

**The Fort Worth Zoological Association
1989 Colonial Parkway
Fort Worth, Texas 76110**

Insert Date, 2015

Via Hand Delivery:

City of Fort Worth
C/O Ms. Susan Alanis
Assistant City Manager
1000 Throckmorton Street
Fort Worth, Texas 76102
Susan.alanis@fortworthtexas.gov

RE: Supplemental agreement regarding alternative arrangement by and between the Fort Worth Zoological Association (the "Zoo Association") and the City of Fort Worth (the "City" and, together with the Zoo Association, the "Parties").

Dear Mrs. Alanis:

The Zoo Association is delighted that the City has agreed to a one-time modification of the Parties' obligations with respect to the proposed development of the African Savannah exhibit (the "Development") at the Fort Worth Zoo (the "Zoo"). The City and Zoo Association are currently parties to a management agreement concerning the Zoo, said agreement being City Secretary Contract No. 40564 dated effective as of October 1, 2010 (as amended to date, the "Master Agreement"). The Master Agreement sets forth, among other things, certain obligations of the Parties as they relate to the construction of Improvements at the Zoo. In recognition of the significant and unique opportunity that this Development presents, the Parties have discussed and are willing to participate in an alternative arrangement for this Development to address funding and construction for certain improvements, including water, sewer, Zoo Creek drainage, electrical, data, and gas line improvements. The intent is for this letter to serve as a supplement to the Master Agreement by memorializing and confirming the Parties' respective commitments regarding the funding, construction, and installation of certain Basic Utilities and stormwater improvements for this Development only ("Supplemental Agreement"). All capitalized terms used in this Supplemental Agreement and not defined herein shall have the meanings assigned to them in the Master Agreement.

1. City's Obligations.

Under the terms of the Master Agreement, the City is responsible for relocating or altering Basic Utilities to accommodate any construction or modification at the Zoo, and with respect to all Improvements, is responsible for providing all lines, pipes, and other connections within five feet of the location of such Improvement. However, for purposes of this Development, and this Development only, the Parties agree that the City will contribute funds to the Zoo Association for domestic water line improvements and sanitary sewer service improvements. Furthermore, instead of installing or funding any other Basic Utilities under the Master Agreement, the City will provide funding for the design and construction of drainage and erosion control

improvements, including one or more storm sewer box culvert(s) at the Zoo and along Zoo Creek, to address ongoing Zoo Creek drainage issues. The Zoo Association agrees and acknowledges that (i) the obligations of the City with respect to construction and installation of improvements and Basic Utilities relating to the Development shall be only as set forth in this Supplemental Agreement and will not be governed by the other provisions of the Master Agreement and (ii) the City’s funding obligations with respect to the City-Funded Improvements, as defined below, are set forth in their entirety in this Section 1 and in Section 5 of this Supplemental Amendment. The funding amounts for the domestic water line improvements, sanitary sewer service improvements, and Zoo Creek drainage improvements are set forth below and collectively referred to herein as the “City-Funded Improvements.”

	City-Funded Improvements:	Amount:
(i)	Domestic Water Line Improvements	up to \$198,778.97
(ii)	Sanitary Sewer Service Improvements	up to \$298,168.45
(iii)	Drainage and Erosion Control Improvements, including Storm Sewer Box Culvert(s)	up to \$924,707.21

The City will provide the above-listed funding on a reimbursable basis. To receive reimbursement, the Zoo Association shall submit to the City a copy of all applications for payment received from the Zoo Association’s prime contractor(s). An application for payment must include supporting documentation for the cost of work incurred through the date of the application for payment, including, but not limited to, partial lien waivers for the period covered by the prior application for payment and all prior periods from the prime contractor(s) and each subcontractor who has performed any work during the period covered by application for payment and any other substantiating documentation requested by City. The City shall pay to the Zoo Association the amount contained within the application for payment that is attributable to the City obligations herein, less any retainage provided for in the construction contract between the Zoo Association and its prime contractor(s), in accordance with Chapter 2251 of the Texas Government Code (otherwise known as the Prompt Pay Act).

2. Zoo Association’s Estimated Obligations.

Notwithstanding any terms or conditions in the Master Agreement to the contrary, the Zoo Association shall fund any and all costs associated with the following improvements for the Development: (i) electrical ductbank improvements, (ii) data ductbank improvements, and (iii) gas line improvements (collectively, the “Zoo Association-Funded Improvements”). The estimated projected cost of each Zoo Association-Funded Improvement is set forth below.

	Zoo Association-Funded Improvements:	Amount:
(i)	Electrical Ductbank Improvements	\$496,947.41
(ii)	Data Ductbank improvements, including, but not limited to, communications, fiber optics, type lines, and the like.	\$298,168.45
(iii)	Gas Line Improvements	\$136,290.00

The Zoo Association has the right to manage the construction of all City-Funded Improvements and Zoo Association-Funded Improvements pursuant to the terms of this Supplemental Agreement and in accordance with any terms and conditions applicable to the construction of Improvements set forth in the Master Agreement,

including, but not limited to, Article III. The Zoo Association agrees that it will comply with the requirements of Chapter 252, Texas Local Government Code, and all other applicable federal, state, and local laws, regulations, ordinances, and City policies in awarding any contracts related to the City-Funded Improvements. In addition to any requirements set forth in this Supplemental Agreement and the Master Agreement, the Zoo Association shall require all of its contractors to provide insurance in accordance with minimum requirements that may be required by the City, as approved in writing by the City's Risk Manager and delivered to the Zoo Association in writing within a reasonable time, but, in no event later than ten (10) business days, after submission to the City's Risk Manager and the City Attorney's Office for review.

3. The Parties hereby expressly agree and understand that the obligations set forth in this Supplemental Agreement apply to this Development only and supersede any existing obligations set forth in the Master Agreement that directly conflict. Any Improvements to the Zoo outside the scope of this Development shall be governed by and in accordance with the terms and conditions of the Master Agreement and neither Party shall rely on this Supplemental Agreement.

4. The City shall own title to all City-Funded Improvements at all times; however, the Zoo Association shall own title to all Zoo Association-Funded Improvements during construction, but shall vest title in the City upon completion of each project. The Zoo Association shall take all steps necessary to vest title of the Zoo Association-Funded Improvements in the City, including, but not limited to, the delivery of an instrument of donation to the City.

5. The Parties acknowledge that the total cost of the Development may increase, including as bid documents are developed, after construction contracts are awarded, and/or after project completion, due to cost overruns, delay claims or other similar or unforeseen conditions. Reasonably promptly after such cost overruns, claims and/or other conditions are incurred or are reasonably expected to be incurred, the Parties agree to negotiate in good faith the prompt payment of funds to cover the cost of same. As soon as reasonably practicable following the date an agreement is reached with respect to such matters, the Parties agree to amend this Supplemental Agreement to reflect the terms of such mutual agreement with respect to the payment of such costs. For the avoidance of doubt, the Zoo Association agrees to use commercially reasonable efforts to complete each of the City-Funded Improvements and Zoo Association-Funded Improvements, as applicable, using an amount of funds that does not exceed the relevant amount specifically referenced herein.

6. The Parties will execute and deliver, or cause to be executed and delivered, all documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof.

7. Except as expressly provided under the terms of this Supplemental Agreement, any and all terms and conditions of the Master Agreement shall remain in full force and effect and the Parties shall continue to be bound by the terms and conditions of the Master Agreement with respect to this Development and all ongoing operations at the Zoo.

8. This Supplemental Agreement may be executed in multiple counterparts, each of which will be deemed as original, but which together will constitute one and same instrument. A signature received via facsimile or electronically via e-mail shall be as legally binding for all purposes as an original signature.

9. This Supplemental Agreement constitutes the entire agreement between the parties with respect to the funding, construction, and installation of the Basic Utilities and stormwater improvements for this Development, and supersedes all prior and contemporaneous undertakings and agreements, whether written or oral, with respect to such subject matter. This Supplemental Agreement may be amended only by written agreement of the parties.

Please execute three (3) copies of this Supplemental Agreement, retain one original for your files and return one original to the Zoo Association at the address shown above. Please return a scan of a signed copy of the Supplemental Agreement to Mr. Michael D. Fouraker by e-mail to MFouraker@fortworthzoo.org.

Very truly yours,

Fort Worth Zoological Association,
A Texas non-profit corporation

By: _____
Michael D. Fouraker,
Executive Director

Date: _____

By signing below, you represent to the Zoo Association that you have the right to enter into this Supplemental Agreement on behalf of the City to bind the City to the terms herein.

Received, Acknowledged and Agreed this ____ day of _____, 20__.

CITY OF FORT WORTH

By: _____
Susan Alanis
Assistant City Manager

AUTHORIZATION:

M&C: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Tyler F. Wallach
Assistant City Attorney

ATTEST:

Mary Kayser
City Secretary