

1 **AGREEMENT BETWEEN**
2 **FRESNO COUNTY ZOO AUTHORITY**
3 **AND**
4 **COUNTY OF FRESNO**
5 **FOR PROFESSIONAL AND TECHNICAL SERVICES**

6 THIS AGREEMENT is made and entered into this 14th day of June, 2005, by
7 and between the FRESNO COUNTY ZOO AUTHORITY (hereinafter referred to as
8 "AUTHORITY") and the COUNTY OF FRESNO, hereinafter referred to as "COUNTY".

9 **WITNESSETH:**

10 WHEREAS, pursuant to the authority of Revenue and Taxation Code section
11 7286.43, COUNTY's Board of Supervisors created AUTHORITY on July 13, 2004, for
12 the support of zoos, zoological facilities, and related zoological purposes in Fresno
13 County; and

14 WHEREAS, also pursuant to the authority of Revenue and Taxation Code
15 section 7286.43, AUTHORITY proposed to the voters a transactions and use tax of
16 0.1% for the period of 10 years for these purposes; and

17 WHEREAS, the voters approved this tax in an election held on November 2,
18 2004 ("Measure Z"); and

19 WHEREAS, the resolution creating AUTHORITY and AUTHORITY's bylaws
20 authorize AUTHORITY to take all steps necessary to administer the tax, including hiring
21 or contracting with appropriate staff; and

22 WHEREAS, COUNTY is willing and able to furnish assistance to AUTHORITY
23 under the terms and conditions set forth herein.

24 NOW, THEREFORE, in consideration of their mutual covenants and conditions,
25 the parties hereto agree as follows:
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1 **1. EMPLOYMENT OF COUNTY.**

2 AUTHORITY hereby engages COUNTY to perform professional, technical, and
3 staff services and to provide assistance as hereinafter set forth.

4 **2. SCOPE OF SERVICES.**

5 Upon the request of AUTHORITY in accordance with the procedures outlined in
6 Exhibit 1 hereto, COUNTY shall perform the services described in Exhibit 1, which is
7 attached hereto and incorporated herein by this reference.

8 **3. COUNTY'S PERSONNEL AND WORKING RELATIONSHIP WITH**
9 **AUTHORITY.**

10 A. Except as otherwise provided in Exhibit 1, all of the services hereunder to
11 be provided by COUNTY shall be performed by COUNTY personnel, and all personnel
12 engaged in the work shall be fully qualified and shall be authorized or permitted under
13 state and local law to perform such service.

14 B. Except as provided in Exhibit 1, none of the work or services covered by
15 this Agreement shall be subcontracted by COUNTY unless approved in writing in
16 advance by AUTHORITY.

17 **4. COMPENSATION.**

18 COUNTY shall receive payment for allowable costs, as outlined below, not to
19 exceed \$156,347 for Fiscal Year 2005-06, for the performance of work requested under
20 this Agreement. Allowable costs are the direct costs incurred in or allocable to the
21 performance of the services under this Agreement. These allowable costs shall include
22 the following:

23 **A. Direct Costs.**

24 **(1) Personnel.**

25 COUNTY shall be compensated for the services of personnel
26 assigned under this Agreement. Compensation shall be on the basis of actual salary

1 and benefits paid to said personnel, or based on the hourly charge shown in COUNTY's
2 Master Schedule of Fees, Charges, and Recovered Costs, if applicable, for actual time
3 spent on the work necessary to fulfill the terms of this Agreement. Time shall be
4 recorded on the time sheets regularly used by COUNTY in carrying out its ordinary work
5 apart from this Agreement or upon mutually agreed time sheets. No additional or
6 special forms for recording hours spent on the tasks specified herein may be required.

7 The hourly rates shall be adjusted each fiscal year per the
8 approved rate as established by COUNTY's Auditor-Controller/Treasurer-Tax Collector.

9 **(2) Travel expenses and subsistence.**

10 COUNTY shall be paid actual costs due upon documentation of
11 travel expenses and subsistence where such expenses are directly related to the
12 performance of this Agreement. All travel shall be approved in advance by
13 AUTHORITY.

14 **(3) Other direct costs.**

15 The cost of other material and services as may be required
16 hereunder but which are not normally provided as part of the overhead of COUNTY
17 shall be reimbursed to COUNTY at cost. Such other materials and services shall
18 include, but shall not be limited to, the following:

- 19 • report reproduction
- 20 • purchases of maps and charts
- 21 • telephone expense
- 22 • specialized educational needs

23 **5. METHOD OF PAYMENT.**

24 Beginning October 1, 2005, COUNTY may submit to AUTHORITY once each
25 quarter an invoice for allowable costs incurred in the performance of this Agreement.

1 The first such invoice submitted may include all allowable costs incurred in the
2 performance of this Agreement beginning July 1, 2005. AUTHORITY agrees to
3 reimburse COUNTY in arrears, within forty-five (45) days after receipt and verification of
4 COUNTY cost center labor distribution reports.

5 **6. RECORDS.**

6 COUNTY shall maintain complete and accurate records with respect to costs
7 incurred under this Agreement. All such records shall be maintained on a generally-
8 accepted accounting basis and shall be clearly identified and readily accessible.
9 COUNTY shall provide free access to the representatives of AUTHORITY at all proper
10 times to such books and records, and AUTHORITY shall have the right to audit the
11 same, and to make transcripts therefrom as necessary, and to inspect all work, data,
12 documents, proceedings, and activities related to the performance of this Agreement for
13 a period of three (3) years from the date of final payment for work performed under this
14 Agreement. In addition to the above accounting records, COUNTY shall maintain
15 records to show actual time and allowable costs submitted for reimbursement with
16 respect to the scope of services set forth herein.

17 **7. CHANGES.**

18 The parties hereto may from time to time require changes in the scope of
19 services under the performance of such services. Such changes, including any
20 increase or decrease in the amount of compensation to COUNTY, which are mutually
21 agreed upon by and between the parties hereto, shall be incorporated as written
22 amendments to this Agreement or to AUTHORITY's annual Overall Work Program and
23 Budget, whichever is appropriate.

1 **8. TERM OF AGREEMENT.**

2 This Agreement shall become effective on July 1, 2005, and shall continue and
3 remain in full force until two years after the last date upon which the transaction and use
4 tax described above is collected, unless earlier terminated as provided for hereafter.

5 **9. TERMINATION FOR CONVENIENCE OF AUTHORITY OR COUNTY.**

6 Either party hereto may terminate this Agreement without cause at any time by
7 giving written notice of such termination to the other party and specifying the effective
8 date thereof, at least thirty (30) days before the effective date of such termination. In
9 that event, COUNTY shall be reimbursed its allowable costs in accordance with Section
10 4 of this Agreement to the date of termination.

11 **10. HOLD HARMLESS.**

12 AUTHORITY shall hold COUNTY harmless from all liability, claims, or damages
13 incurred as the result of any errors or omissions of the officers, agents, or employees of
14 COUNTY in performing services described in this Agreement on behalf of and for
15 AUTHORITY. The parties acknowledge that COUNTY's primary role is to serve the
16 County of Fresno and not other agencies, and that COUNTY does not carry errors and
17 omissions insurance. AUTHORITY, however, has requested such services and
18 COUNTY is willing to provide them subject to this paragraph. Therefore, the parties
19 hereto are willing to treat COUNTY's officers, agents, and employees as AUTHORITY's
20 employees for the sole purpose of accomplishing AUTHORITY's assumption of the risk
21 of such errors and omissions.

22 **11. NON-ASSIGNMENT**

23 Neither party shall assign, transfer or subcontract their rights or duties under this
24 Agreement without the prior written consent of the other party.
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1 **12. RELATIONSHIP OF PARTIES**

2 It is understood that this Agreement is not intended to and shall not be construed
3 to create a relationship of agent, servant, employee, partnership, joint venture or
4 association. In particular, in the event of a legal conflict of interest, AUTHORITY
5 expressly waives the right to disqualify County Counsel from representing COUNTY in
6 any matter involving AUTHORITY.

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1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
2 executed by their signatures below.

3 COUNTY OF FRESNO

FRESNO COUNTY ZOO AUTHORITY

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5 By: Judith G. Case
Judith G. Case, Chair

By: [Signature]
Chair

6 Date: 6/14/05

Date: 6-9-2005

9 REVIEWED AND RECOMMENDED FOR
10 APPROVAL

ATTEST:

REVIEWED AND RECOMMENDED FOR
APPROVAL

County of Fresno
Administrative Office

BERNICE E. SEIDEL, Clerk
Board of Supervisors

12 By: Bart Bohn
13 Bart Bohn
14 County Administrative Officer

By: Bart Bohn
Deputy
Bart Bohn
Zoo Authority Administrator

15 APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

16 Dennis A. Marshall, County Counsel

Dennis A. Marshall, County Counsel

17
18 By: [Signature]
19 Deputy

By: Barbara Roth Grunwald
Deputy

20 APPROVED AS TO ACCOUNTING
21 FORM

APPROVED AS TO ACCOUNTING
FORM

22 Vicki Crow, Auditor-Controller/Treasurer-
23 Tax Collector

Vicki Crow, Auditor-Controller/Treasurer-
Tax Collector

24 By: [Signature]
25

By: [Signature]

1 EXHIBIT 1
2 TO
3 AGREEMENT BETWEEN
4 FRESNO COUNTY ZOO AUTHORITY
5 AND
6 COUNTY OF FRESNO
7 FOR PROFESSIONAL AND TECHNICAL SERVICES

8 A. GENERAL SCOPE OF SERVICES.

9 COUNTY shall perform professional and technical services and assistance for
10 AUTHORITY in connection with the programs undertaken by AUTHORITY in fulfillment
11 of its duties under the resolution creating AUTHORITY and the ordinance regarding the
12 transactions and use tax approved by the voters. Such services may include, but are
13 not limited to, the following:

14 1. Assistance by the Auditor-Controller/Treasurer-Tax Collector with fiscal
15 functions, which services shall include, but not be limited to:

16 a. Processing and maintaining records of all financial transactions
17 including, but not limited to, preparation of financial statements and other reports as
18 needed and or requested by the Zoo Authority.

19 b. Separately accounting for Authority funds and maintaining records
20 of expenditures, revenues and investments in accordance with administrative code
21 requirements adopted by the Zoo Authority. Such duties may include:

- 22 (1) Review of expenditure documents for payment
- 23 (2) Contract Review
- 24 (3) Cash reconciliation and activity report
- 25 (4) Investment information report
- 26 (5) Revenue distribution report.
- 27 (6) Cash flow analysis

1 (7) Revenue and Interest estimates

2 (8) Attending Zoo Authority Meetings

3 c. Developing and processing a Request for Proposal for the purpose
4 of furnishing independent audit services for the Zoo Authority on at least an annual
5 basis by a certified public accountant.

6 2. Assistance of County Counsel, which services shall include, but not be
7 limited to:

8 a. Attending Zoo Authority meetings.

9 b. Assisting and advising Authority regarding general legal questions,
10 both orally and in writing.

11 c. Performing similar or related legal services as requested by
12 Authority staff.

13 d. Representing Authority in litigation as requested by Authority.

14 Excluded from scope of services:

15 e. Serving as bond counsel.

16 f. Providing any services which would conflict with representing
17 County of Fresno or any of its officers or employees. County Counsel will promptly
18 advise Authority of any potential conflict of interest so that Authority may obtain
19 independent counsel. AUTHORITY agrees that if County Counsel provides services to
20 AUTHORITY, and a legal conflict of interest arises or AUTHORITY believes a legal
21 conflict of interest has arisen, County Counsel shall not be disqualified from
22 representing COUNTY under any circumstances.

23 3. Assistance of the County Administrative Office and other assigned
24 departments in connection with other needs as requested by AUTHORITY.

1 The County Administrative Office shall perform day-to-day oversight in
2 accordance with requirements of the Zoo Authority. Services shall include, but not be
3 limited to:

- 4 a. Review and analysis of all documents submitted for Zoo Authority
5 action.
6 b. Scheduling of all Zoo Authority Board meetings
7 c. Preparation of all meeting materials and posting of meeting
8 agendas
9 d. Facilitating Zoo Authority Board meetings, including recording of
10 proceedings and preparation of meeting minutes
11 e. Day-to-day administration of all aspects of Zoo Authority Board
12 activities, as directed by and on behalf of the Zoo Authority Board

14 B. PROCEDURE

15 The following procedures shall be used to establish appropriate financial controls
16 for the services and work provided under this Agreement.

17 1. With respect to services to be provided, COUNTY shall perform the work
18 and services identified in the budget and this Agreement. The maximum total annual
19 cost to AUTHORITY for the performance of work and services by COUNTY shall not
20 exceed the amounts scheduled for payment or reimbursement by AUTHORITY to
21 COUNTY as set forth in the budget and this Agreement and any amendments thereto.