

## **FUNDING AND ASSIGNMENT AGREEMENT**

**THIS FUNDING AND ASSIGNMENT AGREEMENT** (the “**Agreement**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and **DENVER ZOOLOGICAL FOUNDATION, INC.**, a Colorado nonprofit corporation (the “**Foundation**”).

### **RECITALS**

**WHEREAS**, the Foundation is a private Colorado nonprofit corporation that was formed in 1950 to, among other things, develop, manage and operate the property known as the Denver Zoological Gardens located at 2300 Steele Street, Denver, CO 80205 (the “**Denver Zoological Gardens**”) in collaboration with the Denver Parks and Recreation Department on behalf of the citizens of the City and County of Denver and the State of Colorado. The Denver Zoological Gardens are located within City Park, Denver, on land owned by the City; and

**WHEREAS**, the City has retained the Foundation, as the City's agent (on a contractual basis), to "maintain, administer, manage, operate, control the Denver Zoological Gardens and all buildings, grounds, living collections, of fauna and flora, exhibits, program, operations, and properties located therein or used in connection therewith, for the enjoyment and education of the public," on and subject to the conditions set forth in the Cooperative Agreement, dated November 4, 1998, by and between the Foundation and the City (the “**Cooperative Agreement**”); and

**WHEREAS**, Paragraph 9(b) of the Cooperative Agreement, pertaining to construction of permanent improvements at the Denver Zoological Gardens, allows for the Foundation to be assigned, as agent for the City (on a contractual basis), to perform certain permanent improvements at the Denver Zoological Gardens subject to the terms and conditions of the Cooperative Agreement, including such Paragraph 9(b); and

**WHEREAS**, Paragraph 13(h) of the Cooperative Agreement provides that, in order to allow the Foundation to achieve and continue the public purpose of the Cooperative Agreement, bond funds authorized by the people and issued by the City may be provided by the City to the Foundation in the amounts and for the purposes stated in the authorization ordinance; and

**WHEREAS**, the qualified and registered voters of the City approved referred question 1G on November 6, 2007, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of \$70,000,000.00 for the purpose of financing the cost of new cultural facilities; and

**WHEREAS**, the Foundation intends to construct at the Denver Zoological Gardens a new 2,500 square foot large carnivore tiger exhibit holding building, including specialty cage work within the building that will allow for handling multiple pairs of tigers and their offspring, and the City desires to make a part of the proceeds, totaling an amount not to exceed \$2,200,000.00 of the Bonds (the “**Bond Proceeds**”), available to fund costs associated with the above-stated improvements to the buildings and grounds all as more fully described below (the “**Project**”), in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the Foundation is willing and has the present capacity to satisfactorily complete and operate the Project in accordance with Cooperative Agreement and this Agreement; and

**WHEREAS**, all supplementary funds necessary to satisfactorily complete the Project in accordance with the terms and conditions of this Agreement will be provided by the Foundation; as of the date of this Agreement, the Foundation anticipates such supplementary funds will be approximately Three Hundred Thousand Dollars (\$300,000.00) (assuming \$2,200,000.00 Bond Proceeds are made available to the Foundation for the Project under this Agreement), and the Foundation has reserved and designated Three Hundred Thousand Dollars (\$300,000.00) of its funds for the Project; and

**WHEREAS**, the City and the Foundation desire to specify the procedures for, and conditions to, disbursement of Bond Proceeds to the Foundation for the Project.

**NOW, THEREFORE**, in consideration of the above, and the mutual promises and covenants contained herein, the City and the Foundation agree as follows:

1. **The Project**: The “Project,” as used herein, refers to the improvements to be designed, constructed, and installed by the Foundation as described in **EXHIBIT A**. The Project is to be constructed and installed entirely within the boundaries of the existing "Facilities" as described in the Cooperative Agreement. The Project will be funded by the Bond Proceeds, to the extent such Bond Proceeds are made available hereunder. The Foundation will perform or cause to be performed all work and provide all supplementary funds necessary to satisfactorily

complete the Project in accordance with the terms and conditions of this Agreement.

2. **Coordination and Liaison:**

A. The City's Project Manager for the Better Denver Bond Program, currently Scott Hergenrader, (the “**Manager**”) is vested with the authority to act on behalf of the City in performing the City's obligations under this Agreement. The Manager may designate someone to act on the Manager’s behalf as the authorized representative. The City may change its authorized representative at any time by providing written notice to the Foundation of such change.

B. The Vice President for Design and Campus Management of the Foundation, currently George Pond, is the Foundation’s authorized representative under this Agreement with respect to the Project and, as such, is responsible for overseeing the satisfactory completion of the Project, in accordance with the terms and conditions of this Agreement. The Foundation may change its authorized representative at any time by providing written notice to the City of such change.

3. **City Payment and Related Responsibilities:**

A. As consideration for the performance of the Foundation under this Agreement and in order to enhance the ability of the Foundation to perform the functions and services set forth in the Cooperative Agreement, the City agrees to pay towards the cost of completing the Project the Bond Proceeds. All other expenditures required to complete the Project or other costs associated with the Project are solely the responsibility of the Foundation, and shall be paid by the Foundation. As of the date of this Agreement, the Bond Proceeds have been duly and lawfully appropriated by the City Council for the purpose of this Agreement; and such Bond Proceeds will be disbursed by the City to the Foundation pursuant to a draw request procedure, as further described in Section 3(B) and 5(B) below. If, at the request of the Foundation, the City utilizes on-call City contracts to complete work on the Project, the value of that work shall be deducted from the Bond Proceeds available to reimburse the Foundation. The estimated costs of the component parts of the Project are included in Exhibit A.

Unless otherwise specified herein, the Bond Proceeds shall be made available to the Foundation to be expended to pay capital costs incurred in completing the Project including, but not limited to, costs associated with design, construction, project management, furnishings, and equipment and insurance, and permit costs associated with the design, construction, management

and completion of the Project. The Foundation may reallocate the Bond Proceeds among the Project components described on Exhibit A from time to time. The Foundation will not utilize the Bond Proceeds for operating or other working capital expenditures.

B. The City agrees to pay to the Foundation the Bond Proceeds upon notice from the Foundation that the Foundation is ready to commence the Project and as draws are submitted and approved by the Manager for payment from the Bond Proceeds, as further described in Section 5(B) below.

C. Upon final completion of the Project, the Foundation will provide to the City an accounting of all Bond Proceeds and other funds expended on the Project attaching all required or requested supporting documentation. Such accounting, including supporting documentation, shall be sufficient to demonstrate that the Bond Proceeds have been expended only for actual costs associated with the design, construction, management and completion of the Project and in accordance with the terms and conditions of this Agreement. The accounting shall itemize the expenditure of the Bond Proceeds for Project's design cost, construction cost, project management cost, furnishing cost, equipment cost, insurance cost, permit cost, or other administrative cost category and must also provide a total of all expenditures, to date, for each referenced category, regardless of the source of funds.

D. The parties agree that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or indirect, shall extend only to the payment of the Bond Proceeds that are duly and lawfully appropriated by the City Council for the purpose of this Agreement.

4. **Assignment**: Pursuant to the authority granted in Section 2.3.3(A) of the Denver City Charter, the Mayor of the City hereby assigns to the Foundation, as agent (on a contractual basis) for the City under the Cooperative Agreement, all matters relating to the design, planning, construction and completion of the Project, including any demolition, and the qualification, selection and retention of all consultants, architects, and contractors engaged in connection therewith. The Project must be designed, planned, and constructed in a manner approved by the Foundation and the Manager of Parks and Recreation.

5. **Foundation Responsibilities**: Except as otherwise provided in this Agreement, the Foundation shall have sole responsibility with respect to undertaking and completing the Project in accordance with this Agreement.

A. Before any work on the Project is commenced (excluding, however, the Project design work performed by the Foundation's design consultant, CLR Design, Inc., directly or through sub-consultants of CLR Design, Inc.), the Foundation shall submit design plans and specifications for such work to the Manager of Parks and Recreation and the Manager of Public Works of the City for the written approval of said documents by both of the managers or their authorized representatives. Design review will include a review for safety engineering purposes by City's insurance carrier and the City's Risk Management office, which review and recommendation will be reported to the Manager of Public Works. The design plans and specifications will be approved or disapproved, in writing, with the reasons for any disapproval being stated, within thirty (30) days of receipt by both of the managers of complete sets of design plans and specifications; if any such design plans and specifications are neither approved nor disapproved within such thirty (30) day period, then approval of such design plans and specifications by the managers will be deemed given. Any deficiencies in said plans and specifications included in a properly given notice of disapproval shall be remedied by the Foundation, to the reasonable satisfaction of both of the managers or their representatives, prior to the commencement of work. Notwithstanding anything herein to the contrary, the provisions of this Section 5(A) shall not apply to any design plans or specifications that are prepared solely for the purpose of obtaining a permit for the Project.

B. The Foundation shall submit quarterly draw requests that anticipate the Bond Proceeds and other funds needed for the coming quarter. The Foundation and the City shall mutually agree upon the form of draw request and quarterly draw request schedule. With each draw request, the Foundation shall provide (1) a report of anticipated future expenditures for the next quarter and for the full Project, showing projected expenditures compared to the budget for the Project, and (2) a report of the expenditures made in the past on the Project, showing past expenditures compared to the budget for the Project.

C. The Foundation shall provide to the Manager a public communication plan with respect to the Project for approval and will continue to coordinate its public outreach efforts with the Manager.

D. The Foundation shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to the Project work site to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in

conformance with the approved design plans and specifications. If it is determined that the work is not being so performed, the Manager of Public Works or the Manager of Parks and Recreation may order the cessation of the work until there is satisfactory evidence that the work conforms to the approved design plans and specifications. If the City determines that the work is not otherwise being performed in accordance with this Agreement, the Manager of Public Works may order that the Foundation cease to conduct the work until there is satisfactory evidence that the work will be performed in accordance with this Agreement.

E. The City shall not charge the Foundation for the City's activities under this Section 5, including design plan and specifications review, inspections, material testing, and construction monitoring. Standard building permit fees and other fees mandated by existing ordinance or rule for construction approvals will be paid, from either the Bond Proceeds or by the Foundation.

F. The Foundation shall be solely responsible for assuring that the Project is properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws (local, state, and federal) that govern the performance of the work, including (to the extent applicable) the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

G. In addition to compliance with the above-mentioned laws, the City and the Foundation have agreed that, as a matter of contract, the Foundation will comply with all limitations and provisions that are imposed on the City Department of Public Works by the Charter or ordinances of the City (the "**Additional Requirements**"). Specifically, Project work shall be performed in compliance with the provisions for competitive procurement set forth in the Denver City Charter at 2.3.3(A)(i) and Section 20-56 of the Denver Revised Municipal Code ("**DRMC**"); for payment of prevailing wages set forth in Sections 20-76 through 20-79, DRMC; for public art in Sections 20-85 through 28-90, DRMC; and for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained, respectively, in Sections 28-31 through 28-91, DRMC, as the same may be amended or re-codified from time to time (collectively, the "**Specified Additional Requirements**"). Notwithstanding the foregoing, if the Manager of Public Works and the Manager of Parks and Recreation have approved of the Foundation self-performing certain Project work, then the

Foundation shall not be required to comply with the Specified Additional Requirements as to such Project work that will be self-performed; however, the Foundation remains subject to the Cooperative Agreement, including without limitation Paragraph 23 of the Cooperative Agreement (*Non-Discrimination*).

H. Insurance requirements.

a. **General Conditions:** The Foundation agrees to secure, and maintain, the insurance coverage specified in this Section 5H during the term of this Agreement. In the event that any required insurance is written on a claims-made basis, then the policy(ies) shall be maintained during the term of this Agreement with a retroactive date concurrent with or preceding the date hereof, and for a period of not less than three (3) years following the termination this Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as “A” and “Financial Size Category of Class VIII” or better, or other insurer acceptable to the City.

If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Foundation. The Foundation shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Foundation, to the extent the Foundation otherwise has liability. If a policy provides higher limits of coverage the policy shall not limit the City’s coverage as an additional insured to the minimum limits stated in this Agreement. The Foundation shall maintain at its own expense, or require from any contractor(s) on the Project, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. **Proof of Insurance:** The Foundation shall provide a copy of this Agreement to its insurance agent or broker. The Foundation shall provide proof of required insurance to the City, through a certificate of insurance or other proof of insurance as required by the City’s Risk Management Office. The parties agree that if the Foundation provides an Accord (paper) Certificate it will satisfy the proof of insurance requirement under this paragraph. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such

written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.”

c. **Workers’ Compensation/Employer’s Liability Insurance:** The Foundation shall maintain the Workers’ Compensation Coverage as required by statute and Employer’s Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. The Foundation expressly represents to the City, as a material condition and requirement of this Agreement, that none of the Foundation’s officers or employees who may be eligible under any statute or law to reject Workers’ Compensation Insurance has effected such a rejection at the time of this Agreement, and that the Foundation shall notify the City of any such subsequent rejections if the Foundation has knowledge of the rejection.

d. **General Liability:** The Foundation shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

e. **Automobile Liability:** The Foundation shall maintain limits of \$1,000,000 for combined single limit applicable to all Foundation vehicles operating on City property and elsewhere. If the Foundation self-performs any Project work and such work will involve vehicle hauling cargo containing pollutants or contaminants, then prior to commencement of such work, the Foundation will obtain an endorsement to its automobile policy that provides for auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants (and such additional coverage shall thereafter be maintained for the period specified in Section 5(A) above).

f. **Crime/embezzlement:** The Foundation shall carry an endorsement to its general policy naming the City as a Joint Loss Payee for crime or employee dishonesty, with limits no less than the maximum amount of funds in the Foundation’s care, custody and control at any one time relating to funding for the Project.

g. **Additional Provisions:**

(i) For all general liability, the policies must provide the following:

(a) Unlimited defense costs outside of policy limits;



- (b) Contractual liability covering the indemnification provisions of this Agreement;
  - (d) A severability of interests provision;
  - (e) Waiver of exclusion for lawsuits by one insured against another;
  - (f) A provision that coverage is primary; and
  - (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.
- (ii) For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement.
- h. **Additional Insured's:** For all coverages, the Foundation's insurer shall name the City as an additional insured.
- i. **Waiver of Subrogation:** For the General Liability and Workers' Compensation coverages, the Foundation's insurer shall waive subrogation rights against the City.

I. Prior to execution and delivery, the Foundation shall submit to the City the form of all contracts to be entered into by the Foundation in connection with the construction of the Project (excluding, however, the consulting contracts between the Foundation and CLR Design, Inc. with respect to the design of the Project, and any sub-consulting agreements entered into by CLR Design, Inc. in connection therewith) (collectively, the "**Construction Contract**"), which will be reviewed by the Office of the City Attorney to assure compliance with the requirements of this Agreement, including compliance with the Additional Requirements specified in Section 5(G) and the insurance requirements specified in Section 5(H) and those insurance requirements similar to those in Exhibit B. The Office of the City Attorney shall review each Construction Contract that is submitted by the Foundation for the purposes of obtaining the City's approval under this Section 5(I) within 21 days of the submittal of such Construction Contract to the Office of the City Attorney by the Foundation, or such approval shall be deemed given. Any warranty to be provided by the contractor to the Foundation in a

Construction Contract to which the Foundation is a party shall include the City as a beneficiary of the warranty.

J. The Foundation and its contractors and subcontractors shall pay all applicable taxes, including sales and use taxes and occupational privilege taxes, levied by the State and the City on any tangible property built into or incorporated into the work for the Project. Upon request by the City, an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes owed or paid, and the dates of payment, shall be furnished to the City.

K. The Foundation or its contractors shall obtain a bond or bonds or other financial guarantee acceptable to the City Attorney, conditioned that the Foundation or its contractors shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons or entities furnishing labor or materials used in the prosecution of the work on the Project, and shall indemnify the City to the extent of all payments in connection with performing the work. The Foundation and the City Attorney will consult as to whether any performance bonds will be obtained for the Project and, if the Foundation and the City Attorney mutually agree upon any such performance bond(s), then the Foundation or its contractors will provide the performance bond(s) in accordance with the terms mutually agreed by the Foundation and the City Attorney. The dollar amount of bonds obtained pursuant to this Section 5(K) shall be modified to reflect any change orders that modify the total value of the Project or part of the Project. Notwithstanding the foregoing, if the Manager of Public Works and the Manager of Parks and Recreation have approved of the Foundation self-performing certain Project work, then the Foundation shall not be required to obtain the bonds (e.g., payment bonds, performance bonds, etc.) or other financial guarantees contemplated by this Section 5(K) with respect to Project work to be self-performed.

L. The Foundation will provide and install at the Project site signs, in a form mutually agreeable to the Manager of Parks and Recreation and the Foundation, stating the scope of the Project and acknowledging the participation of the City and the bond funding for the Project.

M. If, for any reason, construction of the Project is delayed or halted while in process for more than 21 days, the Foundation shall take reasonable measures to protect the existing Project site and buildings from weather damage, vandalism and other similar threats.

N. The Foundation agrees to complete the Project within three (3) years of the date of the first disbursement of Bond Proceeds by the City to the Foundation, in accordance with the terms and conditions of this Agreement.

O. The Foundation agrees that any Bond Proceeds received from the City may not be invested, if at all, at a rate greater than the rate to be provided by the City's Finance Department at the time of disbursement of the Bond Proceeds to the Foundation. The Foundation agrees to provide evidence of compliance with this responsibility at the time the investment, if any, occurs. The Foundation agrees to monitor the deposit and any investment of Bond Proceeds pending disbursement to a third party and provide the City with copies of all bank statements relating to the investment and expenditure of such amounts.

6. **Reporting & Audits:**

A. The Foundation shall provide, or cause its contractors to provide, to the City Auditor documentation of expenditures for the Project, in form and detail sufficient to enable the Auditor to perform their responsibilities under the Charter and ordinances of the City. Such documentation shall include periodic invoices evidencing the work performed and the payroll reporting requirements contained in DRMC Section 20-76(d).

B. The Foundation agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after completion of the Project, have access to and the right to examine any directly pertinent books, documents, papers and records of the Foundation involving transactions related to this Agreement, including expenditure data and investment of Bond Proceeds, if any, required by the City's Department of Finance.

7. **Term:** The term of this Agreement shall commence on the date above first written and shall terminate upon the completion of the Project.

8. **Title:** In furtherance of Paragraph 6(a) of the Cooperative Agreement, upon completion of construction of any aspect of the Project, and upon approval and acceptance by the City, the Foundation shall be deemed to have conveyed to the City all right, title and interest in and to the fixtures and other permanent improvements to real property made as part of the Project.

9. **No Discrimination in Employment:** In connection with the performance of the Foundation's obligations under this Agreement, the Foundation agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person

otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. The Foundation further agrees to insert the foregoing provision in all contracts and subcontracts hereunder with respect to the performance of Project work by contractors and subcontractors.

10. **Limitation on Application of Agreement:** The provisions of this Agreement are intended to govern the commencement and completion of the Project and shall not be construed to prohibit, limit, waive, or modify other agreements between the parties currently existing or entered in the future as to improvements to real property at the Denver Zoological Gardens.

11. **Notices:** Any notices, responses, or communications given hereunder may be personally delivered or sent by facsimile or first class mail, addressed to the following:

To the City:

Scott Hergenrader  
Program Manager  
Better Denver Bond Program  
201 West Colfax Avenue, Dept. \_\_\_\_  
Denver, CO 80202  
Facsimile No. \_\_\_\_\_

City Attorney  
c/o Shaun Sullivan  
201 W. Colfax Avenue, Dept. 1207  
Denver, CO 80202  
Facsimile No. \_\_\_\_\_

To the Foundation:

Shannon Block  
President/CEO  
Denver Zoological Foundation  
2300 Steele Street  
Denver, CO 80205  
Facsimile No. \_\_\_\_\_

With a copy to (which shall not constitute notice):

Kelly N. Matthews, Esq.  
Robinson Waters & O'Dorisio, P.C.  
1099 18th Street, Suite 2600  
Denver, Colorado 80202  
Facsimile No. (303) 297-2750

Notices shall be deemed delivered upon receipt, if delivered personally or by facsimile transmission (receipt verified by telephone), or upon the third day following posting by certified mail, return receipt requested. The contacts and addresses specified above may be changed by the parties at any time upon written notice to the other party.

12. **Conflict of Interest:** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Project or related services or property described herein.

13. **No Third Party Beneficiaries:** The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Foundation; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. The City and the Foundation expressly agree that any person other than the City and the Foundation receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. **Subject to Local Laws; Venue:** Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter and Municipal Code of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

15. **Execution of Agreement:** This Agreement is expressly subject to, and shall not be or become effective or binding on the City and the Foundation until fully executed by all signatories of the City and the Foundation.

16. **Legal Authority:** The City and the Foundation each represent that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

17. **Agreement as Complete Integration; Amendments:** Except for the Cooperative Agreement, this Agreement is intended as the complete integration of all understandings between the parties with respect to the subject matter of this Agreement, and no prior or contemporaneous addition, deletion or other amendment shall have any force or effect,

unless embodied herein in writing. Amendments to this Agreement will become effective only when approved by both parties and executed in the same manner as this Agreement.

18. **Counterparts of Agreement**: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, and all of which, taken together, shall constitute one and the same document. Counterparts may be delivered via facsimile, electronic mail (including pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

19. **Electronic Signatures and Electronic Records**: The Foundation consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_







## EXHIBIT A

The Project includes construction of a 2500 square foot large carnivore holding building with two off exhibit yards and one large exhibit yard for the outdoor public viewing of Amur tigers. Specialty cagework inside the building will allow for managing multiple pairs of tigers and their offspring. The off-exhibit yards will be a covered heavy duty galvanized fencing connected to the holding building and the main exhibit yard for the flexible movement of animals. The main exhibit yard will be a one acre open top 16 foot tall steel fencing system occupying an existing wooded area with multiple visitor viewports. The exhibit yard will include a pool and other animal enrichment to provide a great habitat for tigers and a dynamic visitor experience.

Estimated cost: \$2,500,000.00

Bond Proceeds to be used: \$2,200,000.00

**EXHIBIT B**  
**EXAMPLE OF CONSTRUCTION INSURANCE REQUIREMENTS**

**INSURANCE:**

**A. General Conditions:** General Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. General Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A”VIII or better. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies be cancelled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.” If any policy is in excess of a deductible or self-insured retention, the Foundation must be notified by the General Contractor. The General Contractor shall be responsible for the payment of any deductible or self-insured retention. The Foundation reserves the right to require the General Contractor to provide a bond, at no cost to the Foundation, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the General Contractor. The General Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance:** General Contractor shall provide a copy of this Agreement to its insurance agent or broker. General Contractor further agrees to have its agent or broker provide proof of General Contractor’s required insurance. The Foundation reserves the right to require the General Contractor to provide a certificate of insurance, a policy, or other proof of insurance as required by the Foundation’s Risk Administrator in his sole discretion.

**C. Additional Insureds:** For general liability, excess/umbrella liability, and Builder’s Risk, the General Contractor’s insurer shall name the Foundation as an additional insured, and/or loss payee.

**D. Waiver of Subrogation:** For all coverages, General Contractor’s insurer shall waive subrogation rights against the Foundation.

**E. Subcontractors:** All subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the General Contractor. General Contractor shall include all such subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. General Contractor agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the

Foundation.

**F. Worker's Compensation/Employer's Liability Insurance:** General Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$\_\_\_\_\_ for each bodily injury occurrence claim, \$\_\_\_\_\_ for each bodily injury caused by disease claim, and \$\_\_\_\_\_ aggregate for all bodily injuries caused by disease claims. General Contractor expressly represents to the Foundation, as a material representation upon which the Foundation is relying in entering into this Agreement, that none of the General Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date General Contractor executes this Agreement. These coverages shall apply to all work or services performed outside the United States. These coverages shall apply to any work or services performed by employees covered by the Federal Employee's Liability and Compensation Act.

**G. General Liability:** General Contractor shall maintain limits of \$\_\_\_\_\_ for each occurrence, \$\_\_\_\_\_ for each personal and advertising injury, \$\_\_\_\_\_ products and completed operations for each occurrence, and \$\_\_\_\_\_ policy aggregate. Aggregate limits must be "per project" or "per location".

**H. Automobile Liability:** General Contractor shall maintain \$\_\_\_\_\_ combined single limit applicable to all vehicles operating on Foundation property and elsewhere which includes auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants.

**I. Builder's Risk:** General Contractor shall provide, until Final Acceptance of the Work, builder's risk insurance including as insureds the General Contractor and all Subcontractors performing Work at the Project Site. Such insurance shall cover all equipment, machinery, supplies, and other property intended to be permanently incorporated in the Work, for which title or risk of loss shall have passed at the time of loss to an insured. Coverage shall apply to the foregoing items while are located on the Project Site or located at temporary off-site storage or staging areas approved by Foundation, or while in land-based transit to the Project Site within the continental United States. Coverage shall be written on an "All Risk" form, including but not limited to, fire, lightning, windstorm, hail, riot, riot attending a strike, civil commotion, aircraft, vehicle, smoke, explosion, vandalism, malicious mischief, damage to glass, theft, flood and earthquake (including sinkhole) coverages, subject to normal industry policy provisions. Limits under the Foundation-provided builder's risk insurance shall not be less than 100% of the replacement value of the Project for physical damage to property and related expenses, except the functional replacement valuation of the useable existing structure. Sublimits shall be established for losses due to earthquake (including sinkhole) and for losses due to flood. The builder's risk insurance shall include a deductible of not more than \$50,000 for each loss, except \$250,000 per occurrence for flood, water damage, earthquake or losses to existing property.

The builder's risk must include, but is not limited to, the following: (1) loss resulting from mysterious disappearance or caused by any wrongful removal of any property of a named

insured or any additional insured by the employee(s) of such named insured or additional insured, (2) loss or damage to any automobiles, (3) loss or damage to the Design-Builder's or any insured Subcontractor's owned, leased or rented property or construction-type tools, equipment, machinery, or supplies used for construction but not intended to be permanently incorporated in the Work, (4) loss or damage covered by a manufacturer's warranty or guarantee, (5) resultant damage as respects to error/omission/deficiency in design/plans/specifications, and (6) acts of terrorism.

The General Contractor shall be responsible for the ultimate costs associated with deductibles under the builder's risk insurance as a Cost of the Work.

J. **Excess/Umbrella Liability:** General Contractor shall maintain \$\_\_\_\_\_ excess/umbrella liability coverage.

K. **Additional Provisions:**

(1) For all general liability and excess/umbrella liability, the policies must provide the following:

- (a) If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, the General Contractor shall notify the Foundation within ten (10) days and reinstate the aggregates required;
- (b) Unlimited defense costs in excess of policy limit;
- (c) Contractual liability covering the indemnification provisions of this Agreement;
- (d) A severability of interests provision;
- (e) Waiver of exclusion for lawsuits by one insured against another;
- (f) A provision that coverage is primary; and
- (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the Foundation.

(2) For all general liability, excess/umbrella liability, and pollution liability, if the policy is a claims-made policy, then the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the Foundation, whichever is earlier.

(3) For all general liability and excess/umbrella liability, the policies must not contain an exclusion for subsidence or earth movement; and exclusion for residential or habitational construction, reconstruction, remodeling, repair or similar activity; an exclusion for the hazard of explosion; and exclusion for the hazard of collapse; or an exclusion for the hazard of underground work.

(4) For all general liability, excess/umbrella liability and pollution liability, the policies must not contain an exclusion for injury or damage from mold, fungus, or other biological pathogens.

(5) For all general liability and excess/umbrella liability, the policies must not contain an exclusion for discrimination or similar offenses.