

1 **Fresno County Zoo Authority**

2 **Retention Policy**

3 **Adopted September 30, 2015**

4 **Revised February 13, 2018**

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6 **Purpose**

7 This Policy provides requirements for Agreements between the Fresno Chaffee Zoo
8 Corporation (ZooCorp) and any party acting as a Construction Manager at Risk for
9 construction of Measure Z funded capital projects, and the process for the disbursement
10 of Measure Z funds and release of funds in escrow when there is agreement for security
11 deposits in lieu of retention.

12 **Definitions**

- 13 1. "Agreement" shall be defined herein as an executed contract.
- 14 2. "Construction Manager at Risk" shall be defined as an individual, partnership, joint
15 venture, corporation, or other recognized legal entity, that is appropriately licensed
16 in this state, including a contractor's license issued by the Contractors' State
17 License Board, and that guarantees the cost of a project and furnishes construction
18 management services, including but not limited to, preparation and coordination of
19 bid packages, scheduling, cost control, value engineering, evaluation,
20 preconstruction services, and construction administration.
- 21 3. "Retention" shall be defined as the percentage of the Measure Z funds retained by
22 the ZooCorp for security purposes relating to work to be performed on claims
23 reimbursed for Capital Projects over \$30,000, and/or for which there is a
24 Construction Manager at Risk. Retention shall be no less than five percent (5%).
25 If the Authority has approved a finding by the ZooCorp, on a project by project
26 basis, during a properly noticed and normally scheduled public hearing and prior
27 to bid, that a project is substantially complex and therefore requires a higher
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1 retention amount, Retention may be greater than five percent (5%), but not more
2 than ten percent (10%).

- 3 4. "Escrow Account" shall mean an account established at a financial institution or
4 bank by ZooCorp for purposes of depositing and holding Retention funds paid by
5 the Authority to ZooCorp, pending disbursement, to the Construction Manager at
6 Risk.

7 **Requirements**

- 8 1. ZooCorp requests for funding for construction of Capital Projects over \$30,000
9 and/or for which there is a Construction Manager at Risk shall be received for staff
10 and Board member review at least 30 days before the Board meeting at which the
11 funding request will be made, and shall include an Agreement with the construction
12 firm stating the requirement for Retention and its terms.
- 13 2. Requests for funding for the design of Capital Projects over \$30,000 shall be
14 received for staff and Board member review at least 30 days before the Board
15 meeting at which the funding request will be made, and shall include an Agreement
16 with the design firm stating the requirement for Retention and its terms.

17 **Procedures for Payment of Invoices by the Authority**

18 ZooCorp invoices are received, reviewed, and paid in accordance with the terms
19 of the December 21, 2005 Agreement Regarding Procedures For Distribution Of Tax
20 Revenue To The Chaffee Zoo, as amended, and with the Authority's Procedures for
21 Approving and Administering Measure Z Funds.

22 **ZooCorp's Deposit of Funds Received from Authority**

23 Not later than two business days from its receipt of funds from the Authority for
24 reimbursement of project invoices, ZooCorp shall deposit Retention funds in the
25 appropriate Escrow Account. Within one business day of deposit of funds in the Escrow
26 Account, ZooCorp shall send proof of deposit of the funds to the Authority.

1 **Certification to the Authority**

2 Prior to releasing any Retention funds from the Escrow Account, ZooCorp shall
3 request the release at an Authority Board meeting, at the same time presenting written
4 certification that all conditions of the Escrow Agreement have been met, that the
5 construction project is final and complete in accordance with the construction contract,
6 and that the release of funds in the Escrow Account is appropriate. Such written
7 certification shall include certification from the project architect or lead engineer that the
8 project has been completed in accordance with the plans and specifications.

9 **Disputes**

- 10 1. The ZooCorp shall advise the Authority in writing of any dispute between ZooCorp
11 and the Construction Manager at Risk regarding retention funds within 30 days of
12 such dispute coming to the attention of ZooCorp.
- 13 2. The construction contract shall require that any settlement agreement between the
14 Construction Manager at Risk and the ZooCorp involving retention funds be made
15 public.
- 16 3. Any previously released retention funds that are recouped by ZooCorp as part of
17 a settlement with the Construction Manager at Risk shall be returned by ZooCorp
18 to the Measure Z Capital Fund.

19 **Authority Consent to Distribution of Escrow Funds**

20 Upon receipt of the required written certification from ZooCorp that the project is
21 final and complete in accordance with the construction contract, the Authority will not
22 unreasonably withhold its consent to the release of the funds held in escrow. If it
23 withholds consent, the Authority will set forth in writing its objections, stating those items
24 that are not final and complete according to the construction contract.

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