

HATTIESBURG ZOO AGREEMENT

This Agreement, effective the 1st day of October, 2015 between the City of Hattiesburg (hereafter sometimes "the City") and the Hattiesburg Convention Commission (hereafter sometimes "the Commission");

RECITALS

1. Senate Bill 3232 approved May 3, 1991, creates the Hattiesburg Convention Commission for the promotion of conventions and tourism. [SECTION 2(1)]
2. SECTION 4 of the Act states in part,

The Commission shall have jurisdiction and authority over all matters relating to the establishment, development, construction, furnishing and equipping of convention and tourism-related facilities within the City of Hattiesburg, including the authority to enter into such contracts and agreements as may be necessary to carry out the intent of this act.....
3. SECTION 5 of the Act refers to the provision of funds for the construction, furnishing, equipping, erection and operation of tourism and convention facilities. The Commission is authorized to make contracts in that respect and has full and sole discretion and authority to do so as long as it complies with the law.
4. The Commission, created by Legislative act, is a separate and independent body, corporate and politic. Its members are appointed by the Mayor and confirmed by the City Council. The Commission seeks to function with the City in common effort to achieve tourism growth and responsible stewardship.
5. All funds for the construction, operation and maintenance of Convention Commission facilities are derived solely from operational revenue and the 2% Food and Beverage tax. No property ad valorem taxes are involved.
8. The City has requested the Commission to provide operational funding, operational management, marketing, staffing and overall management and development of the Hattiesburg Zoo and related property. The Commission is authorized to, and accepts such request.

WITNESSETH

Therefore, in consideration of the foregoing and the terms and conditions hereinafter contained, the City and the Hattiesburg Convention Commission do hereby agree as follows:

Article I SCOPE

The Scope of contract shall be to provide operational funding, operational management, visitor marketing, tourism growth, general staffing and overall management and development of the Hattiesburg Zoo, a cultural and tourism venue owned by the City of Hattiesburg. Excluded from this contract are the tennis courts, baseball field, and playground equipment and playground area, all of which will remain under the control and direction of the City of Hattiesburg.

Article II
DURATION OF CONTRACT

The Commission shall begin the herein described duties under this contract on October 1, 2015. These contracted duties and responsibilities shall be performed by the Commission until September 30, 2020, or as otherwise provided by law. Six months prior to the culmination of the contract as set forth herein, a renewal option for additional years shall be available at the pleasure of the City and the Commission.

Article III
COVENANT AGAINST CONTINGENT FEES

The Hattiesburg Convention Commission shall comply with all relevant federal, state and local laws. The Commission warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Commission, to secure this contract, and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the awarding of this contract. For evidenced breach or violation of this warranty the City shall have the right to annul this contract without liability.

Article IV
MANAGEMENT AUTHORITY

The City of Hattiesburg authorizes the Hattiesburg Convention Commission as their duly appointed agent and designee, as Owner's Representative with respect to all matters related to the Hattiesburg Zoo. Further, the City understands that it is the intent of the Commission to operate the Hattiesburg Zoo in a manner that seeks to maximize the community and tourism value of the Zoo for the purposes of providing economic return, quality of life, and public enjoyment while seeking to increase operational revenue and insure efficiency of expenditures.

Execution of this contract by the City shall designate the Hattiesburg Convention Commission as the Management Agency of record for the Hattiesburg Zoo. The Hattiesburg Convention Commission shall be authorized to act on behalf of the City with regard to all contractual matters including zoo management and marketing, evaluation, approval and contracting of current and future outsourced services, establishment of operational procedures, development and implementation of reasonable operational policies and procedures for all users, provision of data and information, collection of revenues and application of same towards operations, as well as contact with the press, media and general public. The Hattiesburg Convention Commission shall have sole and complete authority over and with respect to personnel employment, including the right to hire and terminate for cause or for considerations of operational performance and efficiency and such other rights as are accorded by law. However, the City may at all reasonable times review and inspect operational management, marketing, and maintenance programs and procedures under this agreement and amendments thereto.

Article V
GEOGRAPHICAL DEFINITION

All areas contained within the Zoo fence bounded on the west by Gordon's Creek, the east by South 17th Avenue, the North by Hardy Street and the South by parking area and entry to the Zoo; includes the former carousel location and adjacent building, as well as Kamper Park Pavilions.

Article VI
ECONOMIC DEFINITION

Contract shall include all income and expense including, but not limited to; personnel, marketing, and operations. Items listed in the City of Hattiesburg Expenditure Report – Kamper Park Zoo Division Budget (2008) form the basis for expense and income projections. Items not included in the budget but currently in place and necessary for operation will remain the responsibility of the City, which it agrees to continue in full force; such items include water, property and liability insurance.

Article VII
EQUIPMENT

The City agrees that all Zoo-specific equipment or equipment assigned to the Zoo will remain available as required for zoo operations. City agrees to permit use of critical specialty equipment necessary for achieving Zoo improvements to qualified and approved Convention Commission operators (e.g., backhoe, dump truck, etc.).

Article VIII
INUREMENT

All operating revenue and donations at the Zoo will accrue to Hattiesburg Convention Commission. All physical or capital development will inure to the benefit of the owner (City of Hattiesburg) including; branding, marketing products and activities, physical improvements, building, constructions and other enhancements.

Article IX
TERMS

Both parties agree that the intent of this contract is, in part, to reduce expenditures by the City of Hattiesburg in operating the Hattiesburg Zoo. In that spirit, the HCC commits to implement reasonable measures that increase operational revenue and reduce operational expenditures. Effective June 1, 2012, the Hattiesburg Convention Commission agreed to accept full financial responsibility for any subsidy requirements necessary for operation of the Hattiesburg Zoo. This contract will extend that financial responsibility of the Commission as long as the contract remains in force.

Both parties enter into this agreement committing to a mutually agreeable and beneficial partnership that provides ongoing benefit to the City of Hattiesburg, while not financially harming the Hattiesburg Convention Commission. As such, all parties agree to allow for the review of the financial status, including annual profit and loss analysis, of the Zoo operations at mutually agreeable times during the term of this contract.

Concurrently with any review hereinabove provided, or in lieu thereof, and pursuant to the provisions of Article II hereof, either City or HCC may elect to either terminate or renew the contract.

Article X
INDEMNIFICATION FOR CLAIMS AND LIABILITY TO THE EXTENT PERMITTED BY LAW:

(a) The Hattiesburg Convention Commission and its agents, assigns or licensees shall be indemnified by the City of Hattiesburg for any and all damages to property or persons which shall save harmless their officers, agents,

and employees from all suits, claims, actions, or damages of any nature whatsoever resulting from the operations of the Zoo, performance of work under this contract or any pre-existing conditions of this project; provided however, this indemnification shall not extend to negligent acts or omissions of the Commission. The City of Hattiesburg shall maintain its current general liability policies with any endorsements required to cover their ownership of the Zoo facilities as well as fire, hazard and extended coverage insurance on all buildings and structures comprising the Zoo facilities.

(b) The City shall be indemnified by the Hattiesburg Convention Commission for any and all damages to property or persons and shall save harmless its officers, agents, and employees from all suits, claims, actions, or damages of any nature whatsoever resulting from the performance of duties under this contract or any pre-existing conditions of the Commission, provided however, this indemnification shall not extend to negligent acts or omissions of the City. The Hattiesburg Convention Commission and its agents, assigns or licensees shall maintain in effect their current general liability policies with any endorsements required to cover their operation and management of the Zoo facilities.

Article XI

ASSIGNMENT OR TRANSFER

The Hattiesburg Convention Commission agrees not to assign or transfer this contract in whole without prior written approval of the City. The Commission reserves the right to assign specific performance functions named in this contract to privately contracted firms as it deems appropriate. The Commission agrees that said assignment does not waive their responsibilities or obligations under the terms of this agreement.

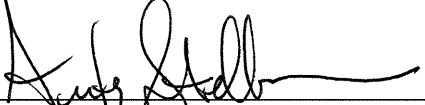
Article XIII

COVENANTS BINDING UPON SUCCESSORS AND ASSIGNS

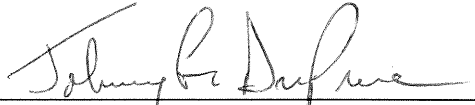
The covenants herein contained shall, except as otherwise indicated, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, said parties have hereto set their hands and affixed their seals the day and year above first written.

HATTIESBURG CONVENTION COMMISSION
One Convention Center Plaza
Hattiesburg, MS 39401

By: 
Andy Stetelman, Chairman

CITY OF HATTIESBURG
P. O. Box 1898
Hattiesburg, MS 39403-1898

By: 
Johnny DuPree, Ph.D., Mayor

Appendix A

DEFINITION

The term "facilities" as used herein, shall mean all structures and improvements planned, developed and operated under the City of Hattiesburg Budget 2008-09, entitled, Parks & Recreation, Kamper Park, Zoo Division.

ZOO DEVELOPMENT

Zoo Development - As the Commission determines appropriate and productive, it will evaluate and implement appropriate construction, installation and modification of the facility to improve its effectiveness as a cultural and tourist venue and attraction to the Hattiesburg area. The Commission agrees that any significant modifications will be discussed and reviewed with the Director of Parks and Recreation and other City personnel to preserve the overall viability of Kamper Park. Further, the Commission will review, develop, modify, increase or decrease existing and future revenue streams to improve the financial viability of the Zoo.

ZOO OPERATIONS

Operational Structure and Staffing - The Commission will employ all zoo personnel under the Hattiesburg Convention Commission. The Commission will additionally utilize existing knowledge and expertise of its staff to encourage economies of scale with regard to Maintenance, Operations, Events, Sales and Marketing.

The Commission maintains policies and practices that are designed to prevent discrimination against any qualified employee or applicant on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, disability and medical condition to the extent protected by law. This policy of nondiscrimination applies to all employment practices, including hiring, compensation, benefits, promotion, training, and termination.

Operations Sub-Contracting - The Commission will evaluate and act upon its findings with respect to fixed and optional sub-contracted operational contracts for the Zoo.

Marketing, Sales, Promotions, Sponsorship and Event Management - The Commission will develop, administer and oversee all sales, sponsorship and event management services for the Zoo during the terms of this contract. The Commission will identify potential Zoo group, leisure and scholastic clientele. The Commission will identify potential donors, sponsors, investors and other contributors for the purposes of enhancing the Zoo and its activities. The Commission will develop a comprehensive marketing strategy, a specific marketing plan and fund an overall marketing budget on an annual basis. In addition, the Commission will coordinate the production of marketing and collateral materials, develop contracts with potential clients, and establish a multi-year advertising campaign.