



REQUEST FOR COUNCIL ACTION

City of Greenville, South Carolina

Agenda Item No.

16a

TO: Honorable Mayor and Members of City Council
FROM: John F. McDonough, City Manager

Ordinance/First Reading Ordinance/Second & Final Reading Resolution/First & Final Reading Information Only

AGENDA DATE REQUESTED: July 11, 2022

ORDINANCE/RESOLUTION CAPTION:

RESOLUTION TO APPROVE AN AGREEMENT BETWEEN THE CITY OF GREENVILLE AND FRIENDS OF THE GREENVILLE ZOO, INC. D/B/A THE GREENVILLE ZOO FOUNDATION FOR SUPPORT OF THE GREENVILLE ZOO

SUMMARY BACKGROUND:

This Resolution approves an Agreement between the City and Friends of the Zoo, D/B/A The Greenville Zoo Foundation for support of the Greenville Zoo. This Agreement defines the responsibilities of both parties and has a term of two years with automatic one-year renewals unless otherwise terminated.

IMPACT IF DENIED:

The Agreement will not be approved.

FINANCIAL IMPACT:

N/A

REQUIRED SIGNATURES

Department Director

DocuSigned by:
Tara Eaker
C13C9A7C3A764D2...

OMB Director

DocuSigned by:
Matt Egan
44928B1C67864BE...

City Attorney

DocuSigned by:
Ligh Padetti
5CBFADF32244F8...

City Manager

DocuSigned by:
John F McDonough
FDC2AC15040F440...

A RESOLUTION

TO APPROVE AN AGREEMENT BETWEEN THE CITY OF GREENVILLE AND FRIENDS OF THE GREENVILLE ZOO, INC. D/B/A THE GREENVILLE ZOO FOUNDATION FOR SUPPORT OF THE GREENVILLE ZOO

WHEREAS, the city of Greenville (“City”) owns and operates the Greenville Zoo, located at 150 Cleveland Park Drive within Cleveland Park in downtown Greenville (the “Zoo”); and

WHEREAS the Friends of the Greenville Zoo, Inc. d/b/a the Greenville Zoo Foundation (“Foundation”) is a nonprofit corporation created for the primary purpose of cooperating with and raising and providing financial and other support for the Zoo through a combination of memberships, grants, events, sponsorships, donations, and other resources; and

WHEREAS, the City and the Foundation desire to work in a collaborative effort in support of the Zoo;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, the Cooperative Operating Agreement for the Greenville Zoo and First Addendum thereto are approved in substantially the same form as attached hereto as Exhibit A. The City Manager, in consultation with the City Attorney, may make or accept minor modifications to the wording and designations of the attached documents as may be necessary or appropriate, provided there is no compromise of the substantive purposes of the Council action. Should the City Manager or City Attorney, or both, determine that any modifications of previously negotiated terms is significant and warrants further action by Council, then the matter shall be presented to Council for further action before the final execution.

RESOLVED THIS _____ DAY OF _____, 2022

MAYOR

Attest:

CITY CLERK

EXHIBIT A
COOPERATIVE OPERATING AGREEMENT FOR THE GREENVILLE ZOO

THIS **COOPERATIVE OPERATING AGREEMENT FOR THE GREENVILLE ZOO** (the "Agreement") is made and entered into this _____ (the "Effective Date"), by and between the City of Greenville, South Carolina, a municipal corporation and political subdivision of the State of South Carolina (the "City"), and Friends of the Greenville Zoo, Inc., d/b/a the Greenville Zoo Foundation, a South Carolina non-profit corporation, whose address is 150 Cleveland Park Drive, Greenville, South Carolina 29601 (the "Foundation").

WITNESSETH:

WHEREAS, the City owns and operates the Greenville Zoo, located at 150 Cleveland Park Drive within Cleveland Park in downtown Greenville (the "Zoo");

WHEREAS, the Foundation is a nonprofit corporation organized under the laws of the State of South Carolina that was created for the primary purpose of cooperating with and raising and providing financial and other support for the Zoo through a combination of memberships, grants, events, sponsorships, donations, and other resources; and

WHEREAS, the City and the Foundation desire to enter into an agreement whereby the City and the Foundation shall work in a collaborative effort in support of the Zoo as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

1. Responsibilities of the City. The City shall be responsible for all operational aspects of the Zoo, including, but not limited to, the following:
 - a. Zoo Animals. The City shall be responsible for the acquisition, care, and disposition of all animals in the Zoo's collection; provided, however, in order to ensure that fundraising communications and related initiatives by the Foundation align with the long-term strategy of the Zoo, the City shall (i) proactively seek input from the Foundation when exploring the potential acquisition or dispositions of animals, and (ii) communicate any planned acquisitions or dispositions to the Foundation prior to such action.
 - b. Zoo Facilities. Contingent upon the necessary appropriations from Greenville City Council, the City shall be responsible for all aspects of the management, upkeep, and maintenance of all Zoo facilities within AZA standards. The City shall communicate with the Foundation regarding fundraising needs to ensure alignment with long-term strategy.
 - c. Zoo Employees. The City shall be responsible for the employment and compensation of all Zoo personnel, who shall be responsible for all aspects of Zoo operations, including, but not limited to, animal curatorial services, facility operations, gate management, educational programming, concessions and sales, repair and maintenance, planning, general zoo promotion, and facility development. Such employees of the City may work with the Foundation on Foundation activities and events when such assistance is necessary in keeping with the City's management of the Zoo; provided, however, that the City shall make reasonable efforts not to interfere with or duplicate the Foundation's efforts. Notwithstanding the above, it is further recognized that the Foundations efforts may include, with prior notice to the City, active participation with the City in the City's planning and execution of certain promotional activities as well as standalone promotional activities sponsored by the Foundation, such as event promotion or special project promotion.
 - d. Zoo Master Plan. The City shall be responsible for the development and management of the Zoo Master Plan, including, but not limited to, user surveys, strategies, and

implementation schedules for facility development and programming, with respect to both short-term and long-term improvement plans.

- (i) The City shall appoint a Zoo Master Plan Committee of seven to ten members that shall oversee development of the Zoo Master Plan, and the Foundation shall be entitled to designate two representatives (either Foundation board members or their designees) to serve on the committee.
 - (ii) Specific responsibilities regarding the development and implementation of the Zoo Master Plan shall be set forth in a separate memorandum of understanding or other agreement between the parties.
- e. Budgets. Contingent upon the necessary appropriations from Greenville City Council, the City shall develop and manage all annual operational and capital improvement budgets for the Zoo. In order to ensure alignment of fundraising needs and the long-term strategy of the Zoo, the City shall seek input from the Foundation regarding the capital improvement budget each year, and discuss potential deviations from previously approved capital improvement projects; however, the parties expressly acknowledge and agree that the City is not permitted to, and will not, share its final budget proposal with the Foundation prior to submission to the Greenville City Council. The City shall share finalized and approved operational and capital budgets of the Zoo with the Foundation.
- f. Use Restrictions. The City acknowledges that funds may be donated to the Foundation with specific use-restrictions or based on targeted capital improvement campaigns and agrees to use any such funds exclusively for their intended use in accordance with the documented use restrictions provided to the City by the Foundation. In the event that the City cannot use any such funds for their intended use, the City shall return such funds back to the Foundation, which shall be responsible for communicating said changes to its donors and subsequently returning the funds to its donors when required.
- g. Admissions. The City shall be responsible for the receipt and administration of all entrance admissions to the Zoo.
- h. Membership Program. The City shall be responsible for the receipt and administration of the Zoo membership (e.g., annual admissions pass) program, which shall be developed in coordination with the Foundation and subject to the approval of both parties. The City shall provide to the Foundation access to the City's member contact information via integration of the City's membership software with the Foundation's donor software, with the implementation and maintenance of the software integration being at the sole cost and expense of the Foundation, and shall allow the Foundation to communicate directly with members for effective donor cultivation and non-commercial solicitation. Each party is responsible for taking commercially reasonable efforts to: (a) secure their respective computer facilities and (b) prevent unauthorized access to the shared data contemplated under this subsection. No information obtained by the Foundation from the City under this subsection shall be disclosed to a third-party except for the limited purpose of facilitating communications from the Foundation to the members, or as otherwise pre-approved by the City in writing. The Foundation shall ensure that all solicitation by the Foundation of individuals identified from the City's membership information clearly communicates to the recipient that the purpose of the solicitation is for non-commercial purposes solely in furtherance of the Foundation and its efforts to support the Zoo. Additionally, the recipients of the solicitation shall be notified they may opt out of further solicitations upon request. Revenues from the membership program shall be split as follows:
 - (i) All revenues from memberships costing \$109.99 or less shall be collected and retained by the City and expended or reserved by the City for the benefit of the Zoo.

- (ii) All revenues from memberships costing \$110.00 or more shall be collected by the City and transferred to the Foundation on a quarterly basis (no later than September 30th, December 31st, March 31st, and June 30th) for each calendar year this Agreement remains in effect. All such revenues shall be expended or reserved by the Foundation in accordance with this Agreement.

For the avoidance of doubt, any membership level developed by the Foundation during the course of this Agreement that has associated membership or admission benefits must be approved by the City, in writing, prior to implementation, even though such membership or admission benefits may be separate from the Zoo membership (annual admissions pass) program.

- i. Concessions and Sales. Unless otherwise expressly set forth in this or a subsequent Agreement, the City shall be responsible for the development, receipt, and management of all Zoo concessions and related sales, including, but not limited to, food and non-food concessions, the Zoo Gift Shop, equipment rentals, third-party concessions vendors, and miscellaneous sales at both Zoo and off-Zoo locations.
- j. Unsolicited Donations. To the extent reasonably feasible, the City shall direct to the Foundation all unsolicited donations or other gifts made for the benefit of the Zoo (e.g., general or capital improvement donations, "Adopt-an-Animal" donations, etc.). The City shall provide necessary signage or other materials at the Zoo's ticket gates and on the Zoo's website.
- k. Community Events. The City shall develop and manage the following community events at the Zoo, either on its own or in coordination with the Foundation or other third parties: (1) Boo in the Zoo, (2) Zoo Lights, and (3) Brew in the Zoo.
 - (i) The City shall be responsible for soliciting and managing sponsors for these events; however, the City and the Foundation shall collaborate to ensure consistent sponsorship pricing and messaging across events, and the Foundation shall include these event sponsorship opportunities in its corporate sponsorship solicitation materials.
 - (ii) The City and the Foundation shall collaborate to cross-promote their events and to provide reasonable facility access.
- l. Educational and Other Programming. The City shall be responsible for the development, approval, and delivery of all Zoo programs, including all education programs offered by the Zoo. Foundation may provide occasional supplemental support for Zoo programs such through applying for and managing related public grants. Prior to making application, and for the purposes of this Section, the Foundation shall provide the City with notification, through the Director of the Zoo, of the grant opportunities it is pursuing in order to avoid conflict or duplication of effort.
- m. AZA Accreditation. The City shall prepare all applications for, and develop, approve, and manage all programs and activities that support the Zoo's continued accreditation from the Association of Zoos and Aquariums (AZA).
- n. Marketing Efforts. The City shall be responsible for the development, approval, and management of all promotional, communications, and marketing efforts and programs for the Zoo. Promotional development shall be done in coordination with the Foundation when feasible and with the understanding that, in accordance with Section 2(m) below, the Foundation shall develop, approve, and manage all fundraising communications and marketing programs for the Foundation.
- o. Naming Rights. Notwithstanding anything else in this Agreement, the City shall have final approval of all naming rights, naming contests, and sponsorship opportunities for Zoo

facilities and events. The City shall provide to the Foundation any relevant City-wide guidelines for naming rights or exhibit sponsorships as they pertain to the Zoo and shall collaborate with the Foundation to create and approve a holistic list of naming rights and sponsorship opportunities with pre-approved pricing that includes all relevant exhibits and sponsorship opportunities. To the extent Foundation successfully solicits event, annual or periodic sponsors within the scope of the pre-approved pricing and sponsorship opportunities, Foundation does not require reapproval from City to effectuate said sponsorship(s); however, any permanent naming rights will be subject to final City approval once a specific sponsor is identified. Any naming contests shall be pre-approved by the City and managed by the Foundation.

- p. Zoo Website. The City shall maintain and manage the Zoo website and shall include thereon a prominent link to the Foundation's website, as well as a donation link or message directing donors to the Foundation's website.
 - q. Foundation Board. The City shall designate a representative to serve as an ex-officio member of the board of directors of the Foundation. The ex officio member shall be invited to attend all meetings, but shall not be entitled to attend executive sessions involving the discussion of Foundation personnel matters or any potentially adversarial matter between the City and Foundation. Foundation will otherwise maintain all aspects of its board members in accordance with its bylaws.
 - r. Focus Groups. For any focus groups or committees formed by the City for the Zoo, the City shall designate at least two spots for Foundation representatives, who shall be determined by the Foundation.
 - s. Public Meetings. When possible, the City shall provide advance notice to the Foundation if the City anticipates that the Zoo will be a topic for a public City meeting or working session with Greenville City Council.
 - t. Volunteer Opportunities. The City shall develop and manage all Zoo volunteer programs or other volunteer opportunities, if necessary, in the sole discretion of the City. For the avoidance of doubt, Foundation may solicit and manage volunteer opportunities for Foundation's events and fundraising efforts.
 - u. Other. During the term of this Agreement, the City shall collaborate with the Foundation on the general needs of the Zoo to help determine which, if any, specific Zoo projects should be targeted for fundraising. If the parties agree to commence fundraising for a specific capital improvement project, and the Foundation fully raises the needed funds, the City shall not cancel such project without first reviewing with the Foundation.
2. Responsibilities of the Foundation. The Foundation shall serve as the primary fundraising entity for the Zoo and, as such, shall be responsible for the following:
- a. Fundraising Strategy. The Foundation shall develop and implement a long-term fundraising strategy for the Zoo and periodically (and regularly) communicate with the City regarding such strategy and any relevant updates. At a minimum, the Foundation shall provide an annual fundraising report to the City and shall otherwise communicate regularly with the Zoo Administrator on said matters as appropriate.
 - b. Fundraising Support. The Foundation shall be responsible, where feasible, for providing financial and resource support for the operational and capital improvement needs of the Zoo, including, but not limited to, by developing and administering a variety of fundraising and Foundation membership programs, including, but not limited to, grant writing, naming rights, Foundation memberships, annual fundraising campaigns, planned giving, major gifts, events, and sponsorships. Funds raised by the Foundation may not be used to provide donations to organizations other than the Zoo, except for those needed for the Foundation's operational requirements or in support of the Zoo's AZA accreditation, as

defined by the City or as defined in the Foundation's articles of incorporation and the application for federal tax 501(c)(3) recognition.

- c. *Giving Programs*. In order to maximize donor cultivation, overall fundraising capacity, and tax deduction capability for donors, with limited exceptions, all giving programs, including solicited and unsolicited donations and the "Adopt-an-Animal" program, shall be managed by and directed to the Foundation. Exceptions include donations for conservation and other targeted campaigns pre-approved by both the City and the Foundation.
- d. *Use Restrictions*. Because funds may be donated to the Foundation with specific use-restrictions or based on targeted capital improvement campaigns, the Foundation shall ensure that any use-restricted funds provided to the City through the Foundation's non-membership fundraising efforts adhere to the use intended for the provided funds. Accordingly, the Foundation shall document any use-restrictions for funds that are provided to the City. In the event that the City cannot use any such funds for their intended use and returns such funds back to the Foundation, the Foundation shall be responsible for communicating said changes to its donors and subsequently returning such funds to the donors when required.
- e. *Fundraising Events*. The Foundation shall have the right to develop and manage the following fundraising events for the Zoo, to the extent the Foundation seeks to have said events in a given year, which may take place at the Zoo or at another event, either on its own or in coordination with the City or other third parties: (1) Annual Gala; (2) Sippin' Safari; (3) Zoo Tunes; (4) Zoom Through the Zoo; and (5) other new fundraising events subject to express pre-approval by the City.
 - (i) The Foundation shall be responsible for soliciting sponsors for these events; however, the Foundation and the City shall collaborate to ensure consistent sponsorship pricing and messaging across events.
 - (ii) The Foundation and the City shall collaborate to cross-promote their events and to provide reasonable facility access.
- f. *Zoo Master Plan*. The Foundation shall serve in an advisory capacity in the development of the Zoo Master Plan through service on the City's Zoo Master Plan Committee. The Foundation shall be entitled to designate two representatives (either Foundation board members or their designees) to serve on the committee. Specific responsibilities regarding the development and implementation of the Zoo Master Plan shall be set forth in a separate memorandum of understanding or other agreement between the parties.
- g. *Budgets and Financials*. The Foundation shall develop and manage its own annual budget; however, in order to ensure transparency, the Foundation shall share its approved annual budget and shall secure an annual third-party review of its financials each year. The budget and third-party financial review shall be provided to the City within a reasonable period of time following completion of same.
- h. *Bank Accounts*. The Foundation shall deposit all funds raised by the Foundation with a reputable financial institution.
- i. *Foundation Employees*. The Foundation shall be responsible for the management of all Foundation personnel involved in Zoo-related activities. Such personnel of the Foundation may work with the City on Zoo-related activities and events when such assistance is necessary in keeping with the Foundation's purpose and/or the City's management of the Zoo; provided, however, such personnel shall not seek to duplicate functions performed by employees or volunteers of the City. At all times, Foundation employees shall be under the direction and control of the Foundation.

- j. Membership Program. The Foundation shall manage high-level supporting memberships in the Zoo and the Foundation (e.g., Friends Giving Society) to complement the City's membership (annual admissions pass) program; provided, however, that the Foundation shall obtain written approval from the City, prior to implementation, for any membership level that has associated membership or admission benefits or any other benefit affecting Zoo operations.
- k. Direct Solicitations. The Foundation shall be responsible for the development and management of all donor direct solicitation efforts to provide equipment, materials, and supplies for Zoo operations, development, and educational programming; provided that such efforts have previously been reviewed and approved by the City, which approval shall not be unreasonably withheld. In the event that unexpected or expeditious donor direct solicitation needs or opportunities develop, the Foundation will promptly communicate such activity with the City for contemporaneous approval.
- l. AZA Accreditation. The Foundation shall support the City's efforts to maintain the Zoo's continued AZA accreditation.
- m. Marketing Efforts. The Foundation shall be responsible for the development, approval, and management of all fundraising communications and marketing programs for the Foundation. Such initiatives may include donation appeals, fundraising campaigns, membership cultivation, and other fundraising events.
- n. Naming Rights. The Foundation shall develop and solicit all naming rights and sponsorship opportunities for Zoo facilities and events. The Foundation shall collaborate with the City to create and approve a holistic list of naming rights and sponsorship opportunities with pre-approved pricing that includes all relevant exhibits and sponsorship opportunities. The Foundation shall be responsible for soliciting all relevant donors based on identified opportunities.
- o. Foundation Website. The Foundation shall maintain and manage the Foundation website and shall include thereon a prominent link to the Zoo website.
- p. Foundation Board. The Foundation shall invite the City's representative serving as an ex-officio member of the Foundation board to attend all meetings, but shall not be entitled to attend executive sessions involving the discussion of Foundation personnel matters or any potentially adversarial matter between the City and Foundation. The Foundation shall otherwise maintain all aspects of its board members in accordance with its bylaws.
- q. City Focus Groups. In the event that the City forms any focus groups or committees with respect to the Zoo, the Foundation shall designate a number of representatives for service on such groups or committees equal to the number of spaces reserved by the City for the Foundation; provided that the City shall designate at least two spots for Foundation representatives on any such group or committee.
- r. Office Space. The City shall continue to provide office space in the Zoo administration building to the Foundation as it has customarily done in in the past. Except with respect to the City-provided terminal used to provide the data contemplated above in Subsection 1(h), the Foundation shall maintain separate IT facilities with no interconnection to the City's IT facilities. The Foundation shall be responsible for insuring its personal property contained therein at its sole expense.
- q. Other. During the term of this Agreement, the Foundation shall collaborate with the City on the general needs of the Zoo to help determine which, if any, specific Zoo projects should be targeted for fundraising. If the parties agree to commence fundraising for a specific capital improvement project, and the Foundation fully raises the needed funds, the City shall not cancel such project without first reviewing with the Foundation.

3. Term of Agreement. This Agreement shall commence on the Effective Date and shall continue for a term of two years thereafter, unless earlier terminated by the parties as provided herein, and will automatically renew for successive one year terms unless terminated by either party with no less than 90 days written notice to the other party prior to the end of the original or any renewal term.
4. Termination of Agreement.
 - a. For Convenience. Either the City or the Foundation, in its sole discretion, may terminate this Agreement, in whole or in part, at any time without cause by providing at least 30 calendar days' prior written notice to the Foundation. Termination of this Agreement shall not relieve either party of any obligation incurred one to the other prior to termination.
 - b. For Cause. This Agreement may be terminated, in whole or in part, by the City or the Foundation on written notice to the other if such party materially breaches any provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured within 30 calendar days after receipt of written notice of such breach from the non-breaching party. Termination of this Agreement shall not relieve either party of any obligation incurred one to the other prior to termination.
5. RESERVED.
6. Records. The Foundation shall maintain accurate and detailed books, records, correspondence, and accounts regarding the services provided to the City hereunder and shall do so in accordance with sound cost accounting and generally accepted accounting principles and procedures. Upon reasonable advance notice and no more than one time per year except for good cause shown, the City may inspect the financial books and records of the Foundation at the City's sole cost and expense. Upon reasonable advance notice, the City will make its Zoo membership-related financial records available to the Foundation, subject to any redaction required by the City of any personally identifying information that might be contained therein.
7. Compliance with Laws; Business Licenses. The Foundation shall comply with all applicable federal, state, county, and City laws, rules, regulations, and ordinances in the performance of its obligations hereunder, including, but not limited to, the procuring of any necessary business license(s).
8. Independent Contractor. The Foundation shall at all times be considered an independent contractor hereunder, and neither the Foundation nor its employees or volunteers shall under any circumstances be considered employees of the City. The City shall not be legally responsible for negligence or other wrongdoing, either intentional or unintentional, by the Foundation or the Foundation's employees or volunteers. The City shall not provide to the Foundation or its employees or volunteers any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees.
9. Insurance. The Foundation shall procure and maintain insurance for the duration of this Agreement against any and all claims which may in any way arise from, or in connection with, the performance hereunder by the Foundation, its subcontractors, subconsultants, employees, volunteers, agents, or representatives. Such insurance shall be in the following minimum amounts:
 - a. Commercial General Liability \$1,000,000 per occurrence
The commercial general liability policy is to contain or be endorsed to name the City and its officers, officials, employees, agents, and representatives as additional insureds as respects the liability arising out of the services performed under this Agreement. Such coverage shall be primary to the extent of the Foundation's negligent acts or omissions or willful misconduct and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - b. Comprehensive Automobile Liability \$1,000,000 per occurrence

c. Workers' Compensation Statutory Limits

The Foundation shall maintain workers' compensation insurance for all of the Foundation's employees who are in any way connected with the performance under this Agreement. Such insurance shall comply with all applicable state laws and provide a waiver of subrogation against the City and its officers, officials, employees, agents, and representatives unless otherwise approved by the City.

d. Employer's Liability \$500,000/\$500,000/\$500,000

Certificates showing proof of such insurance shall be submitted to the City at inscerts@greenvillesc.gov within 30 days of execution of this Agreement. Further, it shall be an affirmative obligation upon the Foundation to advise the City, by email to inscerts@greenvillesc.gov, within five business days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a curable breach of this Agreement.

Insurance shall be placed with insurers with a current A.M. Best's rating of not less than A:VII and licensed to do business in the State of South Carolina, unless otherwise approved by the City, and the Foundation shall not self-insure in satisfaction of any insurance requirement set out herein without the express written consent of the City.

The Foundation shall be fully and solely liable for any costs or expenses arising as a result of a coverage deductible, co-insurance penalty, or self-insured retention, including any loss not covered because of the operation of such deductible, co-insurance penalty, or self-insured retention.

The Foundation shall cause each of its subcontractors or subconsultants performing services hereunder, if any, to purchase and maintain insurance of the type(s) specified herein, unless the Foundation's insurance provides coverage on behalf of each such subcontractor or consultant.

During the term of this Agreement, the City shall maintain at its sole expense such types and limits of insurance that meet or exceed those set forth above as part of its standard insurance program.

10. Indemnification. The Foundation shall indemnify, defend, and hold the City and its officers, officials, employees, agents, and representatives, free and harmless from and against any and all losses, injuries, death, damages, liabilities, claims, deficiencies, demands, actions, suits, judgments, interest, awards, penalties, fines, costs or expenses of any kind or nature, including reasonable attorneys' fees and costs, the costs of enforcing any right to indemnification hereunder, and the costs of pursuing any insurance providers, but not to exceed the Foundation's net revenue for its previous two fiscal years or the limits of the Foundation's insurance, whichever amount is greater, (collectively, "Losses"), arising out of or occurring in connection with any claim for property damage or personal injury, including death, to the extent resulting from or arising out of the negligence, errors, omissions, or willful misconduct of the Foundation, its subcontractors, subconsultants, employees, volunteers, agents, or representatives under the Agreement. The Foundation shall have no obligation to indemnify the City for Losses resulting from or arising out of the gross negligence or willful misconduct of the City or its employees. Notwithstanding the above the City shall have the option to appear and defend such action or claim on its own behalf and at its own cost and risk, with counsel of its own choosing. The Foundation shall not enter into any settlement without the City's prior written consent. The foregoing indemnity shall survive the expiration or termination of the Agreement.

11. Notices. All notices required hereunder shall be in writing and shall be deemed to have been duly given if either hand delivered or mailed by certified or registered mail, postage prepaid, addressed to the party to whom intended at the address provided below or at such other address as such party shall hereinafter designate to the other party in writing:

City: City of Greenville
Attn: City Manager _____

206 South Main Street (29601)
P.O. Box 2207
Greenville, South Carolina 29602

Foundation: Greenville Zoo Foundation
Attn: Lydia Thomas
150 Cleveland Park Drive
Greenville, SC 29601

Any notice so mailed shall be deemed to have been given and received by the party to whom addressed on the third day after the date such notice was properly deposited in the mail.

12. Assignment; Successors and Assigns. The rights and obligations herein shall not be assigned by either party, in whole or in part, without the prior written consent of the other party. The rights and obligations herein shall inure to, and be binding upon, the respective successors and permitted assigns of the parties hereto.
13. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto and may not be modified or amended except in writing signed by all parties hereto.
14. Severability. If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement.
15. Nonwaiver. The waiver by the City or the Foundation of a breach of this Agreement shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of the breach.
16. Governing Law and Venue. This Agreement and the rights, obligations, and remedies of the parties hereto, shall in all respects be governed by and construed in accordance with the laws of the State of South Carolina, without reference to its conflict of law provisions, and venue for the resolution of all disputes regarding the terms of this Agreement or the performance thereunder, whether in law or in equity, shall be exclusively in the federal or state courts sitting in Greenville County, South Carolina.

[Signatures appear on the following pages]

FOR THE PARTIES HERETO, the duly authorized representatives of the parties have executed this Agreement as of the date first above written.

CITY OF GREENVILLE, SOUTH CAROLINA

John F. McDonough

**FRIENDS OF THE GREENVILLE ZOO, INC.,
d/b/a THE GREENVILLE ZOO FOUNDATION**

Name: Lydia L. Thomas
Title: Executive Director

Name: Grover Martin
Title: Chair of the Board of Directors

Approved as to form:

City Legal Department

Reviewed:

City Director of Parks, Recreation & Tourism

Reviewed:

City Zoo Administrator

Reviewed:

City Director of OMB

Reviewed:

City Risk Manager

Received:

City Purchasing Administrator

**FIRST ADDENDUM TO
COOPERATIVE OPERATING AGREEMENT FOR THE GREENVILLE ZOO**

This FIRST ADDENDUM TO THE COOPERATIVE OPERATING AGREEMENT FOR THE GREENVILLE ZOO (“Addendum”) effective as of _____, 2022, is made and entered into by and between the City of Greenville, South Carolina (“City”), and Friends of the Zoo, Inc. d/b/a the Greenville Zoo Foundation (the “Foundation”) (each a “Party”, and collectively, the “Parties”).

RECITALS

WHEREAS, the City and the Foundation entered into the Cooperative Operating Agreement for the Greenville Zoo, dated _____ (the “Agreement”), for the purpose of defining responsibilities of both Parties respecting the Zoo; and

WHEREAS, the Parties desire to amend the Agreement as more particularly set forth in this Addendum.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Addendum, the Parties agree as follows:

ADDENDUM

1. Capital Projects

- a. The Foundation commits to funding the Giraffe Feeding Deck and the Africa Pathway capital projects (collectively “FY23 Capital Projects”), at a minimum total of \$450,000, as estimated by the City, in FY22.
- b. The City commits to carrying out the FY23 Capital Projects subject to their funding by the Foundation pursuant to 1(a).
- c. The City and the Foundation will work together to determine other capital projects to be funded by the Foundation in FY23 and/or FY24.

2. Reporting. The Foundation shall make a biannual report to Council at a regularly scheduled meeting providing an overview of fundraising progress, including total dollar amounts collected for capital projects and total dollar amounts committed for capital projects. The first such report shall be made in person by Foundation representatives and take place at the first regularly scheduled meeting of City Council in November 2022.

3. Effect of the Addendum on the Agreement. This Addendum is only intended to amend and supplement the Agreement as stated herein and all other terms and conditions of the Agreement are intended to remain in full force and effect as if fully restated herein.

4. Defined Terms. Any defined term used in this Addendum, not separately defined herein, shall have the same meaning and usage as the term is used and defined in the Agreement.

[Signature Page to Follow]

FOR THE PARTIES HERETO, the duly authorized representatives of the parties have executed this Addendum as of the date first above written.

CITY OF GREENVILLE, SOUTH CAROLINA

John F. McDonough

**FRIENDS OF THE GREENVILLE ZOO, INC.,
d/b/a THE GREENVILLE ZOO FOUNDATION**

Name: Lydia L. Thomas
Title: Executive Director

Name: Grover Martin
Title: Chair of the Board of Directors