## Replacement. Any portion of the Work found to be defective or unsuitable in the judgment of Tulsa Zoo, in its sole and absolute discretion, or not in compliance with any law, regulation, ordinance, permit, or license shall be removed, replaced, or corrected by Contractor without additional cost or risk to Tulsa Zoo promptly upon receipt of written notice thereof.

12. **ASSUMPTION OF RISK**. Contractor assumes all risk of loss of or damage to its tools, materials, and equipment and any articles furnished by Tulsa Zoo or others entrusted to Contractor while in Contractor's possession or under Contractor's control. Contractor shall promptly reimburse Tulsa Zoo for the value of any article that belongs to Tulsa Zoo which is damaged or destroyed while in Contractor’s possession or while under Contractor’s control. Tulsa Zoo shall not be liable for any loss of or damage to the Work prior to completion and acceptance, and Contractor shall make all corrections, repairs or replacements to the Work, at Contractor's expense, as may be necessary to correct such loss or damage. Contractor shall retain risk of loss of or damage to all equipment and material to be installed on Tulsa Zoo's property in connection with the performance of the Work hereunder, until final acceptance of the Work by Tulsa Zoo. Contractor waives all rights against Tulsa Zoo for such loss and damage, including but not limited to loss of use of its equipment or other property, and agrees to obtain similar written waivers of subrogation from its property insurance carriers and Subcontractors and to provide such waivers to Tulsa Zoo upon request.

13. **INDEMNITY**

13.1 **Definitions**.

* + 1. “**Claims**” shall include, without limitation, any and all claims, losses, damages, costs, expenses, causes of action, fines, penalties, enforcement proceedings, suits, and liabilities of any and every kind whatsoever (including interest and all expenses of litigation, court costs, experts’ fees, and attorneys' fees), whether arising in tort, contract, voluntary settlement, strict liability, under statute, in law or in equity, or of any other character whatsoever, including contractual indemnification obligations to other persons or entities.
    2. “**Contractor Group**” means Contractor; the parent, subsidiary, and affiliated entities of Contractor; the subcontractors of any of the foregoing; the officers, directors, employees, agents, representatives, and invitees of any of the foregoing; and the successors, heirs, and assigns of any of the foregoing.
    3. “**Tulsa Zoo Group**” means Tulsa Zoo; the parent, subsidiary, and affiliated entities of any of the foregoing; the contractors and subcontractors of any of the foregoing (other than Contractor and its Subcontractors); the officers, directors, employees, agents, representatives, board members and invitees of any of the foregoing; and the successors, heirs, and assigns of any of the foregoing.

## 13.2 Mutual Indemnification. Subject to Section 13.5, each party (the “Indemnitor”) agrees to and shall release, indemnify, defend, and hold harmless the other party’s group as defined above (the “Indemnitee Group”) from and against any and all Claims that are brought by or on behalf of the Indemnitor’s group as defined above (the “Indemnitor Group”) which arise out of, relate to, or are connected with the Agreement or the performance hereof and relate to bodily injury, illness, or death of any member of the Indemnitor Group.

13.3 **Contractor’s General Indemnification**. Subject to Section 13.5, Contractor agrees to and shall release, indemnify, defend, and hold harmless Tulsa Zoo Group and the City of Tulsa from and against any and all Claims that are brought by or on behalf of any person or entity which arise out of, relate to, or are connected with the Agreement or the performance hereof and relate to: (i) the personal injury, bodily injury, illness, or death of any person other than a member of Tulsa Zoo Group; (ii) damage to, loss of, or loss of use of any property; (iii) Contractor Group’s violation of any governmental laws, regulations, ordinances, permits, licenses, or orders; or (iv) Contractor Group’s infringement, dilution, misappropriation, or other violation of the copyright, trade secret, trademark, trade dress, service mark, patent, or any other proprietary right of any person or entity.

13.4 **Indemnity Savings Provision**. In the event the Agreement is interpreted in any instance under the laws of any state purporting to limit indemnity obligations in contracts, then this Section 13 is hereby modified to the extent necessary for enforceability under the laws of such state in order to give force and effect, to the maximum extent possible, to the liability and indemnification structure contained herein.

13.5 **Express Negligence**. THE RELEASE, INDEMNITY, DEFENSE, AND HOLD HARMLESS OBLIGATIONS CONTAINED IN THIS SECTION 13 SHALL APPLY EVEN IF THE CLAIMS ARE CAUSED, IN WHOLE OR IN PART, BY THE JOINT, SOLE, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO THE GROUP INDEMNIFIED IN THIS SECTION 13, BUT NOT TO THE EXTENT CAUSED BY OR RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY MEMBER OF SUCH INDEMNIFIED GROUP.

13.6 **Notification**. Tulsa Zoo and Contractor shall promptly notify each other in writing of any Claims that may be presented to either by any party. Tulsa Zoo and Contractor shall afford each other full opportunity to assume the defense of such Claims, and to protect all interests implicated. The obligations set forth in this Section 13 shall survive even if reasonably prompt written notice of any Claim is not provided so long as such failure does not materially prejudice the party to whom notice is owed.

13.7 **Survival**. All indemnity provisions of the Agreement shall survive termination, expiration, or cancellation of the Agreement.

14. **LIMITATION OF LIABILITY**. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, GOODWILL OR BUSINESS INTERRUPTIONS, HOWEVER SAME MAY BE CAUSED, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF ANY NATURE WHATSOEVER.[NOTE TO DRAFT: THIS IS A STANDARD PROVISION, BUT YOU MAY CONSIDER REMOVING THIS SECTION IN SOME CASES IF LOST PROFITS IS A CONCERN FOR THE ZOO IF THERE IS A DELAY. THIS IS A RISK ANALYSIS BECAUSE YOU COULD BE LIABLE TO THE CONTRACTOR FOR SPECIAL OR CONSEQUENTIAL DAMAGES, BUT IT MIGHT BE WORTH THE RISK DEPENDING ON THE CONTRACTOR.]

15. **INSURANCE.** Contractor, at its sole cost and expense, shall obtain and maintain, and shall require its agents, representatives, contractors and/or subcontractors performing any portion of the Work to procure and maintain, throughout the term of this Agreement and during the performance of the Work insurance coverage complying with the requirements in **Exhibit “D”** attached hereto and shall furnish industry-standard Acord certificates to evidence such insurance before beginning the Work.

16. **PROTECTION FROM LIENS.** Contractor agrees to timely pay and discharge all claims for labor, materials, and supplies furnished by any other member of Contractor Group and to allow no lien or charge to become fixed upon all or any portion of Tulsa Zoo Group’s property. Contractor shall release, indemnify, defend, and hold harmless each member of Tulsa Zoo Group from and against any and all such claims or liens and all expenses (including reasonable attorneys’ fees) incurred by any member of Tulsa Zoo Group in connection with this Section 16. In the event of any such claim or lien, Tulsa Zoo Group shall have the right to discharge, post a bond, and/or withhold payment from Contractor of an amount sufficient to fully satisfy or discharge any such claim or lien together with any and all Claims related thereto. **EXCEPT TO THE EXTENT TULSA ZOO HAS NOT MADE PROPER PAYMENT HEREUNDER, CONTRACTOR HEREBY WAIVES AND RELEASES ALL CLAIMS, DEMANDS, LIENS, SECURITY INTERESTS, AND OTHER RIGHTS OF EVERY KIND AND CHARACTER, WHETHER CONSTITUTIONAL, STATUTORY, CONTRACTUAL, TORTIOUS, OR EQUITABLE, WHICH CONTRACTOR NOW HOLDS OR MAY ACQUIRE IN, ON OR AGAINST ALL OR ANY PORTION OF TULSA ZOO GROUP’S PROPERTY.**

17. **CONFIDENTIALITY**. Contractor and Tulsa Zoo agree that any and all information that is not otherwise publicly available, including without limitation, the nature and location of the Work and the other party’s processes and procedures communicated by one party (“**Disclosing Party**”) to the other (“**Receiving Party**”), shall be “**Confidential Information**” and treated as and held in strict confidence by Receiving Party and shall be used only for purposes of the Agreement by Receiving Party. Confidential Information shall not be disclosed by the Receiving Party or its agents or employees without the prior written consent of the Disclosing Party, except to the extent such information (i) is legally required to be disclosed, (ii) was in the public domain or comes into the public domain through no breach of this Agreement, (iii) was in the Receiving Party’s possession prior to receiving it from the Disclosing Party, (iv) is obtained by the Receiving Party from a third party who has the right to disclose such information, or (v) is independently developed by the Receiving Party without reference to the information received from the Disclosing Party. The terms of this provision shall survive the termination of the Agreement.

18. **EVENTS OF DEFAULT**. Contractor shall be in default under the Agreement if it (i) fails to abide by any provision of the Agreement, (ii) becomes insolvent, (iii) makes an assignment for the benefit of creditors, (iv) is adjudicated bankrupt, (v) admits in writing its inability to pay debts as they become due, (vi) institutes any proceeding for relief of debtors or appointment of a receiver, trustee, or liquidator, (vii) institutes a voluntary petition in bankruptcy, or (viii) fails to remove within 30 days any attachment which is levied upon Tulsa Zoo Group’s equipment or property. Contractor shall immediately notify Tulsa Zoo upon discovery of any instance where it failed to comply with the provisions of the Agreement, or if any information provided to Tulsa Zoo was inaccurate, incomplete, or misleading.

19. **ASSIGNMENT**. Contractor acknowledges that Tulsa Zoo has entered into this Agreement because of the unique technical abilities, capabilities, and creditworthiness of Contractor. Therefore, Contractor may not assign this Agreement or any rights obtained hereunder without the prior written approval of Tulsa Zoo. Any assignment or subcontracting made in contravention of this Section shall be null and void for all purposes. In the event Contractor assigns this Agreement or subcontracts any Work to be performed hereunder Contractor, as assignor or subcontractor as the case may be, shall remain liable for its obligations under each Agreement. To the extent that there are successors, assigns, or subcontractors permitted under this Section, each Agreement shall be binding on and inure to the benefit of the parties and their respective successors, assigns, and subcontractors.

20. **CONFLICT OF DOCUMENTS**. To acknowledge or document various events during the Work, a party may from time to time sign the other party’s variously entitled forms, such as delivery tickets, invoices, labor tickets, bills of lading, purchase orders, and rental tickets, but the terms and conditions of such forms do not amend, modify, waive, or release any aspect of the Agreement. No parol agreement of whatsoever nature entered into between Tulsa Zoo’s representative(s) and Contractor shall ever be deemed to alter or affect the provisions of this Agreement.

21. **SEVERABILITY**. Except as provided in Section 13, if a court of competent jurisdiction determines that any clause or provision of this Agreement is void, illegal, or unenforceable, the other clauses and provisions of this Agreement shall remain in full force and effect and the clauses and/or provisions that are determined to be void, illegal, or unenforceable shall be either amended or limited so that they shall remain in effect to the extent permissible by law.

22. **WAIVER**. Any waiver on the part of Tulsa Zoo or Contractor of any term or condition of this Agreement shall not constitute a precedent or bind either party to a waiver of any succeeding breach of the same or any other term or condition of this Agreement.

23. **NOTICES**. All notices, reports and other correspondence required or made necessary by the terms of this Agreement shall be deemed to have been properly served when furnished in writing and received by the addressee at the address below by hand delivery, facsimile, or mail service providing written proof of delivery. Notices shall be delivered to:

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| To Tulsa Zoo:  Tulsa Zoo Management, Inc  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (e-mail)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(phone)  ATTN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | To Contractor:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (e-mail)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (phone)  ATTN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

24. **APPLICABLE LAW/JURISDICTION AND VENUE**. The parties intend that the Agreement shall be interpreted under and governed by the laws of the State of Oklahoma, excluding any rule which would refer the interpretation of such law to another jurisdiction. Any suit or proceeding hereunder shall be brought EXCLUSIVELY in Tulsa County, Oklahoma and each party consents to the personal jurisdiction of the courts, state and federal, located therein. Each party agrees to waive any objection that the state or federal courts of Tulsa County, Oklahoma are an inconvenient forum.

25. **AUDIT**. Contractor and its subcontractors shall keep a true and correct set of records pertaining to all Work performed under this Agreement, including supporting documentation, for five (5) years following completion of the Work. Tulsa Zoo, or its designee, shall have the right to audit Contractor and inspect and copy such records that may exist until any claim that could be discovered in an audit would be barred by the applicable statute of limitation. If Tulsa Zoo’s examination discloses that Contractor’s invoices to Tulsa Zoo were in error, Contractor will immediately pay to Tulsa Zoo any amounts overpaid by Tulsa Zoo, plus interest from the date of the error at the lesser of twelve percent (12%) per annum or the maximum rate allowed by law. If the audit determines that Contractor over reported the amounts owed by Tulsa Zoo by three percent (3%) or more for any one month period, then Contractor shall also bear the expense of Tulsa Zoo’s examination and audit.

26. **TIMING**. Time is of the essence in the completion of any Work under the Agreement.

27. **EXECUTION**. The persons signing below represent and warrant that they have all requisite power, authority, and authorization to execute this Agreement on behalf of the parties for whom they sign (including the present and future affiliates bound hereby), and that by signing below this Agreement shall be fully binding upon and enforceable against such parties and their present and future affiliates. This Agreement may be executed in one or more counterparts, and if so executed such counterpart executions shall constitute one binding contract hereof, and Tulsa Zoo shall be authorized to assemble the various signature pages into one complete document.

IN WITNESS WHEREOF, Tulsa Zoo and Contractor execute this Agreement as of the Effective Date.

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| **Contractor:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  for itself and on behalf of its present and  future affiliated entities  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Tulsa Zoo:**  Tulsa Zoo Management, Inc,  for itself and on behalf of its present and  future affiliated entities  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT “A”**

**(Scope of Work)**

**EXHIBIT “B”**

**(Specifications)**

**EXHIBIT “C”**

**(Payment Terms**)

**EXHIBIT “D”**

**Insurance Requirements**

1. Coverages. Contractor shall procure at Contractor's expense and maintain the insurance policies described below (except as otherwise indicated). All insurance policies procured and maintained by Contractor must be written with insurance companies licensed to do business in the state where the Work will be performed, and carry a rating of A- VIII or better as shown in the most current issue of A.M. Best’s Key Rating Guide, under forms of policies satisfactory to Company, in the kinds and amounts set forth below:

A. Workers' Compensation Insurance in accordance with the Applicable Laws of the jurisdiction in which the work is performed under this Agreement, including occupational disease coverage, and Employer's Liability Insurance with a minimum limit of $1,000,000 per occurrence protecting Contractor against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship, and having the following endorsements wherever necessary for proper coverage: To provide that a claim “in rem” shall be treated as a claim against the employer.

B. Commercial (or Comprehensive) General Liability Insurance, including coverage for Product and Completed Operations, and “Action Over” claims and other contractual obligations as respects this Agreement. The minimum limit shall be $1,000,000 combined single limit per occurrence for Bodily Injury and Property Damage. If the policy has an annual aggregate limit the aggregate will be on a “per project” or “per location” basis or the annual aggregate will be twice the per occurrence limit or the Contractor shall carry Excess Liability (or Umbrella) coverage that will “drop down” over each claim if such limit becomes exhausted. Wherever necessary for proper coverage the policy shall cover “In Rem”.

C. If the scope of Work includes professional engineering and design services, Professional Liability and Indemnity Insurance with limits of not less than $5,000,000 per act, error or omission may be required. The subcontractor (if any) providing the engineering and design services for the project may provide such insurance, on the terms set forth herein, in lieu of contract.

D. Commercial Automobile Liability Insurance covering owned, non-owned and hired automotive equipment with minimum limits of $1,000,000 combined single limit for Bodily Injury and Property Damage.

E. Full Machinery and Equipment Insurance covering Contractor’s equipment and appliances used in connection therewith in amounts sufficient to cover the replacement value of the equipment and appliances with proper endorsements providing appropriate navigation limits.

2. Cancellation/Alteration/Amendment. None of such insurance shall be cancelled, altered, or amended without 30-days prior written notice having been furnished Tulsa Zoo.

3. Certificate of Insurance. Prior to work commencing under this Agreement, Contractor shall provide Tulsa Zoo certificates of insurance for itself and each of its subcontractors signed by an authorized representative evidencing the coverages, limits, endorsements and extensions required herein. Notwithstanding Contractor’s obligation to provide, and Tulsa Zoo’s right to receive, proof of insurance in compliance with this Exhibit, any failure of Tulsa Zoo to require, or to insist that Contractor comply with its obligations to provide, proof of insurance prior to the commencement of any Work, or at any other time, shall not operate as a waiver of Contractor’s obligations to provide insurance. Tulsa Zoo’s acceptance of a certificate with less than the required amounts shall not be deemed a waiver of the foregoing requirements.

4. Indemnification Obligations. To support the indemnification provisions in this Agreement but as a separate and independent obligation, Contractor shall name Tulsa Zoo as an additional insured on all insurance policies, including equipment coverage, excepting Workers Compensation Insurance, covering exposures for which Contractor has agreed to indemnify Tulsa Zoo. These policies shall provide primary coverage only for claims in which Contractor has agreed to hold harmless, release from liability and/or to indemnify Tulsa Zoo. No “other insurance” clause may be invoked by any insurer. This coverage shall apply whether or not the indemnification is valid. Contractor shall have its insurer waive its right of subrogation against Tulsa Zoo on all insurance carried. Additionally, Contractor shall have its insurer waive its right of subrogation against all other parties owning an interest in the property on which Work covered by this Agreement is to be performed.

5. Subcontractors. Contractor shall require all of its subcontractors to provide such of the foregoing coverages, as well as any other coverages that the Contractor considers necessary. Such policies shall include the waiver of subrogation clause as set forth above. However, the fact that any subcontractor provides any of the foregoing coverages or any other coverages that Contractor considers necessary shall not relieve Contractor of its obligations to provide said coverages. To the extent that Contractor does not require, or the subcontractor does not obtain, such coverage, the Contractor agrees to indemnify and save Company, any of its affiliates, any officer, agent, employee or representative or customers of Tulsa Zoo harmless from all claims, demands, losses, expenses and judgments to which said coverages would have applied.

6. Indemnification. Contractor does hereby protect and indemnify and hold harmless Tulsa Zoo and the City of Tulsa from any loss Company may suffer due to Contractor's failure to comply with all of the above insurance requirements, the insurance contract, and/or any applicable law, including the obtaining of waivers of subrogation, or due to any insurance coverage being invalidated due to Contractor's failure to comply with the terms, conditions, and warranties of the insurance.

7. Occurrence/Claims-Made Basis. All policies of insurance referred herein must be written on an “occurrence” basis with the exception of Professional Liability Insurance which may be provided on a “claims made” coverage form, and endorsed to be primary to any other insurance policies carried by Tulsa Zoo with respect to Contractor’s operations. Any coverage provided on a claims-made basis shall include at least a three (3) year extended reporting period endorsement, and shall not contain “prior acts” exclusion.

8. Insurance Does Not Limit Liability. The insurance requirements set forth herein shall in no way limit Contractor’s liability or responsibility under this Agreement or be construed to be the only types and amounts of insurance Contractor should maintain to adequately cover itself from the hazards of its occupation.

9. Additional Insured. All policies of insurance referred herein, with the exception of Worker’s Compensation, Employer’s Liability and Professional Liability, shall name the City of Tulsa, Tulsa Zoo and the other members of the Tulsa Zoo Group as an Additional Insured with Additional Insured Endorsement (CG 20101185 or equivalent) covering Completed Operations, as respects the Work performed and materials provided, and shall contain “Cross-Liability” and “Severability of Interest” coverage as provided under standard ISO “separation of insured” condition. Contractor’s insurance policies shall not contain exclusions for claims arising out of the negligence of Tulsa Zoo or City of Tulsa as an Additional Insured.