

# Dane County Contract Cover Sheet

Revised 01/2022

RES 338

Significant

<b>Dept./Division</b>	Henry Vilas Zoo		
<b>Vendor Name</b>	SSA Group	<b>MUNIS #</b>	32283
<b>Brief Contract Title/Description</b>	SSA Group For Food, Retail and Catering services at the Henry Vilas Zoo		
<b>Contract Term</b>	April 1, 2022 - March 31, 2032		
<b>Contract Amount</b>			

<b>Contract #</b> Admin will assign	14641
<b>Type of Contract</b>	
<input checked="" type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	County Lessee
<input type="checkbox"/>	County Lessor
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Grant
<input type="checkbox"/>	Other

Department Contact Information		Vendor Contact Information	
<b>Name</b>	Joseph Darcangelo	<b>Name</b>	David
<b>Phone #</b>	608-225-1294	<b>Phone #</b>	303-945-2161
<b>Email</b>	darcangelo.joseph@henryvilaszoo.gov	<b>Email</b>	dgoetz@thessagroup.com
<b>Purchasing Officer</b>	Pete Patten		

<b>Purchasing Authority</b>	<input type="checkbox"/> \$11,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$11,000 – \$40,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input checked="" type="checkbox"/> Over \$40,000 (\$25,000 Public Works) (Formal RFB/RFP required)	<b>RFB/RFP #</b> 121047
	<input type="checkbox"/> Bid Waiver – \$40,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$40,000 (N/A to Public Works)	
	<input type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

<b>MUNIS Req.</b>	<b>Req #</b> 1129	<b>Org:</b> 7665	<b>Obj:</b> 80118	<b>Proj:</b>	
	<b>Year</b> 2022	<b>Org:</b>	<b>Obj:</b>	<b>Proj:</b>	
		<b>Org:</b>	<b>Obj:</b>	<b>Proj:</b>	

Budget Amendment	
<input type="checkbox"/>	A Budget Amendment has been requested via a Funds Transfer or Resolution. Upon addendum approval and budget amendment completion, the department shall update the requisition in MUNIS accordingly.

<b>Resolution Required if contract exceeds \$100,000 (\$40,000 PW)</b>	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works)	
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.	<b>Res #</b> 338
	<input type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	<b>Year</b> 2021

CONTRACT MODIFICATIONS – Standard Terms and Conditions		
<input type="checkbox"/> No modifications.	<input checked="" type="checkbox"/> Modifications and reviewed by: Carlos Pabellon/Chuck Hicklin	<input type="checkbox"/> Non-standard Contract

APPROVAL	
<b>Dept. Head / Authorized Designee</b>	
Darcangelo, Joseph	Digitally signed by Darcangelo, Joseph Date: 2022.02.15 11:08:34 -06'00'

APPROVAL – Contracts Exceeding \$100,000	
<b>Director of Administration</b>	<b>Corporation Counsel</b>
<i>Greg Brockmeyer</i>	<i>Carlos Pabellon</i>

APPROVAL – Internal Contract Review – Routed Electronically – Approvals Will Be Attached			
<b>DOA:</b>	<b>Date In:</b> 2/16/22	<b>Date Out:</b> _____	<input checked="" type="checkbox"/> Controller, Purchasing, Corp Counsel, Risk Management

## Goldade, Michelle

---

**From:** Goldade, Michelle  
**Sent:** Wednesday, February 16, 2022 3:05 PM  
**To:** Hicklin, Charles; Pabellon, Carlos; Patten (Purchasing), Peter; Lowndes, Daniel  
**Cc:** Stavn, Stephanie; Oby, Joe  
**Subject:** Contract #14641  
**Attachments:** 14641.pdf

<b>Tracking:</b>	<b>Recipient</b>	<b>Read</b>	<b>Response</b>
	Hicklin, Charles	Read: 2/16/2022 3:41 PM	Approve: 2/16/2022 3:41 PM
	Pabellon, Carlos	Read: 2/16/2022 3:06 PM	Approve: 2/16/2022 3:07 PM
	Patten (Purchasing), Peter		Approve: 2/16/2022 3:07 PM
	Lowndes, Daniel		Approve: 2/16/2022 3:21 PM
	Stavn, Stephanie	Read: 2/16/2022 3:21 PM	
	Oby, Joe		

Please review the contract and indicate using the vote button above if you approve or disapprove of this contract.

Contract #14641  
Department: Zoo  
Vendor: SSA Group  
Contract Description: Provide Food, Retail & Catering Services at the Zoo (Res 338)  
Contract Term: 4/1/22 – 3/31/32  
Contract Amount: \$--

Thanks much,  
Michelle

*Michelle Goldade*

Administrative Manager  
Dane County Department of Administration  
Room 425, City-County Building  
210 Martin Luther King, Jr. Boulevard  
Madison, WI 53703  
PH: 608/266-4941  
Fax: 608/266-4425  
TDD: Call WI Relay 711

Please note: I am currently working a modified schedule in accordance with COVID 19 response guidelines. I work in office Mondays and Wednesdays and work remotely Tuesday, Thursdays and Fridays.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**2022 RES – 338**

**AWARDING CONTRACT WITH THE SSA GROUP FOR FOOD, RETAIL AND CATERING SERVICES AT THE HENRY VILAS ZOO**

The current food, retail and catering agreement with Centerplate expires March 31, 2022. A new contract was awarded as a result of Dane County RFP #121047. An agreement has been negotiated with The SSA Group that includes the following terms: Ten-year agreement; The SSA Group will make \$1,175,000 in capital investment in concession facilities the first two years; The SSA Group will manage special event site rentals on behalf of the Henry Vilas Zoo while providing an event sales manager, including their salary, benefits, and sales commission—along with this event management The SSA Group will invest \$25,000 annually towards advertising and promotional efforts; The SSA Group will guarantee a minimal \$400,000 in annual commission against a reciprocal attendance guarantee of 700,000 visitors; Sustainability and Conservation efforts will be supported by The SSA Group by participating in existing and future efforts by the Henry Vilas Zoo to remain a leader in sustainable purchasing, plastic reduction, recycling, landfill diversion, and animal conservation; and The SSA Group will provide additional on-site personnel: executive chef and general manager to manager the daily operation.

**NOW, THEREFORE, BE IT RESOLVED** the County Board approves the award of a contract to The SSA Group, 4624 Central Park Blvd. Suite 100. Denver. CO 80238, for the Ten-year agreement beginning April 1, 2022 for food, retail, and catering services at the Henry Vilas Zoo.

**BE IT FINALLY RESOLVED** that the County Executive and County Clerk are authorized the sign the agreement.

# DANE COUNTY CONTRACT # 14641

Revised 06/2021



**Department:** Henry Vilas Zoo  
**Provider:** SSA Group, LLC  
**Expiration Date:** March 31, 2032  
**Maximum Cost:** \$0

**Registered Agent (if applicable):** Corporation Service Company  
**Registered Agent Address:** 8040 Excelsior Drive, Suite 400,  
Madison, WI 53717

**THIS AGREEMENT**, made and entered into, by and between the County of Dane (hereafter referred to as "COUNTY") and SSA Group, LLC (hereafter, "PROVIDER"),

## WITNESSETH:

**WHEREAS** COUNTY, whose address is 702 S Randall Avenue, Madison, WI 53715, desires to purchase services from PROVIDER for the purpose of providing space for conducting the food service and retail merchandise operations at the Henry Vilas Zoo; and

**WHEREAS** PROVIDER, whose address is 4624 Central Park Blvd. Suite 100, Denver, CO 80238, is able and willing to provide such services;

**NOW, THEREFORE**, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth, the receipt and sufficiency of which is acknowledged by each party for itself, COUNTY and PROVIDER do agree as follows:

### I. TERM:

- A. The term of this Agreement shall commence on April 1, 2022 ("Transition Date") and shall end as of the EXPIRATION DATE set forth on page 1 hereof, unless sooner agreed to in writing by the parties. PROVIDER shall complete its obligations under this Agreement not later than the EXPIRATION DATE. COUNTY shall not be liable for any services performed by PROVIDER other than during the term of this Agreement. COUNTY shall never pay more than the Maximum Cost as stated above for all services. Upon failure of PROVIDER to complete its obligation set forth herein by the EXPIRATION DATE, COUNTY may invoke the penalties, if any, set forth in this document and its attachments.
- B. In the event PROVIDER shall, with the consent of COUNTY, hold over and remain in possession of any of the Facilities without any formal extension of the term set forth above, after the expiration of the term, such holding over shall not be deemed to operate as a renewal or extension of this Agreement but shall only create a month-to-month tenancy on the same terms, conditions and covenants, including consideration, contained herein.

### II. SERVICES:

- A. PROVIDER agrees to provide the services detailed in the bid specifications, if any; the request for proposals (RFP) and PROVIDER's response thereto, if any; and on the attached Schedule A, which is fully incorporated herein by reference. In the event of a conflict between or among the bid specifications, the RFP or responses thereto, or the terms of Schedule A or any of them, it is agreed that the terms of Schedule A, to the extent of any conflict, are controlling.

- B. PROVIDER shall commence, carry on and complete its obligations under this Agreement with all deliberate speed and in a sound, economical and efficient manner, in accordance with this Agreement and all applicable laws. In providing services under this Agreement, PROVIDER agrees to cooperate with the various departments, agencies, employees and officers of COUNTY.
- C. PROVIDER agrees to secure at PROVIDER's own expense all personnel necessary to carry out PROVIDER's obligations under this Agreement. Such personnel shall not be deemed to be employees of COUNTY nor shall they or any of them have or be deemed to have any direct contractual relationship with COUNTY.
- D. No portion of funds under this Agreement may be used to support or advance religious activities.
- E. PROVIDER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin and has met all state and federal service standards, certifications and assurances as expressed by State and Federal statutes, rules, and regulations applicable to the services covered by this Agreement.
- F. PROVIDER will follow applicable public health guidelines to provide safe services and a safe workplace. In addition, by signing this Agreement, PROVIDER acknowledges the contagious nature of COVID-19 and voluntarily assumes the risk that PROVIDER and its staff may be exposed to or infected by COVID-19 by providing services under this Agreement and that such exposure or infection may result in personal injury, illness, permanent disability, and death.

PROVIDER further acknowledges that PROVIDER is assuming all of the foregoing risks and accept sole responsibility for any injury to itself and staff, including, but not limited to, personal injury, disability, death, illness, damage, loss, claim, liability, or expense or any kind, that PROVIDER or its staff may experience or incur in connection with providing services. PROVIDER hereby releases, covenants not to sue, discharges, and holds harmless and indemnifies the COUNTY, its employees, agents, and representatives, of and from any and all claims, including all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. Provider understands and agrees that this release includes any claims based on the actions, omissions, or negligence of COUNTY, its employees, agents and representatives, whether a COVID-19 infection occurs before, during, or after the provision of services under this Agreement.

**III. ASSIGNMENT/TRANSFER:**

PROVIDER shall not assign, subcontract or transfer any interest or obligation in this Agreement, without the prior written consent of COUNTY, including the hiring of independent contract service providers unless otherwise provided herein. Claims for money due or to become due PROVIDER from COUNTY under this Agreement may be assigned to a bank, trust company or other financial institution without such approval if and only if the instrument of assignment contains a provision substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to PROVIDER shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Agreement. PROVIDER shall promptly provide notice of any such assignment or transfer to COUNTY.

**IV. TERMINATION:**

- A. Failure of PROVIDER to fulfill any of its obligations under this Agreement in a timely manner, or violation by PROVIDER of any of the covenants or stipulations of this Agreement ("Default"), shall constitute grounds for COUNTY to terminate this Agreement by giving a thirty (30) day written notice setting forth in reasonable detail the nature of such Default to PROVIDER.
- B. The following shall constitute grounds for immediate termination:

1. violation by PROVIDER of any State, Federal or local law, or failure by PROVIDER to comply with any applicable States and Federal service standards, as expressed by applicable statutes, rules and regulations.
  2. failure by PROVIDER to carry applicable licenses or certifications as required by law.
  3. failure of PROVIDER to comply with reporting requirements contained herein.
  4. inability of PROVIDER to perform the work provided for herein.
  5. Inability of PROVIDER to pay its debts as they become due or PROVIDER's admission in writing that it is unable to pay its debts as they become due.
  6. commencement of any proceeding under any federal or state bankruptcy law by or against PROVIDER;
  7. appointment of custodian or trustee to take possession of, or an attachment, execution or other judicial seizure of substantially all of PROVIDER's assets or PROVIDER's interest in this Agreement.
- C. Failure of the Dane County Board of Supervisors or the State or Federal Governments to appropriate sufficient funds to carry out COUNTY's obligations hereunder, shall result in automatic termination of this Agreement as of the date funds are no longer available, without notice.
- D. COUNTY may terminate this Agreement without cause upon 90 days' prior written notice to PROVIDER.
- E. PROVIDER may terminate this Agreement without cause upon 120 days' prior written notice to COUNTY, provided that PROVIDER shall continue operating the Food Service & Retail Merchandise Business at the Zoo up until the date of termination.
- F. In the event COUNTY terminates this Agreement as provided herein, all finished and unfinished documents, services, papers, data, products, and the like prepared, produced or made by PROVIDER under this Agreement shall at the option of COUNTY become the property of COUNTY, and PROVIDER shall be entitled to receive just and equitable compensation, subject to any penalty, for any satisfactory work completed on such documents, services, papers, data, products or the like. Notwithstanding the above, PROVIDER shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by PROVIDER, and COUNTY may withhold any payments to PROVIDER for the purpose of offset. In the event of termination, COUNTY shall also have the right to repossess the Zoo Facilities (as hereafter defined), including without limitation the Existing Equipment (as hereafter defined) and Leasehold Improvements (as hereafter defined); to purchase all inventory at the Zoo as of the termination date, pursuant to Schedule A - Section 21.D; and to purchase all existing FF&E (as hereafter defined) as of the termination date, pursuant to Schedule A - Section 21.E.
- G. Upon any termination of this Agreement, all rights and obligations of the parties shall cease except those rights and obligations that have accrued or expressly survive such termination. For purposes of this Agreement, termination includes expiration or cancellation of this Agreement.

**V. PAYMENT:**

COUNTY agrees to make such payments for services rendered under this Agreement as and in the manner specified herein and in the attached Schedule B, which is fully incorporated herein by reference. Notwithstanding any language to the contrary in this Agreement or its attachments, COUNTY shall never be required to pay more than the sum set forth on page 1 of this Agreement under the heading MAXIMUM COST, for all services rendered by PROVIDER under this Agreement.

**VI. REPORTS:**

PROVIDER agrees to make such reports as are required in the attached schedules, which is fully incorporated herein by reference. With respect to such reports it is expressly understood that time is of the essence and that the failure of PROVIDER to comply with the time limits set forth in said schedules shall result in the penalties set forth herein.

**VII. DELIVERY OF NOTICE:**

Notices, bills, invoices and reports required by this Agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set forth above. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time.

**VIII. INSURANCE & INDEMNIFICATION:**

- A. PROVIDER shall indemnify, hold harmless and defend COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of PROVIDER's furnishing the services or goods required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of COUNTY, its agencies, boards, commissions, officers, employees or representatives. Any failure on the part of the PROVIDER to comply with reporting or other provisions of its insurance policies shall not affect this PROVIDER's obligations under this paragraph. COUNTY reserves the right, but not the obligation, to participate in defense without relieving PROVIDER of any obligation under this paragraph. The obligations of PROVIDER under this paragraph shall survive the expiration or termination of this Agreement.
- B. In order to protect itself and COUNTY, its officers, boards, commissions, agencies, agents, volunteers, employees and representatives under the indemnity provisions of the subparagraph above, PROVIDER shall, at PROVIDER's own expense, obtain and at all times during the term of this Agreement keep in full force and effect the insurance coverages, limits, and endorsements listed in Schedule A. 19.B.. When obtaining required insurance under this Agreement and otherwise, PROVIDER agrees to preserve COUNTY's subrogation rights in all such matters that may arise that are covered by PROVIDER's insurance. Neither these requirements nor the COUNTY's review or acceptance of PROVIDER's certificates of insurance is intended to limit or qualify the liabilities or obligations assumed by the PROVIDER under this Agreement. The County expressly reserves the right to require higher or lower insurance limits where County deems necessary.
- C. Required provisions.
1. Insurer's Requirement  
All of the insurance shall be provided on policy forms and through companies satisfactory to COUNTY, and shall have a minimum AM Best's rating of A- VIII
  2. Additional Insured.  
COUNTY, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of PROVIDER; products and completed operations of PROVIDER; premises occupied or used by PROVIDER; and vehicles owned, leased, hired or borrowed by PROVIDER. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of COUNTY.

3. Provider's Insurance Shall be Primary

For any claims related to this Agreement, PROVIDER's insurance shall be primary insurance with respect to COUNTY, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by COUNTY, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance. PROVIDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability

4. Cancellation Notice

Each insurance policy required by this Agreement shall state, or be endorsed so as to the state, that coverage shall not be canceled by the insurance carrier or the PROVIDER, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to COUNTY.

5. Evidences of Insurance.

Prior to execution of the Agreement, PROVIDER shall file with COUNTY a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

6. Sub-Contractors.

In the event that PROVIDER employs sub-contractors as part of this Agreement, it shall be the PROVIDER's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

- D. The parties do hereby expressly agree that COUNTY, acting at its sole option and through its Risk Manager, may waive any and all requirements contained in this Agreement, such waiver to be in writing only. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by COUNTY's Risk Manager taking into account the nature of the work and other factors relevant to COUNTY's exposure, if any, under this Agreement.

**IX. NO WAIVER BY PAYMENT OR ACCEPTANCE:**

In no event shall the making of any payment or acceptance of any service or product required by this Agreement constitute or be construed as a waiver by COUNTY of any breach of the covenants of this Agreement or a waiver of any default of PROVIDER and the making of any such payment or acceptance of any such service or product by COUNTY while any such default or breach shall exist shall in no way impair or prejudice the right of COUNTY with respect to recovery of damages or other remedy as a result of such breach or default.

**X. NON-DISCRIMINATION:**

During the term of this Agreement, PROVIDER agrees not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). PROVIDER agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases, and exceptions shall be permitted only to the extent allowable in state or federal law.



**XI. CIVIL RIGHTS COMPLIANCE:**

- A. If PROVIDER has 20 or more employees and receives \$20,000 in annual contracts with COUNTY, the PROVIDER shall submit to COUNTY a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990. PROVIDER shall also file an Affirmative Action (AA) Plan with COUNTY in accordance with the requirements of chapter 19 of the Dane County Code of Ordinances. PROVIDER shall submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by COUNTY. If an approved plan has been received during the previous CALENDAR year, a plan update is acceptable. The plan may cover a two-year period. Providers who have less than twenty employees, but who receive more than \$20,000 from the COUNTY in annual contracts, may be required to submit a CRC Action Plan to correct any problems discovered as the result of a complaint investigation or other Civil Rights Compliance monitoring efforts set forth herein below. If PROVIDER submits a CRC/AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by COUNTY, a verification of acceptance by the State of PROVIDER's Plan is sufficient.
- B. PROVIDER agrees to comply with the COUNTY's civil rights compliance policies and procedures. PROVIDER agrees to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the PROVIDER. PROVIDER agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and non-discrimination. PROVIDER further agrees to cooperate with COUNTY in developing, implementing, and monitoring corrective action plans that result from any reviews.
- C. PROVIDER shall post the Equal Opportunity Policy, the name of PROVIDER's designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment and employees. The complaint process will be according to COUNTY's policies and procedures and made available in languages and formats understandable to applicants, clients and employees. PROVIDER shall supply to COUNTY's Contract Compliance Officer upon request a summary document of all client complaints related to perceived discrimination in service delivery. These documents shall include names of the involved persons, nature of the complaints, and a description of any attempts made to achieve complaint resolution.
- D. PROVIDER shall provide copies of all announcements of new employment opportunities to COUNTY's Contract Compliance Officer when such announcements are issued.
- E. If PROVIDER is a government entity having its own compliance plan, PROVIDER'S plan shall govern PROVIDER's activities.

**XII. COMPLIANCE WITH FAIR LABOR STANDARDS:**

- A. Reporting of Adverse Findings  
During the term of this Agreement, PROVIDER shall report to the County Contract Compliance Officer, within ten (10) days, any allegations to, or findings by the National Labor Relations Board (NLRB) or Wisconsin Employment Relations Commission (WERC) that PROVIDER has violated a statute or regulation regarding labor standards or relations. If an investigation by the Contract Compliance Officer results in a final determination that the matter adversely affects PROVIDER'S responsibilities under this Agreement, and which recommends termination, suspension or cancellation of this agreement, the County may take such action.
- B. Appeal Process  
PROVIDER may appeal any adverse finding by the Contract Compliance Officer as set forth in Dane County Ordinances Sec. 25.08(20)(c) through (e).

- C. Notice Requirement  
PROVIDER shall post the following statement in a prominent place visible to employees:  
“As a condition of receiving and maintaining a contract with Dane County, this employer shall comply with federal, state and all other applicable laws prohibiting retaliation for union organizing.”

**XIII. CONTROLLING LAW AND VENUE:**

It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane County Circuit Court.

**XIV. FINANCIAL INTEREST PROHIBITED:**

Under s. 946.13, Wis. Stats. COUNTY employees and officials are prohibited from holding a private pecuniary interest, direct or indirect, in any public contract. By executing this Agreement, each party represents that it has no knowledge of a COUNTY employee or official involved in the making or performance of the Agreement that has a private pecuniary interest therein. It is expressly understood and agreed that any subsequent finding of a violation of s. 946.13, Wis. Stat. may result in this Agreement being voided at the discretion of the COUNTY.

**XV. LIMITATION OF AGREEMENT:**

This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

**XVI. ENTIRE AGREEMENT:**

The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.

**XVII. COUNTERPARTS:**

The parties may evidence their agreement to the foregoing upon one or several counterparts of this instrument, which together shall constitute a single instrument.

**XVIII. CONSTRUCTION:**

This Agreement shall not be construed against the drafter.

**XIX. COPIES VALID:**

This Agreement, and any amendment or addendum relating to it, may be executed and transmitted to any other party by legible facsimile reproduction or by scanned legible electronic PDF copy, and utilized in all respects as, an original, wet-inked manually executed document. Further, this Agreement and any amendment or addendum thereto, may be stored and reproduced by each party electronically, photographically, by photocopy or other similar process, and each party may at its option destroy any original document so reproduced. All parties hereto stipulate that any such legible reproduction shall be admissible in evidence as the original itself in any judicial, arbitration or administrative proceeding whether or not the original is in existence and whether or not such reproduction was made by each party in the regular course of business. This term does not apply to the service of notices under this Agreement.

**XX. REGISTERED AGENT:**

PROVIDER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so, and, if a corporation, that the name and address of PROVIDER's registered agent is as set forth opposite the heading REGISTERED AGENT on page 1 of this Agreement. PROVIDER shall notify COUNTY immediately, in writing, of any change in its registered agent, his or her

address, and PROVIDER's legal status. For a partnership, the term 'registered agent' shall mean a general partner.

**XXI. DEBARMENT:**

By signing this Contract, PROVIDER attests that it is not debarred from participating in federal procurements. COUNTY reserves the right to cancel this Contract if PROVIDER is presently, or is in the future, on the list of parties excluded from federal procurements.

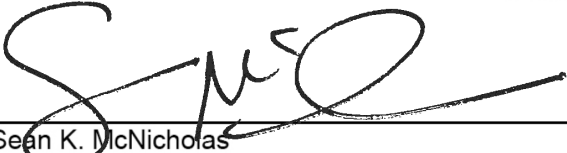
**XXII. EXECUTION:**

A. The parties agree that execution of this document may be made by electronic signatures. The parties may make electronic signatures by typing the name of the authorized signature followed by the words, "electronically signed" or by any other electronic means representing an authorized signature by PROVIDER. PROVIDER shall ensure that only authorized persons may affix electronic signatures to this Agreement and COUNTY may rely that the electronic signature provided by PROVIDER is authentic.

B. This Agreement has no effect until signed by both parties. The submission of this Agreement to PROVIDER for examination does not constitute an offer. PROVIDER warrants that the persons executing this Agreement on its behalf are authorized to do so.

**IN WITNESS WHEREOF**, COUNTY and PROVIDER, by their respective authorized agents, have caused this Agreement and its Schedules to be executed, effective as of the date by which all parties hereto have affixed their respective signatures, as indicated below.

**FOR PROVIDER:**

  
\_\_\_\_\_  
Sean K. McNicholas  
President & CEO

2/16/2022  
\_\_\_\_\_  
Date

\*\*\*

**FOR COUNTY:**

\_\_\_\_\_  
Joseph T. Parisi  
Dane County Executive

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott McDonell  
Dane County Clerk

\_\_\_\_\_  
Date

\* [print name and title, below signature line of any person signing this document]

## **Schedule A – Scope of Services**

1. Exclusivity
2. Use of Zoo Facilities and Equipment
3. Operating Hours
4. Zoo Closing and/or Interruption of Service
5. Provider Management, Employees, Agents and Representatives
6. Relationship of Parties
7. License
8. Food Service and Retail Merchandise Inventory/Commitment to Sustainability
9. Deliveries
10. Signage
11. Mobile Units
12. Maintenance
13. Utilities
14. Trash Collection
15. Prohibited Acts
16. Compliance with Laws and Policies
17. Force Majeure
18. Severability
19. Taxes, Insurance, Licenses
20. Notices
21. Delivery Upon Termination

## **Schedule B**

1. Commission
2. Definition of Gross Receipts
3. Statement of Accounts
4. Provider Capital Improvements
5. Possessory Interest
6. Audit
7. Wire Transfers
8. Right to Observe/Reports

## **Schedule C**

1. Event Sales Responsibilities

# **SCHEDULE A**

## **Scope of Services**

### **1. EXCLUSIVITY**

A. COUNTY grants PROVIDER the exclusive privilege and obligation to conduct the Food Service and Retail Merchandising Business at the Zoo during the term of this Agreement, except for those occasions when COUNTY conducts fund raising activities at the Zoo. In all instances, when practical, such distribution shall be coordinated with the PROVIDER operations and offered to the PROVIDER for first right of refusal. COUNTY agrees that it shall not conduct such activities arbitrarily or unreasonably.

B. PROVIDER will have the right to serve alcoholic beverages within the Zoo upon written approval by COUNTY. PROVIDER shall be required to obtain and maintain (keep in good standing) all liquor permits and licenses necessary for all types of alcoholic beverage dispensing that occurs at the Zoo.

C. COUNTY grants to PROVIDER the exclusive right to maintain and operate mobile food service application and / or kiosk-based food ordering for the buildings and grounds of the Henry Vilas Zoo ("Zoo Facilities"). PROVIDER shall be responsible for the creation, operation, and maintenance of any mobile food ordering applications and kiosks provided under this Agreement. The design of the mobile food ordering application shall meet COUNTY design specifications and must have approval of COUNTY prior to implementation.

D. Collaborating with, and incorporating input and protocols from COUNTY, PROVIDER shall manage the facility rentals and event related ancillary services (the "Event Sales"), as well as the catering sales for special event clients external to the COUNTY.

- i. Event Sales management shall include, but not necessarily be limited to co-management of quarterly marketing and special event meetings between the parties, answering inbound event inquiries, maintaining an inquiry database, assuming outbound sales efforts, touring all prospective clients, coordinating with COUNTY on space and services (IT, AV, etc.), and collecting any event related site and add-on fees.
- ii. Event Sales responsibilities shall be detailed, updated regularly, and upon mutual written agreement incorporated as Schedule C. to the Agreement, and shall include responsibilities for Zoo sponsored events as well, and with no commission paid to COUNTY for those internal services. Notwithstanding any other language in this Agreement, PROVIDER shall provide COUNTY with a draft of its Event Sales responsibilities for COUNTY consideration no later than thirty (30) days prior to the Transition Date.
- iii. PROVIDER shall provide the set-up and tear-down staff to accommodate event rentals and table / chair needs. Upon prior notice to the COUNTY, PROVIDER may elect to charge external clients a fee for these set-up and tear-down services, and PROVIDER shall provide these set-up and tear-down services for COUNTY without a fee. When renting third party

equipment to either COUNTY or external clients, PROVIDER shall not be obligated to pay commission to COUNTY on these rentals, decorations, entertainment, or other third party services.

Notwithstanding the above, COUNTY shall have the right to conduct its own internal events, which may be either open to the public or considered private, for such events that are considered to be promotional, sponsor related, or charitable in nature. When practical, such events, including services and distribution, shall be coordinated with PROVIDER, and COUNTY may elect to allow for third-party donations and give-aways. COUNTY agrees that it shall not conduct such activities arbitrarily or unreasonably.

## **2. USE OF ZOO FACILITIES AND EQUIPMENT**

A. PROVIDER shall use the Zoo Facilities for the exclusive operation of a food service and retail merchandise business, including without limitation maintaining permanent and mobile daytime visitor dining and retail merchandise facilities, e-commerce, retail and concession vending, face painting and retail crafts, caricature art, photo souvenirs, Mobile Unit(s) (as defined in Schedule A - Section 11), storage and closet facilities, for the purpose of selling food service items (i) related to the COUNTY and its mission; (ii) promoting public awareness of the Zoo; or (iii) customary and reasonable for the convenience of visitors to the Zoo (collectively the "Food Service and Retail Merchandising Business"). PROVIDER shall not use or permit the Zoo Facilities to be used for any other purpose without COUNTY's prior written consent.

B. COUNTY also hereby allows PROVIDER, and PROVIDER hereby accepts from COUNTY, all equipment and furnishings existing prior to the date of this Agreement that are owned by COUNTY, physically located at the Zoo Facilities, and related to the Food Service and Retail Merchandising Business ("Existing Equipment"). PROVIDER agrees to accept all Existing Equipment "as is" in its current condition.

## **3. OPERATING HOURS**

PROVIDER shall keep primary daytime visitor dining amenities at the Zoo open in accordance with a schedule provided to and mutually agreed upon by COUNTY and which is consistent with the public hours of the Zoo. PROVIDER must obtain COUNTY's prior consent before changing its operating hours.

## **4. ZOO CLOSING AND/OR INTERRUPTION OF SERVICE**

A. Food service and retail merchandise facilities may be closed or service therein temporarily interrupted to accommodate any and all construction, restoration and repair activities, or for any other reason deemed appropriate by COUNTY in or around the main Zoo buildings for the food service locations. COUNTY shall give PROVIDER reasonable advance notice, if possible, to arrange for any such closing or interruption.

B. COUNTY shall make a good faith effort to provide reasonable alternate locations for PROVIDER's services if such closure or interruption will be for an extended period of time. In the event of closings or service interruptions caused by COUNTY which continue for a substantial period of time or which are repetitive, PROVIDER may request that COUNTY negotiate some form of relief to mitigate the financial loss by PROVIDER, caused by such closing. COUNTY will evaluate and consider such requests on a case-

by-case basis. PROVIDER acknowledges it is already aware of COUNTY's plans to redevelop the central part of the Zoo, which is anticipated to begin in 2024-2025 and that no such negotiation is necessary regarding the potential interruption that may arise as a result.

## **5. PROVIDER MANAGEMENT, EMPLOYEES, AGENTS, AND REPRESENTATIVES**

A. PROVIDER acknowledges that COUNTY is providing PROVIDER with special access to visitors to the Zoo, and that COUNTY's purpose in this Agreement is to enhance visitors' experience of the Zoo. PROVIDER and its employees, agents, and representatives shall not interfere in any way with the projects, activities, or events of COUNTY or the performance of the duties of any employee, volunteer, or representative of COUNTY.

B. PROVIDER shall at all times maintain an on-site manager with a level of experience commensurate with management at similar stores of comparable size and scope, to oversee the Food Service and Retail Merchandising Business at the Zoo for the term of this Agreement.

C. PROVIDER shall at all times maintain an adequate staff of employees on duty at the Zoo to conduct the Food Service and Retail Merchandising Business. All employees of PROVIDER shall be dressed in a clean and professional manner and in accordance with COUNTY's regulations.

D. PROVIDER shall be responsible for the proper training and motivation of its employees.

E. PROVIDER shall have its employees attend any meetings COUNTY may offer them in order that said employees may more completely understand the philosophy, purposes and programs of COUNTY at the Zoo. PROVIDER shall familiarize all of its personnel with the COUNTY's safety policies at their orientation. PROVIDER shall be required to participate in all drills related to severe weather, guest or employee injury, fire or any other drills necessary for staff, and guests safety.

F. All persons and sub-contractors engaged by PROVIDER shall be the sole and exclusive employees of PROVIDER and shall be paid by PROVIDER. It is understood that COUNTY shall have neither supervision nor control over PROVIDER's employees' or sub-contractor's performance of their duties for PROVIDER. Said employees and sub-contractors, however, and any other persons in or about the Zoo at the request or invitation of PROVIDER, shall conform to all rules and policies established by COUNTY from time to time.

G. If COUNTY determines, in its sole discretion, that any employee, agent, sub-contractor or representative of PROVIDER has violated any of COUNTY's rules or policies, PROVIDER shall remove such employee, agent, sub-contractor or representative from the premises upon COUNTY's written request, and PROVIDER shall no longer employ such person or sub-contractor to work at the Zoo. COUNTY reserves the right to revoke access to the Zoo by anyone at any time with or without cause and without liability to COUNTY.

H. PROVIDER shall be solely responsible for all obligations and duties with respect to PROVIDER's employees, agents, and representatives, including without



limitation any obligations or duties with respect to federal or state income taxes; social security taxes; workers' compensation; unemployment; disability, health, or retirement benefits; or any other tax obligations resulting from or benefits provided to employees under federal, state, or local laws.

## **6. RELATIONSHIP OF PARTIES**

A. Nothing herein shall be construed as creating the relationship of employer or employee between COUNTY and PROVIDER or between COUNTY and PROVIDER's employees, and PROVIDER agrees that it is an independent contractor of COUNTY. This Agreement does not create a relationship of agency, joint venture, or partnership between the parties. PROVIDER shall have no power to incur any liability or other obligation, or to enter into any contract, on behalf of COUNTY, and shall have no right to reimbursement for any expenses paid or incurred by PROVIDER, except as otherwise stated herein or agreed by the parties in writing.

B. Each party shall refrain from recruiting or hiring management staff from the other party until a period of two (2) years has elapsed from the point of employment severance from the initial party or termination of this Agreement. However, this requirement may be waived upon mutual written agreement between both parties as it pertains to case-by-case occurrences.

## **7. LICENSE**

COUNTY hereby grants to PROVIDER, during the term of this Agreement, a nonexclusive, nontransferable, limited license to use the Henry Vilas Zoo trademark(s) and logo(s) to be provided from time to time by COUNTY (collectively, the "Mark") in connection with its Food Service & Retail Merchandise Business at the Zoo Facilities, and PROVIDER accepts the license subject to the following terms and conditions:

A. PROVIDER acknowledges the ownership of all rights in the Mark by COUNTY and agrees that it will do nothing inconsistent with such ownership and that all use of the Mark by PROVIDER shall inure to the benefit of COUNTY. PROVIDER agrees that nothing in this license shall give it any right, title or interest in the Mark other than the right to use the Mark in accordance with this license, and agrees that it will not attack, or assist others to attack, the title of COUNTY to the Mark or the validity of this license.

B. PROVIDER agrees that the nature and quality of all services rendered, goods sold or distributed, and advertising conducted by PROVIDER in connection with the Mark shall be subject to such standards and controls as COUNTY may set from time to time, and at all times shall at least meet the standards generally applicable to similarly situated visitor service operations in similar public attractions. COUNTY retains the right to request removal of any merchandise on which the Mark appears, and is considered inconsistent with these standards.

C. PROVIDER agrees to notify COUNTY of any unauthorized use of the Mark by others promptly as it comes to its attention. COUNTY shall have the sole right and discretion to bring infringement, unfair competition, or other proceedings involving unauthorized use of the Mark.

## **8. FOOD SERVICE AND RETAIL MERCHANDISE INVENTORY / COMMITMENT TO SUSTAINABILITY**

A. PROVIDER shall have the option to purchase from incumbent provider, all food service and retail merchandise inventory existing on site as of the Transition Date that is deemed to be in good and salable condition, as mutually agreed upon by the parties, at cost as evidenced by invoice and inventory statement. Subsequent to the Transition Date, PROVIDER shall be responsible for selecting, ordering, stocking, replenishing, insuring, and paying for, a sufficient levels of food service and retail merchandise inventory so that there is ample inventory for sale during the term of the Agreement.

B. PROVIDER shall sell, assign, or otherwise distribute on, in, at, or from the Zoo, including without limitation the Mobile Units, only food service and retail merchandise items that are appropriate to COUNTY's purposes and consistent with the Zoo Mission. The nature and quality of all such food service and retail merchandise items shall be in keeping with the visitor experience provided by COUNTY's exhibits and other operations at the Zoo, as determined in COUNTY's reasonable discretion. PROVIDER shall provide COUNTY with proposed food service and catering menus, as well as an overview of the proposed retail merchandise families and categories – with an emphasis on retail merchandise bearing the Mark - not less than annually for the review and approval of the COUNTY, which shall not be unreasonably withheld. The sale of balloons, projectiles, water guns, slingshots or any other weapon-like toys, gum, and tobacco-related products and explosives are expressly prohibited.

C. COUNTY shall have the right to object to any food service or retail merchandise item being offered for sale, and upon receiving such objection in writing, PROVIDER shall remove that item immediately. COUNTY agrees that it will neither arbitrarily nor unreasonably interfere with the operation of PROVIDER's business in exercising its power of objection hereunder.

PROVIDER shall be an active participant in the COUNTY's waste reduction and recycling programs, and will support the COUNTY's commitment to sustainable operations and design principles. This includes selections of food service and retail merchandise items, as well as sustainable operating practices supporting Dane County Board of Supervisors Resolution 103, reducing and eventually eliminating fossil fuel dependence and the wasteful use of scarce metals and minerals; the reducing and eventually eliminating dependence upon persistent chemicals and wasteful use of synthetic substances; reducing and eventually eliminating practices that encroach upon nature and harm to life-sustaining ecosystems; and reducing and eventually eliminating those practices and conditions that undermine people's ability to meet their basic human needs.

## **9. DELIVERIES**

PROVIDER shall not allow deliveries to interrupt basic Zoo operations and will make every effort to ensure that deliveries cause as little disturbance as possible. PROVIDER shall provide routine delivery schedules to COUNTY on a seasonal basis. Delivery vehicles shall park in designated areas which have been approved by COUNTY.

## 10. SIGNAGE

A. All signage placed by or on behalf of PROVIDER on, around, or inside the Zoo, including without limitation on any Mobile Units, shall comply with all applicable federal, state, and local laws and shall be consistent with COUNTY's mission and policies. PROVIDER shall be responsible for obtaining any applicable permits and payment of all applicable permit fees as required by applicable laws and ordinances.

B. The number, size, design, content, and location of all signage shall be subject to COUNTY's standards. COUNTY shall have the right to object to any signage, and upon receiving such objection in writing PROVIDER shall remove such signage immediately.

C. All signage shall be professionally lettered and produced in coordination with COUNTY. Handmade signage, paper signage, box signage, flashing signage, moving signage or billboard signage are not permitted unless specifically authorized by COUNTY.

## 11. MOBILE UNITS

A. Any carts, display cases, or other mobile units used to display food service or retail items ("Mobile Units") shall be maintained by PROVIDER in a clean and attractive condition. Mobile Units may only be located on the Zoo premises, unless otherwise approved by COUNTY.

B. The size, number, design, locations, and hours of operation of all Mobile Units shall be subject to COUNTY's prior approval. COUNTY shall have the right to object to the operation of any Mobile Unit, and upon receiving such objection, PROVIDER shall immediately remove, relocate, or alter the Mobile Unit, as requested by COUNTY.

C. Mobile Units may not have flashing or colored lights, siren horns, musical recordings, portable amplified public announcement systems, or any other feature deemed inappropriate by COUNTY, in its sole discretion.

## 12. MAINTENANCE

A. Zoo Facilities. COUNTY shall be responsible for the routine general maintenance of the Zoo Facilities, including but not restricted to maintaining all pipes, lines, mains, wires, HVAC, restrooms and conduits at the Zoo. COUNTY shall be responsible for repairing any major breakdowns, line breaks and system malfunctions, upon prompt notification by PROVIDER. COUNTY shall be responsible for operating and maintaining all network equipment up to the wall jack, including the provision of static IP addresses for each PROVIDER point of sale. COUNTY shall be responsible for maintaining and cleaning all restrooms that may be located within the premises. PROVIDER shall be responsible and for keeping its service spaces in a clean, orderly, and sanitary condition at all times.

B. Personal Property. PROVIDER shall keep all personal property it uses, including without limitation the Existing Equipment, FF&E, the Mobile Unit(s) and the contents thereof, in good condition, normal wear and tear excepted. PROVIDER shall obtain COUNTY's approval prior to replacing any Existing Equipment. The cost of

replacing any Existing Equipment shall be the responsibility of PROVIDER and shall be treated as FF&E, as defined in Schedule B - Section 4.

C. Right of Entry. COUNTY shall have the right to enter upon the Zoo Facilities at all reasonable times to make such repairs, replacements, and alterations as may, in the opinion of COUNTY, be deemed necessary and advisable, *provided*, however, that the same shall be done so as to interfere as little as reasonably possible with PROVIDER's operations.

### **13. UTILITIES**

COUNTY shall provide at no additional cost to PROVIDER, the utilities and services such as water, sewer, natural gas, electric, telephone, grease trap services, pest control services, internet connectivity and all other utilities associated with the Food Service and Retail Merchandising Business at the Zoo.

### **14. TRASH COLLECTION**

A. PROVIDER shall be responsible for placing in and adjacent to the Zoo Facilities receptacles that have been provided by COUNTY for the collection of trash, garbage and other refuse. PROVIDER shall remove any receptacle immediately upon COUNTY request. Accumulation of trash, debris, and boxes will not be allowed inside or outside of the Zoo Facilities.

B. PROVIDER shall provide for the proper handling and disposal in COUNTY dumpsters of trash, garbage, and other refuse resulting from its operations.

### **15. PROHIBITED ACTS**

A. Conflict of Interest. PROVIDER certifies that to the best of its knowledge no employee of the COUNTY, nor any member thereof, nor any public agency or official affected by any agreement that results from this Agreement, has any pecuniary interest in the business of PROVIDER, and that no person associated with the PROVIDER has any interest that would conflict in any manner with the performance of the Agreement.

B. Discrimination. PROVIDER represents that no person in the United States has, on the grounds of race, creed, color, national origin, gender, sexual orientation, disability, or age, been excluded from service by, been denied the benefits of, or been subject to discrimination in connection with, PROVIDER's operations.

C. Discriminatory Criteria. PROVIDER may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed, color, sex, sexual orientation, national origin, disability or age.

D. Prohibited Activities. Notwithstanding anything to the contrary in this Agreement, PROVIDER shall not do or permit anything to be done in or about the Zoo, nor bring or keep anything on or at the Zoo Facilities, that may in any way:

- i. increase the existing rate of or otherwise affect any fire or other insurance on the Zoo;
- ii. cause cancellation of any insurance policy covering any part of the Zoo;

- iii. obstruct or interfere with the projects, activities, or events of COUNTY or the lawful operation of the Zoo;
- iv. interfere with COUNTY operations or ability to fulfill its purposes;
- v. use or allow the Zoo Facilities to be used for any illegal or unlawful purpose;
- vi. cause, maintain or permit any nuisance in, on or about the Zoo; or
- vii. cause disfigurement, damage or structural injury to the Zoo facilities or the Zoo.

## **16. COMPLIANCE WITH LAWS AND POLICIES**

PROVIDER shall comply with all applicable federal, state, and local laws, ordinances, regulations, and orders, and shall obtain all appropriate government approvals pertaining to the sale, distribution and advertising of merchandise and all other activities covered by this Agreement. PROVIDER shall also comply with all applicable rules and policies established by COUNTY from time to time.

## **17. FORCE MAJEURE**

COUNTY shall not be liable for any loss or damage suffered by PROVIDER arising out of the interruption or cessation of the Food Service and Retail Merchandising Business, nor for any loss suffered by PROVIDER in the performance of its obligations under this Agreement resulting from a strike or other work stoppage; breakdown or failure of apparatus, equipment or machinery; any temporary stoppage for repair, improvement, or replacement thereof; interruption in sewer, water, or electrical service; limitation of access to or condemnation of the Zoo; pandemic; or any other act or condition beyond COUNTY's control.

## **18. SEVERABILITY**

If any part of the Agreement shall be held unenforceable, the rest of the Agreement will nevertheless remain in full force and effect.

## **19. TAXES, INSURANCE, LICENSES**

A. PROVIDER shall pay all taxes and excise or licensee fees applicable to its operations at the Zoo and its possession of inventory, equipment, and supplies, and shall obtain and keep current all licenses (municipal, state or federal) required for the conduct of its business, and further shall not permit any of said taxes, excise or licensee fees to become delinquent. PROVIDER shall not permit any lien to be imposed upon any real property or any part or parcel thereof, including without limitation the Zoo, or upon any property located at the Zoo Facilities or installed by PROVIDER pursuant to this Agreement, including without limitation any FF&E, Leasehold Improvements, or Existing Equipment. PROVIDER shall not be held liable for possessory interest taxes related to real property owned by COUNTY.

B. PROVIDER shall pay all premiums and deductibles for the insurance required herein. PROVIDER shall maintain the following coverages with insurers licensed in Wisconsin and carrying a minimum Best's rating of A and a Best's financial size category rating of Class VII or higher:

TYPE OF COVERAGE	MINIMUM LIMITS
Commercial General Liability Bodily Injury and Property Damage (Including Personal Injury, Fire Legal, Contractual & Products / Completed Operations, with waiver of subrogation in favor of COUNTY, including coverage for operations in the State of Wisconsin, with COUNTY listed as primary and non-contributory.)	\$1,000,000 per Occurrence \$3,000,000 General Aggregate
Liquor Liability	\$2,000,000
Cyber Liability Data Privacy Coverage	\$1,000,000 per Occurrence \$1,000,000 Annual Aggregate
Commercial Crime Coverage with Third Party Endorsement	\$1,000,000 per Occurrence \$3,000,000 Annual Aggregate
Automobile Liability Bodily Injury & Property Damage All Autos-Owned, non-owned and/or hired	\$1,000,000 per Accident
Wisconsin Workers' Compensation Or Proof of All States Covered (with waiver of subrogation in favor of COUNTY)	\$1,000,000 per Accident \$1,000,000 per employee for disease \$1,000,000 per policy for disease
Umbrella Coverage	\$5,000,000

C. COUNTY, listed as Certificate Holder, and Henry Vilas Zoo will be named as an additional insured for General Liability and Auto Liability. A waiver of subrogation for Workers Compensation by endorsement in favor of COUNTY and Henry Vilas Zoo shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by COUNTY. The insurance requirements contained within this provision are subject to periodic review and adjustment by COUNTY. Certificates of Liability Insurance should provide that prior to cancellation, COUNTY will be given a minimum of thirty (30) days written notice (ten days in the event of non-payment). Policies that lapse and/or will expire while work is being performed for COUNTY should be re-certified and delivered to COUNTY at least fifteen (15) days prior to the renewal date.

**20. NOTICES**

A. All notices, requests, waivers, approvals, consents, demands and other communications hereunder shall be in writing and shall be deemed duly given when delivered personally, or three days after being deposited with the United States Postal Service, or one day after being deposited for delivery with a nationally-recognized overnight delivery service, with all charges, fees and first-class postage prepaid, properly addressed, as follows:

FOR COUNTY	Henry Vilas Zoo. Attn: Director and Deputy Director 702 S. Randall Ave. Madison, WI 53715
FOR PROVIDER	SSA Group, LLC Attn: Contract Compliance Dept. 4624 Central Park Blvd., Suite 100 Denver, CO 80238

B. In the event that either party wishes to change the address for notification, it shall notify the other party of the new address in accordance with Schedule A - Section 20.A.

## 21. DELIVERY UPON TERMINATION

A. Zoo Facilities. PROVIDER shall deliver the Zoo Facilities and any Existing Equipment to COUNTY as of the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear or loss or damage caused by a natural disaster. The Zoo Facilities shall include all Leasehold Improvements.

B. Commission. PROVIDER shall promptly pay any accrued commission or other amounts due but not yet paid to COUNTY upon termination of this Agreement. PROVIDER's rights upon termination as set forth in this Agreement shall not be effective until all such amounts are paid.

C. License. Upon termination of this Agreement, PROVIDER shall immediately discontinue all use of the Mark and any terms confusingly similar thereto pursuant to the terms of Schedule A - Section 7.

D. Inventory. Upon termination of this Agreement, COUNTY or successor PROVIDER shall be made to purchase from PROVIDER, the food service and retail merchandise inventory existing at the Zoo as of the termination date that is mutually determined to be in good and salable condition. The payment terms for this purchase shall be PROVIDER's cost as evidenced by invoice and inventory statement. If this Agreement is terminated for the reasons set forth in IV.A., B, C or E., COUNTY shall be responsible for purchasing no more than 50% of the food service and retail merchandise inventory existing at the Zoo as of the termination date that is mutually determined to be in good and saleable condition, at PROVIDER's cost as evidenced by invoice and inventory statement. Any purchase of food service and retail merchandise inventory in excess of 50% shall be at the sole discretion of COUNTY.

E. FF&E. Upon expiration or termination of this Agreement, COUNTY shall purchase (or successor PROVIDER shall be made to purchase) the remaining net book value (as depreciated in accordance with Schedule B - Section 4) all moveable FF&E provided by PROVIDER in accordance with this Agreement. If this Agreement is terminated for the reasons set forth in IV.A., B, C or E., COUNTY shall be responsible for purchasing all moveable FF&E at no more than 50% of the remaining net book value, after depreciation in accordance with Schedule B.- Section 4..

F. Leasehold Improvements. If this Agreement expires or is terminated, COUNTY shall pay PROVIDER the remaining unamortized value (as amortized in accordance with Schedule B - Section 4) of all Leasehold Improvements installed by PROVIDER. If this Agreement is terminated for the reasons set forth in IV.A., B, C or E., COUNTY shall be responsible for paying 50% of the remaining unamortized value of any or all Leasehold Improvements.



## SCHEDULE B

### Pricing Structure and Payment

#### 1. COMMISSION

A. Monthly Commission. A Contract Year, for the purposes of calculating commissions, shall be defined as that period from April 1, 2022 through December 31, 2022, and thereafter January 1 to December 31 for each remaining year of the Term. (“Contract Year”). PROVIDER shall pay to COUNTY monthly commission in an amount equal to the applicable percentage of Gross Receipts for items sold during that month, as set forth in the following table:

CATEGORY	CONTRACT YEAR GROSS RECEIPTS	COMMISSION
Daytime Visitor Dining	\$0 up to \$1,200,000	15%
	In excess of \$1,200,000 up to \$2,000,000	19%
	In excess of \$2,000,000	25%
Mobile App & Kiosk Ordered Food	All Gross Receipts	12%
Catering Food & Beverage (applies to food and beverage only)	From \$0 up to \$250,000	10%
	In excess of \$250,000 up to \$450,000	12%
	In excess of \$450,000	15%
Retail Merchandise	\$0 up to \$1,000,000	23%
	In excess of \$1,000,000 up to \$1,800,000	26%
	In excess of \$1,800,000	28%
Retail E-Commerce	All Gross Receipts (not including S&H)	15%
Wagon & Stroller Rentals	Net paid to PROVIDER by 3 <sup>rd</sup> Party	50%
Event Sales – Site Fees / Venue Rentals	From \$0 up to \$80,000	15%
	In excess of \$80,000	70%
Event Sales – COUNTY Add-Ons	All Gross Receipts	80%

B. Annual Guarantee. If in any Contract Year Zoo Attendance exceeds 700,000 visitors, PROVIDER shall pay COUNTY Four Hundred Thirty Thousand Dollars (\$430,000) in commission (the “Guaranteed Amount”) if the Guaranteed Amount exceeds the total Commission due to COUNTY under Schedule B - Section 1.A for that Contract Year. If Zoo Attendance does not reach 700,000 in a Contract Year, no guarantee will apply for that Contract Year and PROVIDER shall only pay COUNTY the Commission pursuant to Schedule B - Section 1.A.

For purposes of this Section, “Zoo Attendance” means total attendance as determined by the COUNTY as of the date of this Agreement, less attendance at any special events that occur outside of the public operating hours of the Zoo in which PROVIDER’s services are not available or educational outreach programs in which participants do not have access to the Facilities. Zoo Attendance also does not include employees or independent contractors who are providing services to PROVIDER or COUNTY. The daily business records maintained by the COUNTY in connection with its admissions function shall be authoritative as to the Zoo Attendance number. COUNTY shall provide PROVIDER with monthly reports, certified by the COUNTY’s authorized representative, of total monthly Zoo Attendance within ten (10) days after the end of each calendar month, *provided* COUNTY may adjust any monthly attendance report up to, but no later than, thirty (30) days after that month’s end.

C. Due Date. By the twentieth day of each month, PROVIDER shall provide COUNTY with a monthly statement of the Gross Receipts of the previous calendar month separated by the categories listed in Schedule B.1.A. and pay the total commission due for the previous calendar month. PROVIDER may not set-off any amounts against the commission due to COUNTY under this Agreement, except as provided in Schedule B - Section 2.B.ii.

D. Annual Statement and Payment. Within thirty (30) days after the end of each Contract Year of the term of this Agreement, PROVIDER shall provide COUNTY with a statement setting forth (i) Gross Receipts for such year, and (ii) the total amount of commission actually paid by PROVIDER to COUNTY during such year ("Paid Commission").

E. Special Event Marketing. PROVIDER shall provide COUNTY \$25,000 in each Contract Year as annual marketing support to promote the Zoo's catered special events programs. These funds can be used for advertising special events, or for in-kind catering services at industry events promoting the Zoo as a special event destination. Unused funds shall not accrue to the following Contract Year.

F. Annual Sponsorship. PROVIDER shall provide COUNTY \$10,000 in each Contract Year as an official sponsor for Zoo gala or fund-raising events. Unused funds shall not accrue to the following Contract Year.

G. Round Up For Conservation. PROVIDER shall implement a program at the Facilities encouraging guests to make a donation towards the COUNTY's conservation initiatives. PROVIDER shall remit all such funds collected, with no off-set, monthly commensurate with monthly commission.

H. Confidentiality. PROVIDER and COUNTY agree to keep confidential the terms of Commission as described in Schedule B - Section 1.A and shall not share this information with any third parties, except to the extent required by Local, State, or Federal law, unless written approval shall be obtained by the requesting party.

## **2. DEFINITION OF GROSS RECEIPTS**

A. For purposes of this Agreement, "Gross Receipts" means the total price charged for all items sold, assigned, or otherwise distributed on, in, at, or from the Zoo Facilities, including without limitation the Mobile Unit(s), whether paid in cash, by check, on credit, through a charge account, exchange, or otherwise, regardless of the location where payment is actually collected, and regardless of the level of profit, if any, realized on any transaction, subject to Schedule B - Section 2.B below.

B. Deducted from the calculation of "Gross Receipts" shall be (i) any amount of sales or other taxes levied on the sales and paid by PROVIDER, or any credit card merchant transaction processing fees levied upon the transaction and remitted as such by PROVIDER; (ii) the amount of any internal sales to COUNTY at PROVIDER's cost, plus 15% shipping and handling, or internal catering sales to COUNTY at PROVIDER's retail price, including COUNTY discount, due and payable to PROVIDER net thirty (30) days from billing; and (iii) the amount of any discounted sales as described in Schedule B - Section 2.C.i..

C. PROVIDER shall provide the following discounts on food service items, excepting items which have been reduced from its usual selling price as a sale or promotion:

- i. COUNTY / Zoo Volunteers
  - a. 40% discount on daytime visitor dining and 30% discount on retail merchandise to working Zoo volunteers, which sales shall be considered non-commissionable.
  - b. 30% discount on retail-priced catering food and beverage for COUNTY-sponsored catered functions, which sales shall be considered non-commissionable.
  - c. Bulk purchases of foodstuffs and retail merchandise by the Zoo, offered by PROVIDER at its wholesale cost plus 15% shipping and handling, which sales shall be considered non-commissionable.
- ii. Zoo Members
  - a. 10% discount on daytime visitor dining and retail merchandise, which sales shall be considered commissionable on the net of the discount, at a rate five (5%) lower than the then applicable commission tier (e.g. commission on a Member discounted daytime visitor dining purchase within the first tier of sales {\$0 - \$1,200,000} is 10% instead of 15%).

Any identification required in order to receive a discount will be subject to the mutual agreement of the parties.

### **3. STATEMENT OF ACCOUNTS**

PROVIDER shall keep a true and accurate account of Gross Receipts and shall, on or before the 20<sup>th</sup> day of each month, deliver to COUNTY an itemized statement showing a breakdown of all amounts so received during the calendar month immediately preceding, and the amount of all exclusions, by category, from Gross Receipts, pursuant to Schedule B - Section 2.B.

### **4. PROVIDER CAPITAL IMPROVEMENTS**

A. PROVIDER will make an investment in capital improvements over the term of this Agreement in the amount of up to \$1,175,000.00 ("PROVIDER Capital Improvements") for one time start-up costs, alterations, furnishings and equipment as necessary (which shall be included in the FF&E and Leasehold Improvements, as defined below) to provide the Food Service and Retail Merchandising Business. All expenditures and capital improvement contracts, including schedule and completion dates, are subject to the prior approval of COUNTY.

B. PROVIDER Capital Improvements shall include moveable furniture, fixtures, and equipment ("FF&E") necessary to conduct the Food Service and Retail Merchandising Business in the Zoo Facilities, including but not limited to any large equipment, cash registers, point of sale, deployment of mobile ordering applications and kiosk ordering hardware and software, display cases, shelves, racks, appliances, tables, desks, or chairs. Any FF&E provided by PROVIDER which are "not-fixed," or moveable, shall become the property of COUNTY upon expiration or termination of this Agreement, pursuant to Schedule A - Section 21.E. herein. PROVIDER shall depreciate moveable

FF&E using a straight-line method over a period of ten (10) years commencing from the "in service to the public" date of the moveable FF&E.

C. PROVIDER Capital Improvements shall also include one-time startup costs, and permanent alterations to the Zoo Facilities ("Leasehold Improvements"). Leasehold Improvements made by PROVIDER shall be amortized over a period of ten (10) years, utilizing a straight-line method, commencing from "in service to the public" date of said improvements. Any Leasehold Improvements, including the selection of any design firm or contractor in connection with making such improvements, must be approved in advance by COUNTY in writing. All Leasehold Improvements shall become part of the Zoo Facilities, and are subject to the provisions of Schedule A - Section 21.F., herein.

## **5. POSSESSORY INTEREST**

This Agreement is not intended to and shall not be construed to vest in PROVIDER any title, estate, possessory interest, or property right in any properties or equipment of COUNTY or in any part thereof, including without limitation the Zoo Facilities and the Existing Equipment, and COUNTY does not by this instrument relinquish, convey, or qualify in any degree its respective possession, title, control, or management of any of said properties or equipment. PROVIDER shall not be held liable for any possessory or real estate taxes, if any, for use of the Zoo Facilities.

## **6. AUDIT**

A. PROVIDER shall preserve for the term of the Agreement and at least three (3) years thereafter all sales slips, cash register tapes, sales books, sales invoices or duplicate deposit slips, and other evidence of Gross Receipts and business transacted by PROVIDER at the Zoo (including without limitation documentation of all elements relevant in calculating Gross Receipts and any exclusions or deductions there from), as well as supporting documentation and financial records related to inventory, Leasehold Improvements, and FF&E.

B. COUNTY shall have the right to inspect the books and records of PROVIDER at all reasonable times during normal business hours.

C. COUNTY shall have the right to have a full audit of PROVIDER's books and records, including sales tax returns, conducted at COUNTY's own expense and with an auditor of COUNTY's choosing. In the event that COUNTY chooses to exercise this right, PROVIDER will cooperate fully and make available at its principal place of business during reasonable and normal business hours any requested information.

## **7. WIRE TRANSFERS**

Unless otherwise instructed in writing by COUNTY pursuant to Schedule A - Section 21, PROVIDER may make all payments due to COUNTY under this Agreement by electronic funds transfer in accordance with the wiring instructions provided by COUNTY from time to time.

## **8. RIGHT TO OBSERVE/REPORTS**

COUNTY shall have the right to observe any transaction or transactions involving PROVIDER at the Zoo Facilities or otherwise in the Zoo, for the purposes of determining the treatment of Zoo visitors, employees, volunteers, or other representatives; the quality, pricing, and quantity of merchandise sold; and the accountability of the revenue received there from.

## **SCHEDULE C**

### **Event Sales Responsibilities**

It is the understanding between the COUNTY and PROVIDER that the following general conditions shall apply to the rights, responsibilities and obligation of the parties with respect to Event Sales:

1. PROVIDER shall assume responsibility for the sales, scheduling and coordination of Event Sales, which shall include the solicitation and collection of special event site rental fees and approved add-ons for guests of the Henry Vilas Zoo. This shall further include:
  - a. Personnel provided by PROVIDER to affect Event Sales.
  - b. PROVIDER management of the special event calendar on behalf of COUNTY, for both outside client and COUNTY functions. COUNTY sponsored functions shall be provided to PROVIDER annually, no later than November for each upcoming calendar year, with additional events provided thereafter 120 days prior to each event. (However, should a date be available within 120 days of the requested event, COUNTY request for that date shall be honored.) COUNTY functions shall take precedence on the calendar, and PROVIDER shall not book outside events in the areas (or on days, as may be the case) in which COUNTY events shall occur.
  - c. PROVIDER management of the related contracts required for site rentals within the premises, which shall include the responsibility for collecting deposits and final payments for site rentals and approved add-ons.
  - d. PROVIDER management for ancillary sales, such as COUNTY provided and approved animal demonstrations, audio visual, IT, additional security, behind the scenes tours, train, carousel, etc. (COUNTY "Add-Ons") or other approved services for site rental clients. This shall include PROVIDER responsibility for collecting deposits and final payments.
  - e. PROVIDER shall provide calendar software and booking protocols, client contracts, and shall be responsible for distributing event related marketing materials provided by COUNTY to clients.
  - f. PROVIDER shall provide clients with evaluation forms at the conclusion of events, with copies of completed evaluations provided to COUNTY upon PROVIDER's receipt.
  - g. PROVIDER and COUNTY shall collaborate on the development of standard operating procedures (SOP) addressing issues of calendar management, the reimbursement process between the parties, conflict and complaint resolution, use of existing sales equipment (if any), negotiated consideration for special groups (such as in-kind requests granted by the COUNTY), grandfathered group site pricing and conditions, discounts for sponsors or donors, and similar items.
  - h. PROVIDER shall be responsible for the set-up and tear-down of COUNTY-owned special event table and chair inventory for catered events, and COUNTY shall be responsible for the set-up and tear-down of COUNTY-owned special event table and chair inventory for events without catering. PROVIDER shall not charge a fee to COUNTY for set-up and tear-down of COUNTY-owned table and chair inventory, however, PROVIDER may elect to charge a fee to outside clients with events that do not include catered food and beverage services at its own discretion.

2. PROVIDER shall provide personnel to assist COUNTY in planning fund-raising, gala, sponsorship and similar internal events. PROVIDER shall provide Event Sales personnel to assist COUNTY staff with menu, rental, and décor planning for internal events at no additional charge to COUNTY.
3. COUNTY shall be responsible for:
  - a. Marketing of private events, in conjunction with PROVIDER
  - b. Audio Visual, Security and IT needs, as communicated by PROVIDER to COUNTY
  - c. Providing animal behind the scenes tours and animal encounters, and train and carousel rides, as communicated by PROVIDER to COUNTY
4. The Parties shall be obligated to provide the following maintenance, care and replacement services associated with Event Sales:
  - a. COUNTY shall be responsible for maintaining, repairing, and replacing if necessary, the special event table and chair inventory.
  - b. COUNTY shall provide the regular cleaning, maintenance, and repair of all site rental facilities.
  - c. PROVIDER shall be responsible for returning site rental facilities in a “broom clean” condition after the completion of a site rental.