

THE CHICAGO ZOOLOGICAL SOCIETY (CZS)

MASTER CONTRACT FOR
[Project Name]
[Contractor Name]

TABLE OF ARTICLES

1. AGREEMENT
2. SCOPE OF WORK
3. SCHEDULE OF WORK
4. CONTRACT PRICE
5. PAYMENT
6. CHANGES, CLAIMS AND DELAYS
7. CZS OBLIGATIONS
8. CONTRACTOR'S OBLIGATIONS
9. MISCELLANEOUS PROVISIONS
10. RECOURSE BY CZS
11. LABOR RELATIONS
12. INDEMNIFICATION
13. INSURANCE
14. [INTENTIONALLY OMITTED]
15. CONTRACT INTERPRETATION
16. SPECIAL PROVISIONS

ARTICLE 1

CONTRACTOR AGREEMENT

This Contractor Agreement is made this _____ day of _____, 2011 by and between The Chicago Zoological Society, an Illinois corporation, hereinafter called CZS, with principal offices at 3300 Golf Road, Brookfield, IL and [Contractor], [Address], the Contractor identified below, hereinafter called Contractor, to perform work on the project identified below (the "Project"). The term "Agreement" as used herein shall include this agreement entered into on this date by CZS and Contractor and any and all other addenda or amendments agreed to by CZS and Contractor and adopted in accordance with the terms of this Agreement.

Project:

CZS Job#:

Owner: FOREST PRESERVE DISTRICT OF COOK COUNTY

Architect: N/A

Contractor:

CZS Rep:

Phone:

Contractor Rep:

Phone:

Prevailing Wage Requirement:

This contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website at: <http://www.state.il.us/agency/idol/rates/rates.HTM>. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties. The contractor will furnish certified payrolls for the project using the State of Illinois, Illinois Department of Labor Certified Transcript of Payroll forms.

Retainage: [Percentage]

Bond Required: Yes/No

Scope of Work: EXHIBIT A (ATTACHED)

CZS employs the Contractor as an independent contractor to perform the work as described hereinafter under the general direction of the CZS Representative and in accordance with this Agreement and the Contract Documents, set forth in Article 16 hereof and to pay Contractor for the satisfactory performance of this work, subject to the terms and conditions of this Agreement and the Contract Documents, the sum of:

Dollars _____ [numerical]

It is understood and agreed that the Work to be performed under the Agreement, including the terms and conditions thereof, is as described in Articles 1 through 16, together with any special provisions as contained in Article 16.

IN WITNESS WHEREOF, the parties, being duly authorized, have executed this Agreement under seal, the day and year first above written.

CONTRACTOR

CZS

Name: _____

By: _____

Its: _____

Its: _____

Employer I.D. # ____ - _____

- () CORPORATION () INDIVIDUAL PROPREITORSHIP
- () PARTNERSHIP () OTHER

revised 8/04/10

ARTICLE 2 – SCOPE OF WORK

2.1 CONTRACTOR'S WORK. The CZS employs the Contractor as an independent contractor to perform the work described in Article 16 and Exhibit A. The Contractor shall perform such work (hereinafter called the "Contractor's Work" or the "Work") under the general direction of the CZS and in accordance with this Agreement and the Contract Documents. CZS's direction of the Work shall in no way relieve the Contractor of its responsibility to control the Work and provide a safe worksite.

2.2 CONTRACT DOCUMENTS. The Contract Documents which are binding on the Contractor are set forth in Article 16.1.

2.3 CONFLICTS. In the event of a conflict between this Agreement and the Contract Documents, this Agreement shall govern, except as follows:

ARTICLE 3 – SCHEDULE OF WORK

3.1 TIME IS OF ESSENCE. Time is of the essence for both parties, and they mutually agree to see to the performance of their respective work and the work of their subcontractors so that the Project will be completed in accordance with the Contract Documents and the Schedule of Work. The CZS shall prepare the Schedule of Work and revise such schedule as the Work progresses.

3.2 DUTY TO BE BOUND. Both the CZS and Contractor shall be bound by the Schedule of Work. The Contractor shall provide the CZS with any requested scheduling information for the Contractor's Work. The Schedule of Work and all subsequent changes thereto shall be submitted to the Contractor in advance of the required performance.

3.3 SCHEDULE CHANGES. The Contractor recognizes that changes may be made in the Schedule of Work and agrees to comply with such changes subject to a reservation of rights arising hereunder.

3.4 PRIORITY OF WORK. The CZS shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Contractor's Work. CZS's rights herein shall in no way relieve the Contractor of its responsibility to control and coordinate the Work and provide a safe worksite.

The Contractor shall commence its work when notified to proceed by the CZS and if such work is interrupted for any reason the Contractor shall resume such work within two working days from the CZS's notice to do so.

ARTICLE 4 – CONTRACT PRICE

The CZS agrees to pay to the Contractor for the satisfactory performance of the Contractor's Work, the sum stated in Article 1, in accordance with Article 5, and subject to additions or deductions pursuant to Article 6. (the "Contract Price")

ARTICLE 5 – PAYMENT

5.1 GENERAL PROVISIONS.

5.1.1 SCHEDULE OF VALUES. The Contractor shall provide a schedule of values satisfactory to the CZS within fifteen (15) days from the date of execution of this Agreement.

5.1.2 PAYMENT USE RESTRICTION. Any payment received by the Contractor hereunder shall not be used to satisfy or secure any indebtedness other than that owed by the Contractor to a person furnishing labor or materials for use in performing the Contractor's Work.

5.1.3 [Intentionally omitted]

5.1.4 PARTIAL LIEN WAIVERS AND AFFIDAVITS. For all payment applications, the Contractor shall provide, in a form satisfactory to the CZS, partial lien or claim waivers and affidavits from the Contractor, and its subcontractors and suppliers for the completed Contractor's Work. Chicago Title and Trust waivers are to be used.

5.1.5 CONTRACTOR PAYMENT FAILURE. In the event the CZS has reason to believe that labor, material or other obligations incurred in the performance of the Contractor's Work are not being paid, the CZS shall give written notice of such claim or lien to the Contractor and has the right to take any steps it deems necessary to insure that any progress payments to the Contractor are utilized to pay such obligations. If upon receipt of said notice, the Contractor does not:

- (a) supply evidence to the satisfaction of the CZS that the monies owing to the claimant have paid; or
- (b) post a bond indemnifying the Owner, the CZS, the CZS's surety, if any, and the premises from such claim or lien; then the CZS shall have the right to retain out of any payments due or to become due to the Contractor a reasonable amount to protect the CZS from any and all loss, damage or expense, including attorney's fees, arising out of or relating to any such claim or lien until the claim or lien has been satisfied by the Contractor.

5.1.6 PAYMENT NOT ACCEPTANCE. The parties specifically stipulate and agree that payment to the

Contractor does not constitute or imply acceptance by the CZS or the Owner of any portion of the Contractor's Work.

5.2 PROGRESS PAYMENTS.

5.2.1 APPLICATION. The Contractor shall submit progress payment applications for work performed in the preceding payment period to the CZS pursuant to the terms of this Agreement, and specifically Articles 5.1.1, 5.2.2, and 5.2.3, for approval by the CZS.

5.2.2 TIME OF APPLICATION. The Contractor shall submit progress payment applications to the CZS no later than the 3rd calendar day of the month indicating work completed and, to the extent allowed under Article 5.2.3, materials suitably stored during the preceding month. Forms AIA G702 and G703 shall be used in submitting applications for both work completed and allowable stored materials. Applications received by the CZS after the due date will be submitted by the CZS in the following month's application for payment to the Owner.

5.2.3 STORED MATERIALS. Unless otherwise provided in the Contract Documents, and if approved in advance by the CZS, applications for payment may include materials and equipment not incorporated in the Contractor's Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Approval of such payment applications shall be conditioned upon submission by the Contractor of bills of sale and applicable insurance or other such procedures satisfactory to the CZS in order to establish the Owner's title to such materials and equipment and otherwise protect the interest of the Owner and CZS therein, including transportation to the site.

5.2.4 TIME OF PAYMENT. Progress payments to the Contractor for satisfactory performance of the Contractor's Work shall be made not later than forty-five (45) days after month end. Contractor understands, agrees and accepts that payment will be withheld if CZS, or CZS architect, if applicable, determines a defect in Contractor's scope of work or some other deficiency by Contractor.

5.2.5 PAYMENT DELAY. If for any reason not the fault of the Contractor, the Contractor does not receive a progress payment from the CZS within seven (7) business days after the date such payment is due, as defined in Article 5.2.4, then the Contractor, upon giving an additional seven (7) business days written notice to the CZS, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Contractor has been received. To the extent obtained by the CZS under the Contract

Documents, the Contract Price shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be effected by appropriate Change Order. If the Contractor's Work has been stopped for thirty (30) days because the Contractor has not received progress payments as required hereunder, the Contractor may terminate this Agreement upon giving the CZS an additional seven (7) business days written notice.

5.2.6 PAYMENT OF CONTRACTOR'S MATERIALS AND OTHER COSTS. Contractor understands and accepts sole responsibility for all credit arrangements with suppliers and others for the purchase of materials and all other costs incurred or to be incurred in connection with the performance of Contractor's Work.

5.3 FINAL PAYMENT.

5.3.1 APPLICATION. The CZS shall process the Contractor's application for final payment without delay, upon acceptance of the Contractor's Work by the CZS, and the Architect, if necessary, and provided that the Contractor has furnished evidence of fulfillment of the Contractor's obligations in accordance with the Contract Documents and Article 5.3.2, below.

5.3.2 REQUIREMENTS. Before the CZS shall be required to make final payment, Contractor shall submit the following to the CZS:

- (a) an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the Contractor's Work for which the Owner or his property or the CZS or the CZS's surety might in any way be liable, have been paid or otherwise satisfied;
- (b) consent of surety to final payment, if required;
- (c) satisfaction of required closeout procedures; and
- (d) other data if required by the CZS or Architect such as receipts, releases, and waivers of liens, waiver of all claims by the Contractor relating to the Contractor's Work, delivery of as-built drawings and other Project record documents, to the extent and in such form as may be designated by CZS. These requirements shall in no way relieve the Contractor of liability for the obligations assumed under Article 9.10 hereof, or for faulty or defective work appearing after final payment.

5.3.3 TIME OF PAYMENT. Final payment of the balance due of the Contract Price shall be made to the Contractor: upon satisfaction of requirements in section 5.3.2.

ARTICLE 6 – CHANGES, CLAIMS, DELAYS

6.1 CHANGES. When the CZS so orders in writing, the Contractor, without nullifying this Agreement, shall make any and all changes in the Work which are within the general scope of this Agreement. Adjustments in the Contract Price or contract time, if any, resulting from such changes shall be set forth in a Contract Change Order pursuant to the Contract Documents. No such adjustment shall be made for any such changes performed by the Contractor that have not been so ordered by the CZS and a change order issued and signed by the CZS representative.

6.2 CLAIMS RELATING TO CZS. The Contractor shall give the CZS written notice of all claims within five (5) days of the beginning of the event for which claim is made; otherwise, such claims shall be deemed waived.

6.3 DELAY. If the progress of the Contractor's Work is substantially delayed without the fault or responsibility of the Contractor, then the time for the Contractor's Work shall be extended by Change Order to the extent obtained by the CZS under the Contract Documents and the Schedule of Work shall be revised accordingly.

The CZS shall not be liable to the Contractor for any damages or additional compensation as a consequence of delays caused by any person not a party to this Agreement unless the CZS has first recovered the same on behalf of the Contractor from said person, it being understood and agreed by the Contractor that, apart from recovery from said person, the Contractor's sole and exclusive remedy for delay shall be an extension in the time for performance of the Contractor's Work.

ARTICLE 7 CZS'S OBLIGATIONS

7.1 AUTHORIZED REPRESENTATIVE. The CZS shall designate one or more persons who shall be the CZS's authorized representative(s). Such authorized representative(s) shall be the only person(s) the Contractor shall look to for instructions, orders and/or directions, except in an emergency. The person(s) so designated shall be named in Article 1, above.

7.2 STORAGE ALLOCATION. The CZS shall allocate adequate storage areas, if available, for the Contractor's materials and equipment during the course of the Contractor's Work.

7.3 TIMELY COMMUNICATIONS. The CZS shall transmit, with reasonable promptness, all submittals, transmittals, and written approvals relating to the Contractor's Work.

ARTICLE 8 – CONTRACTOR'S OBLIGATIONS

8.1 RESPONSIBILITIES. The Contractor shall be responsible for the adequacy of all construction means, methods, techniques and procedures employed in the performance of the Work, and for coordinating all portions of the Work. The Contractor shall furnish all of the labor, materials, equipment and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding, as are necessary for the proper performance of the Contractor's Work. The Contractor shall provide a list of proposed subcontractors and suppliers, be responsible for taking field dimensions, providing tests, ordering materials and all other actions required to meet the Schedule of Work.

The Contractor, upon receiving the approval of the Project Manager of its proposed subcontractor, shall furnish to the CZS an executed copy of the written agreement between the Contractor and its subcontractor on the Project. All such agreements shall contain provisions (i) that the subcontractor performing the Work shall be bound to the Contractor in the same manner as the Contractor is bound to the CZS under the Contract Documents, (ii) that such agreement shall be subject to, and conform with, all applicable federal, state and local laws, ordinances, statutes, rules and regulations, and (iii) that the Department of Commerce and Economic Opportunity, the Office of Inspector General and the Auditor General of the State of Illinois, or any of their duly authorized representatives, will have full access to, and the right to examine, any pertinent books and records relating to the Project of the Contractor or any subcontractor (of any tier) engaged for the Project for a period of three (3) years from the date of final completion of the Work.

8.2 TEMPORARY SERVICES. The Contractor shall furnish all temporary services and/or facilities necessary to perform its work, except as provided in Article 16.

8.3 COORDINATION. The Contractor shall:

- (a) cooperate with the CZS and all others whose work may interfere or interface with the Contractor's work;
- (b) specifically note and immediately advise the CZS of any such interference with the Contractor's Work; and
- (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

8.4 AUTHORIZED REPRESENTATIVE. The Contractor shall designate one or more persons who shall be the authorized Contractor's representative(s). Such authorized representative(s) shall be the only person(s) to whom the CZS shall issue instructions,

orders or directions, except in an emergency. The person(s) so designated shall be named in Article 1, above.

8.5 PROVISION FOR INSPECTION. The Contractor shall notify the CZS when portions of the Contractor's Work are ready for inspection. The Contractor shall at all times furnish the CZS and its representatives adequate facilities for inspecting materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture, storage or treatment. The Contractor shall furnish to the CZS in such detail, and as often as required, full reports of the progress of the Contractor's Work.

8.6 CLEANUP AND SAFETY. The Contractor shall at all times keep its work areas clean and free from debris and unsafe conditions resulting from the Contractor's Work, and shall confine all construction, restoration and repair work and equipment, the storage of materials and equipment and the operations of Services to those lands and areas specifically designated for same by the Society, and shall not unreasonably encumber the Site with construction equipment or other materials or equipment. Contractor shall assume full responsibility for and, shall promptly repair at Contractor's expense, any damage to any land or property of the Society and any occupant of the Site and any adjacent land or property, resulting from the Services or the performance of the Services hereunder, and shall restore such land or property to the condition in which same existed prior to such damage. If the Society incurs any fee or expense necessary to repair or restore the Site to its former condition, the Contractor shall reimburse the Society for all such fees and expenses upon demand therefore, in addition to any other costs relating to such restoration work, including the Society's reasonable attorney's fees and administrative fees follow any special requirements for such as may be given by the Owner or the CZS in addition to those stated hereinafter. The Contractor will follow the CZS safety policy attached as Exhibit C but the Contractor retains the entire responsibility for the safety of the Project, its employees, its Subcontractors, and the CZS's employees and patrons.

8.6.1 The Contractor shall have total responsibility for the clean-up, removal and proper disposal of all waste material, debris, and dirt clearly identifiable as resulting from the Contractor's Work as follows:

(a) The Contractor shall at all times keep the Owner's premises, adjoining premises, streets and buildings free and clear of debris and dirt resulting from the Contractor's Work or caused by the Contractor's employees and any others hired to service the Contractor's Work.

(b) The Contractor shall remove all such debris and dirt and dispose of it in a legal manner at its own expense, unless provided for otherwise in Article 16, hereof. The Contractor, if using disposal container services furnished by the CZS, shall pay prorated costs as determined by the CZS, and shall bear the responsibility of legal disposal of the Contractor's materials.

(c) The Contractor, whose Work has created debris and dirt, shall broom clean each work area to maintain acceptable cleanliness of the premises at such frequency as required by the Contract Documents, the Owner or the CZS and upon final completion of the Contractor's Work.

8.6.2 If the Contractor fails to immediately comply with cleanup duties within 24 hours after receipt of written notice from the CZS of noncompliance, the CZS may implement such cleanup measures, without further notice, and deduct the cost thereof, plus reasonable overhead and handling fees, from any amounts due or become due the Contractor.

8.6.3 The Contractor shall observe and comply with the Safety Programs promulgated by both the Owner and the CZS, and the performance of the Contractor's Work shall be in strict conformity with all applicable Federal, State and local safety laws, regulations and ordinances. The Contractor shall bear the sole responsibility for safety in performing, supervising and controlling safe construction practices pursuant to the Contract Documents and the aforesaid laws, regulations and ordinances.

8.6.4 All labor, materials, and equipment supplied or utilized, including methods and procedures employed, in the performance of the Contractor's Work shall conform to the provisions and requirements of all Federal, State and local laws, regulations and ordinances applicable to the Work. The Contractor shall be responsible for notifying his employees, the CZS and others at the jobsite concerning the presence and use of materials which may be subject to disclosure, pursuant to such laws, regulations and ordinances, as being hazardous or potentially harmful or dangerous. Such notification shall include the furnishing, posting and publication of such information, including Material Safety Data Sheets, where required copies of which shall be provided to CZS immediately upon commencement of the Contractor's Work.

8.6.5 The Contractor shall immediately notify the CZS in writing of any and all accidents involving personal injury and/or property damage, and cooperate fully with the CZS and other interested parties in investigations concerning such accidents.

8.6.6 The Contractor shall immediately notify the CZS in writing of any and all citations received for construction safety violations and take immediate remedial action on all such conditions as cited. If the Contractor fails to immediately commence abatement of construction safety violations as have been cited by the Owner, the CZS or inspectors having regulatory authority, the CZS may suspend the Contractor's Work until such safety violations are abated. If the Contractor refuses to commence compliance, the CZS, at its own discretion, may deem the Contractor to be guilty of a material breach of a provision of the Agreement and invoke recourse as provided in Article 10 of this Agreement.

8.7 PROTECTION OF THE WORK. The Contractor shall take necessary precautions to properly protect the Contractor's Work and the work of others from damage caused by the Contractor's operations. Should the Contractor cause damage to the Work or property of the owner or CZS, it shall be the responsibility of the Contractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of the Contractor shall be deducted from any amounts due or to become due the Contractor.

8.8 ASSIGNMENT. The Contractor shall not assign the Agreement nor its proceeds nor subcontract the whole nor any part of the Contractor's Work without prior written approval of the CZS. See Article 13.1 for requirements regarding subcontractor's insurance.

8.9 EQUAL OPPORTUNITY. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, national origin, or disability not affecting one's ability to perform and will ensure that that employees are treated during employment without regard to their race, color, religion, gender, sexual orientation, age, or national origin or disability.

8.10 MBE/WBE/DBE UTILIZATION. The Contractor shall make good faith efforts to actively solicit and achieve the participation of MBE/WBE/DBE firms as subcontractors and material suppliers for the Project, whenever technically, operationally, and economically feasible. The Contractor shall maintain and make available to the CZS upon request documentation regarding MBE/WBE/DBE utilization for subcontractors and material suppliers.

8.11 EMPLOYMENT OF ILLINOIS WORKERS. The Contractor shall be responsible for compliance with the requirements the Employment of Illinois Workers on Public Works Act (30 ILCS 570/0.01 et seq.), as same may be amended from time to time (the "Illinois

Workers Act"), by the Contractor and all subcontractors (of any tier). As required under the Illinois Workers Act, the Contractor, and every subcontractor (of any tier) shall, during periods of excessive unemployment in Illinois, employ at least 90% Illinois laborers for the Project. Upon request of CZS, the Contractor shall make available for inspection and copying records evidencing the residency of all workers employed by Contractor or any subcontractor for the Project. The Contractor shall include, or shall cause to be included, a similar provision in all subcontracts entered into for the Project, which provision shall extend such right of inspection and copying to CZS. The Contractor shall indemnify, defend and hold harmless CZS, its trustees, officers, employees and agents from and against any and all claims, damages, penalties, fines, liabilities, costs and expenses, including attorney's fees and costs, arising out of or resulting from the violation, or alleged violation, of the Illinois Workers Act by the Contractor or by any subcontractor (of any tier).

ARTICLE 9 – MISCELLANEOUS PROVISIONS

9.1 LAYOUT RESPONSIBILITY AND LEVELS. Contractor shall lay out and be strictly responsible for the accuracy of the Contractor's Work and for any loss or damage to the CZS or others by reason of the Contractor's failure to set out or perform its work correctly. The Contractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

9.2 WORKMANSHIP. Every part of the Contractor's Work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the Contractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

9.3 MATERIALS FURNISHED BY OTHERS. In the event the scope of the Contractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Contractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of the Contractor shall be deducted from any amounts due or to become due the Contractor.

9.3.1 The Contractor, if utilizing labor, materials and/or services furnished by other subcontractors on the Project for the performance of the Contractor's Work, shall treat such charges as having been contracted independently and shall pay such charges directly to the

furnishing subcontractor. The arrangements and subsequent applications for payment and sworn statements shall list the amounts of such transactions due and paid to each subcontractor accordingly.

9.4 **SUBSTITUTIONS.** No substitutions shall be made in the Contractor's Work unless permitted in the Contract Documents and only then upon the Contractor first receiving all approvals required under the Contract Documents for substitutions. The Contractor shall indemnify the CZS as a result of such substitutions, whether or not the Contractor has obtained approval thereof.

9.5 **USE OF CZS'S EQUIPMENT.** The Contractor, its agents, employees, subcontractors or suppliers shall not use the CZS's equipment without the express written permission of the CZS's designated representative.

If the Contractor or any of its agents, employees, suppliers or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the CZS, the Contractor shall be liable to the CZS as provided in Article 12 for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely to the negligence of the CZS's employees operating such equipment.

9.6 **CONTRACT BOND REVIEW.** The CZS's Payment Bond for the Project, if any, may be reviewed and copied by the Contractor.

9.7 **CZS ABILITY TO PAY.** The Contractor shall have the right to receive from the CZS reasonable information relative to its financial ability to pay for the Work.

9.8 **PRIVITY.** All work for this Project performed by the Contractor shall be processed and handled exclusively by the CZS.

9.9 **PAYMENT AND PERFORMANCE BOND.** If Article 1 requires a bond, the Contractor shall provide a payment and performance bond in an amount equal to the full amount of the Contract Price from a surety acceptable to CZS in its discretion. The payment and performance bond shall include an express acknowledgement that the Contractor is subject to prevailing wage requirements under Illinois law.

9.10 **WARRANTY.** The Contractor warrants its work against all deficiencies and defects in materials and/or workmanship and as called for in the Contract Documents, and agrees to repair or replace at its own expense all such defective Work arising within one (1) year following Final Completion. The Contractor further agrees to execute any special guarantees or warranties

that shall be required for the Contractor's Work and assign to the CZS all subcontractors' and manufacturers' warranties as required by the Contract Documents, prior to final payment.

ARTICLE 10 – RECOURSE BY CZS

10.1 FAILURE OF PERFORMANCE.

10.1.1 **NOTICE TO CURE** If the Contractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or it fails to make prompt payment for its workers, subcontractors or suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, and fails within three (3) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the CZS, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as the CZS deems necessary for the completion of the Contractor's Work, or any part thereof which the Contractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Contractor, who shall be liable for the payment of same including reasonable overhead, profit and attorney's fees.
- (b) withhold payment of any monies due the Contractor pending corrective action to the extent required by and to the satisfaction of the CZS and the Owner or the Owner's Agent; and
- (c) in the event of an emergency affecting the safety of persons or property, the CZS may proceed as above without notice.

10.1.2 **TERMINATION BY CZS.** If the Contractor fails to commence and satisfactorily continue correction of a default within three (3) working days after receipt by the Contractor of the notice issued under Article 10.1.1, then the CZS may, in lieu of or in addition to Article 10.1.1, issue a second written notice, by certified mail, to the Contractor and its surety, if any. Such notice shall state that if the Contractor fails to commence and continue within seven (7) working days after receipt by the Contractor of the notice, the CZS may terminate this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to the Contractor to complete the Contractor's Work. The CZS also may furnish those materials, equipment and/or employ such workers or subcontractors, as the

CZS deems necessary to maintain the orderly progress of the Work. All of the costs incurred by the CZS in so performing the Contractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any monies due or to become due the Contractor. The Contractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the subcontract price.

10.1.3 USE OF CONTRACTOR'S EQUIPMENT. If the CZS performs work under this Article 10 or sublets such work to be so performed, the CZS and/or the persons to whom work has been sublet shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, belonging or delivered to the Contractor and located at the Project.

10.2 BANKRUPTCY. Upon the appointment of a receiver for the Contractor or upon the Contractor making an assignment for the benefit of creditors, the CZS may terminate this Agreement upon giving three (3) working days written notice, by certified mail, to the Contractor and its surety, if any. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the CZS may terminate this Agreement by giving three (3) working days written notice by certified mail, to the Contractor, its trustee, and its surety, if any, unless the Contractor, the surety, or the trustee:

- (a) promptly cures all defaults;
- (b) provides adequate assurances of future performance;
- (c) compensates the CZS for actual pecuniary loss resulting from such defaults;
- (d) assumes the obligations of the Contractor within the statutory time limits.

10.3 INTERIM REMEDIES. If the Contractor is not performing in accordance with the Schedule of Work at the time of entering an order for relief, or at any subsequent time, the CZS, while awaiting the decision of the Contractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work.

The CZS may offset against any sums due or to become due the Contractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees.

The Contractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

10.4 TERMINATION FOR CONVENIENCE. The CZS may order the Contractor in writing to suspend, delay or interrupt all or any part of the Contractor's Work

for such period of time as may be determined to be appropriate for the convenience of the CZS. The Contractor shall notify the CZS in writing within ten (10) working days after receipt of the CZS's order of the effect of such order upon the Contractor's Work, and the Contract Price or contract time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension, delay or interruption. No claim under this Article shall be allowed for any costs incurred more than ten (10) working days prior to the Contractor's notice to the CZS.

Neither the Contract Price nor the contract time shall be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of the Contractor.

ARTICLE 11 - LABOR RELATIONS

11.1 LABOR HARMONY. The Contractor shall maintain workable and harmonious relations among its employees, and between its employees and the employees of the CZS, other subcontractors and the Owner. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, the Contractor shall immediately give notice thereof including all relevant information to the CZS.

11.2 WORK STOPPAGES OR UNION DISPUTES. The Contractor shall be responsible for any work stoppages or union jurisdictional disputes involving its employees and shall cooperate fully with the CZS and other involved parties in resolving all such work stoppages and/or disputes, should they occur. In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or its subcontractors, the CZS may at its option terminate this agreement pursuant to Article 10, but the CZS shall compensate the Contractor for the value of the labor and material theretofore furnished or delivered to the construction site, proportioned upon the Contract Amount and pursuant to Article 5, but in such event, the Contractor shall not be entitled to prospective profits on portions of the Project not performed or with respect to materials not furnished to the construction site.

ARTICLE 12 – INDEMNIFICATION

12.1 CONTRACTOR'S PERFORMANCE. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Architect, the CZS (including its affiliates, parents and subsidiaries) and CZS's other contractors and subcontractors and all of their directors, officers, agents and employees from and against all claims, damages, loss and expenses,

including but not limited to attorney's fees, arising out of or resulting from the performance of the Contractor's Work provided that:

- (a) any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Contractor's Work itself) including the loss of use resulting therefrom, to the extent caused or alleged to be caused in whole or in part by any negligent act or omission or willful misconduct of the Contractor, any Subcontractor (of any tier), any of their respective employees or agents or of any person or firm for whose actions the Contractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder.
- (b) such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article 12.

12.2 LIEN CLAIMS. Contractor shall indemnify, defend and hold harmless Owner and CZS from and against any and all suits, claims, damages, losses, costs, settlements, arbitration awards and expenses, including attorney's fees suffered, incurred or arising from mechanics' or materialmen's liens and any other claims for payment asserted against Owner or CZS, the Project, the Project Site and existing improvements thereon, or any part thereof, or against any funds intended to pay for the Project arising out of the Work, but only to the extent that Contractor has been paid all undisputed amounts that are due and payable and that such lien is from an agent or Subcontractor (including any lower-tier subcontractor or supplier) of Contractor.

12.3 NO LIMITATION UPON LIABILITY. In any and all claims against the Owner, the Architect, CZS (including its affiliates, parents or subsidiaries) and other contractors or subcontractors, or any of their directors, officers, agents or employees, by any employee of the Contractor, anyone directly or indirectly employed by the subcontractor or anyone for whose acts the Contractor may be liable, the indemnification obligation under this Article 12 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

12.4 ARCHITECT EXCLUSION. The obligations of the Contractor under this Article 12 shall not extend to the liability of the Architect, if any; its agents or employees, arising out of:

- (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, design or specifications, or
- (b) the giving of or the failure to give directions or instructions by the Architect, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

12.5 COMPLIANCE WITH LAWS. The Contractor agrees to be bound by and, at its own cost, comply with all applicable Federal, State, and local laws, ordinances and regulations (hereinafter collectively referred to as "Laws"), including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, and disadvantaged business enterprise laws.

12.6 PREVAILING WAGE. This contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 et seq. (the "Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, the Contractor should refer to the Illinois Department of Labor. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties. The contractor will furnish certified payrolls for the project using the State of Illinois, Illinois Department of Labor Certified Transcript of Payroll forms. The Contractor shall require its Subcontractors to comply with the Illinois Prevailing Wage Act.

The Contractor 's liability to the CZS and Owner for all loss, cost and expense attributable to any acts of commission or omission by the Contractor, its employees and agents resulting from the failure to comply with the Laws, shall include but not be limited to, any fines, penalties or corrective measures.

12.7 PATENTS. Except as otherwise provided by the Contract Documents, the Contractor shall pay all royalties and license fees which may be due on the Contractor's Work. The Contractor shall defend all suits for claims for infringement of any patent rights arising out of the Contractor's Work, which may be brought against CZS or Owner, and shall be liable to the CZS and Owner for all loss, including all costs, expenses, and attorney's fees.

ARTICLE 13 – INSURANCE

13.1 **CONTRACTOR'S INSURANCE.** Prior to the start of the Contractor's Work, the Contractor shall procure for the Contractor's Work and maintain in force Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive or Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and all insurance policies shall be written by an insurance carrier rated no less than A VII by A.M. Best Company and authorized to do business in Illinois. This insurance shall include contractual liability insurance covering the Contractor's obligations under Article 12.

The CZS, Owner and Architect if any, and such other parties as required by the Contract Document, shall be named as additional insureds on each Comprehensive or Commercial General Liability Insurance Policy, any Umbrella Liability Policy, and any other special liability insurance policy as required for the Project. The Contractor shall arrange for a certificate of insurance, confirming that the minimum limits are in effect for each kind of insurance required for the Project and naming all of the above additional insureds, to be timely furnished to the CZS by the Contractor's insurance agent, and prior to starting work.

This Article 13 has application, in its entirety, to subcontractors who furnish labor and/or services or otherwise perform on the premises for the Contractor's Work under an arrangement with the Contractor. The Contractor accepts the responsibility for each subcontractor's compliance with all of the requirements hereof and indemnifies the CZS against any and all liabilities arising from the utilization of such subcontractors the same as provided in Article 12 hereof.

13.2 **MINIMUM LIMITS OF LIABILITY.** The Contractor's Comprehensive or Commercial General Liability and Comprehensive Automobile Liability Insurance, as required by Article 13.1, shall be written with limits of liability not less than the levels shown in Exhibit B.

13.3 **NUMBER OF POLICIES.** Comprehensive or Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or Umbrella Liability Policy.

13.4 **CANCELLATION, RENEWAL OR MODIFICATION.** The Contractor shall maintain in effect all insurance coverage required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to the CZS.

All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least sixty (60) days prior written notice has given to the CZS unless otherwise specifically required in the Contract Documents. Certificates of Insurance, or certified copies of policies acceptable to the CZS shall be filed with the CZS prior to the commencement of the Contractor's Work. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the CZS may purchase such coverage and charge the expense thereof to the Contractor, or terminate this Agreement.

ARTICLE 14

[Intentionally omitted.]

ARTICLE 15 – CONTRACT INTERPRETATION

15.1 **INCONSISTENCIES AND OMISSIONS.** Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Contractor to so notify the CZS in writing within three (3) working days of the Contractor's discovery thereof. Upon receipt of said notice, the CZS shall instruct the Contractor as to the measures to be taken and the Contractor shall comply with the CZS's instructions.

15.2 **LAW AND EFFECT.** The Agreement shall be governed by the laws of the State of Illinois.

15.3 **SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

15.4 **ATTORNEY'S FEES.** Should either party employ an attorney to institute suit or arbitration to enforce any of the provisions hereof, to protect its interest in any matter arising under this Agreement, or to collect damages for the breach of the Agreement, or to recover on a surety bond given by a party under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges and expenses expended or incurred therein.

15.5 **TITLES.** The titles given to Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

15.6 ENTIRE AGREEMENT. This Agreement is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the parties hereto and supercedes all prior negotiations, representations, or agreements, either written or oral.

ARTICLE 16 – SPECIAL PROVISIONS

16.1 SCOPE OF WORK. All work necessary or incidental to complete the **Work described in Exhibit A.** for the Project, in strict accordance with the Contract Documents

CONTRACT DOCUMENTS –

This Agreement

Exhibit A: Scope of Work

Exhibit B: Contractor’s Insurance Requirements

Exhibit C: Contractor Safety Policy

16.2 Project to be scheduled as least forty-eight (48) hours in advance through the CZS’s designated representative.

16.3 Contractor retains the sole right to control and direct the manner in which the Work is performed. Notwithstanding the foregoing, the CZS retains the right to inspect the Work, stop work, prescribe alterations, and monitor Contractor’s performance to ensure that the Work is performed in accordance and consistent with the following understanding: Contractor acknowledges that the CZS’s primary business is the operation of a zoological park and that one of the CZS’s primary concerns is the safety of the animals and people at the CZS, both employees and visitors; Contractor further acknowledges that the CZS strives to maintain the goodwill of its patrons and the public in general and further agrees that Contractor will do nothing that will have an adverse impact on the CZS’s mission, its collection of animals, its employees, or endanger the public in any way.

16.4 Contractor hereby gives permission to the CZS, its agents, successors, and assigns, to use Contractor’s image (still photo, audio, or video recordings) of any performance of Work for the CZS in conjunction with any CZS productions, advertisement, promotion, or for other similar purposes.

16.5 Contractor hereby assigns all rights, title, interest, copyright, and any renewal rights to the CZS for any work produced or created by the Contractor in performance of Work.

16.6 Contractor agrees not to recruit or hire any employee of the CZS during the period of the Agreement or within one (1) year following the effective termination date of the Agreement. If the Contractor violates this provision of the Agreement, Contractor shall pay the CZS the equivalent of three (3) times such employee’s annual salary at the time of the employee’s termination of employment with the CZS, in one lump sum within thirty (30) days of the CZS’s written demand for payment.

16.7 PARK ACCESS: In accordance with the CZS’s admission and park access policy, all Contractors and vendors are required to be placed on the gate list maintained by the CZS Police Department the day before they are scheduled to arrive. Contractors and/or vendors whose name is not on the approved list will not be allowed into the Park. To ensure there are no difficulties with admission to the Park, Contractor/vendor should verify with appropriate CZS staff that their name is on the gate list by 3:00 P.M. on the day preceding their arrival.

16.8 FIRE HYDRANT USAGE; Use of fire hydrants as water sources is a violation of code requirements designed to protect the safety of the Brookfield Zoo’s water supply and is contrary to the prescribed operation parameters of fire hydrants. No hydrant usage will be permitted without prior authorization of CZS. Where temporary water hydrant connections may be required, the Contractor will be responsible for supply, installation and certification of an approved backflow prevention device. Under no circumstances can hydrant connections be made without such a device in place.

16.9 TREE AND SHRUBBERY: Every precaution shall be taken to avoid damage to trees, shrubs and all other plantings on CZS grounds. The CZS may request that a tree protection plan for all trees and shrubs in and around the construction area be filed with and approved by the Grounds Operations Manager before the Work begins. Any tree or shrub which interferes with the Work may be tied back or moved only with prior approval of the Grounds Operations Manager or Grounds Supervisor. Outside Contractors and Subcontractors will not remove, prune or tie back any tree or shrub at their own discretion. In addition, no nails or screws are to be driven into trees or shrubs for stringing wire, boarding trunks, etc. Contractors whose equipment, vehicles, personnel, or Subcontractors damage trees and shrubs on CZS property will be required to replace the damaged plant material(s). The Contractor’s cost shall include purchase and installation of the replacement tree(s) and/or shrub(s). CZS shall be the sole judge as to whether or not a tree or shrub shall be replaced. It is the Contractor’s responsibility to inform their personnel and Subcontractors of the CZS tree and shrub policy.

16.10 The Contractor agrees to comply with the provisions of Executive Order 11246 as amended, the Rehabilitation Act of 1973 as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 as amended, and their implementing regulations at 41 CFR Part 60. Contractor also agrees to comply with Executive Order 13201 and its implementing regulation at 29 CFR Part 470.