

Park Rec.
4-7-14

14-538

ANIMAL LOAN AGREEMENT CITY OF MANITOWOC'S LINCOLN PARK ZOO

THIS AGREEMENT ("Agreement") is made and entered into on this 1st day of April, 2014 by and between the City of Manitowoc, a municipal corporation, located at 900 Quay Street, Manitowoc, Wisconsin 54220, ("CITY"), for its Lincoln Park Zoo ("ZOO"), and Manitowoc County Farm Bureau, a non-profit organization, with an address of P.O. Box 130, Valders, Wisconsin 54245 ("FARM BUREAU").

RECITALS

WHEREAS, CITY, through its Park and Recreation Department, maintains the Lincoln Park Zoo ("ZOO") for the education and enjoyment of the public; and,

WHEREAS, it is advantageous for the public to experience and learn about various farm animals that are raised in the State of Wisconsin, and in this regard, CITY has created the Big Red Barn at the ZOO for the care and shelter of said farm animals; and,

WHEREAS, farm animals are loaned to the CITY through the courtesy of the Manitowoc County Farm Bureau and the Dairy Promotion Committee, Inc., from its member farmers, OWNERS of the animals; and,

WHEREAS, CITY desires, and finds it cost effective, to board farm animals loaned from local farmers, at the ZOO'S Big Red Barn to meet the CITY'S desire for public education and public enjoyment of farm animals on a limited term basis; and,

WHEREAS, both parties find the loaning of the farm animal(s) is in the best interest of the community and mutually beneficial to the parties.

NOW, THEREFORE, it is hereby understood and agreed by and between the parties hereto as follows:

I. SCOPE OF AGREEMENT. FARM BUREAU shall work with the CITY in the acquisition of farm animals from its member farmers for the 2014 season commencing May 26, 2014 and ending September 1, 2014, for the ZOO'S Big Red Barn exhibit.

A. FARM BUREAU shall:

1. Obtain signed agreements with various members of the FARM BUREAU to secure farm animals for display at ZOO, Form FB, which agreements shall be incorporated herein by reference.
2. Require farmers to provide healthy young, disease free animal(s) to the ZOO.
3. Abide by all Federal, State and Local Laws which relate to farm animals and the terms of this Agreement.

4. Make sure farmers transport and deliver agreed upon animal(s) to CITY ZOO without charge to CITY, and shall give CITY employees clear and concise verbal and written instructions as to the care and feeding of the animals at no charge to the CITY.
5. Require farmers to be responsible for all medical treatment, veterinarian care, husbandry, immobilization, or relocation of animal(s) loaned to CITY, and all medical decisions shall be at the farmer's sole discretion.
6. Require farmers to pickup and transport said animal(s) at the end of the season, or earlier as deemed necessary by the CITY, with final pickup being no later than **September 7, 2014**.
7. Require farmers to assume risk of loss, costs of delivery, pickup and transporting of said animal(s).

B. CITY shall:

1. Provide quality care for the animal(s) including feed, bedding, water and housing.
2. Take care to maintain healthy animal(s) and shall call the OWNER in the event any animal is ill or has an emergency situation. The OWNER shall determine what care, if any, to provide the animal(s). In the event the OWNER is not available, CITY shall call the FARM BUREAU for direction on how to proceed.
3. Maintain a safe environment within the ZOO for said animal(s).
4. Notify farmer within twenty-four (24) hours of any births, hatching of offspring, serious illness, escape (even if recaptured) and mortality of any animal loaned to CITY.
5. Not transfer any animal(s) on loan to another location or party beyond the contiguous boundaries of the ZOO without written permission of the farmer, except in an emergency.
6. Not allow any invasive or stressful research on the animal(s) loaned by farmer.
7. At the end of the season, CITY shall turn over to farmer all data accumulated on the animal(s) on loan during the term of this Agreement

II. CONSIDERATION. The parties acknowledge the receipt of good, valuable and adequate consideration under this Agreement. FARM BUREAU agrees that its members shall loan farm animal(s) to CITY, and CITY agrees to house, feed and care for said animals at CITY ZOO while on loan.

III. DELIVERY and PICKUP. Farmers and CITY shall agree on a mutually acceptable date and time for delivery and pickup of said animal(s). Farmers shall be responsible for transport, deliver and pickup of animal(s) in a safe manner using generally acceptable methods customary in the industry of animal transport. Upon delivery, farmers shall place the animal(s) in the ZOO exhibit area designated by CITY, without assistance from CITY, or CITY employees. Farmer shall be responsible for the pickup and transport of the animal(s) at the end of the season. All delivery and pickup of said animal(s) shall be at no cost to CITY, and without assistance of CITY employees. Animal(s) shall be delivered no later than **May 26, 2014**, and shall be picked up at the end of the season no later than **September 7, 2014**.

IV. ANIMAL WARRANTY. FARM BUREAU AND farmers warrants that title to the animal(s) is in the OWNER loaning the animal(s) to the ZOO. OWNER shall indemnify and hold harmless CITY, its employees, officers, committees and agents, for any loss, cost, claim, damage, action or expense, including attorney fees incurred as a result of a third party claim of possession, title or interest in whole or in part, to said animal(s).

V. INSURANCE. FARM BUREAU shall be responsible to carry General Liability Insurance in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, written on an occurrence bases, to cover personal injury and property damage under the terms of this Agreement. If applicable, FARM BUREAU shall carry worker's compensation in the statutory amounts. Further, FARM BUREAU shall carry any and all insurance necessary for protecting against all claims for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any operations under this Agreement, whether such operations be by FARM BUREAU, its agents, farmer members, employees or assigns, or by anyone directly or indirectly employed by the FARM BUREAU or member farmers to cover the cost of the animal and the transport of said animal and shall secure and maintain throughout the term of this Agreement, insurance of such types and in such amounts whereby FARM BUREAU, member farmers and the CITY are adequately protected against all hazards or risks resulting from the delivery, pickup, transport, care, housing, or any other term under this Agreement regarding the animal(s). Prior to performing under this Agreement and transferring of the animal(s), FARM BUREAU shall provide to the City Clerk, for approval by the City Attorney, a Certificate of Insurance evidencing coverage, from an insurance company authorized to do business in the State of Wisconsin. Said Certificate shall provide a minimum of thirty (30) calendar days written notice sent by registered mail to the City Clerk of any change, modification or cancellation of insurance coverage and shall list the City of Manitowoc as a certificate holder.

VI. Risk of Loss. Risk of loss for the animal(s) shall remain at all times with the farmer. In the event of a storm or fire resulting in property damage, and property loss of farm animals, and if the CITY's insurance covers the cost for the loss of the animals, CITY shall reimburse farmers for their property loss of the loaned animal(s).

VII. Indemnification. FARM BUREAU and member farmers shall defend, indemnify and hold harmless CITY and all its officials, officers, committees, employees, representatives and agents against any and all liability, claims, costs, damages, expenses, demands, loss, injury, including but not limited to personal injury, wrongful death, property damage, damage to animal, death of animal(s) or any other loss, cost or expense arising out of or in connection with the delivery, transport, pickup or care of said animal(s) at the ZOO under this Agreement, and agree to hold harmless the CITY its officials, officers, committees, employees, representatives and agents for any negligence of the CITY, its officials, officers, committees, employees, representatives and agents in the care, housing and custody of the animal(s).

CITY shall release FARM BUREAU and member farmers, its employees, representatives and agents, from any and all liability, claims, costs, damages, expenses, demands, loss, injury, including but not limited to personal injury, wrongful death, or property damage the animal(s) may cause to the public due to the negligence of CITY, its officials, officers, committees,

employees, representatives and agents while animal(s) is in the care and custody of the CITY at the ZOO.

VIII. Default. A material default or material breach (both hereinafter referred to as a “default”) under this Agreement shall be defined as the failure of the parties to perform any term, covenant, condition, warranty, or promise of this Agreement required to be performed. In the event of any default of this Agreement, or any of its terms or conditions by any party hereto, such party shall, upon written notice from the other party, proceed immediately to cure or remedy such default, and in any event shall cure such default within ten (10) calendar days of receipt of written notice of default. In the event of a default, the non-defaulting party shall have the option of terminating this Agreement upon written notice to the breaching party.

IX. Termination. This Agreement may be terminated by either party at any time for any reason upon ten (10) calendar days prior written notice to the other party, unless the parties mutually agree to another time period. Upon termination, farmer shall immediately, but no later than within ten (10) calendar days, remove animal(s) from CITY premises at no cost to CITY. If farmer fails to remove said animal(s) within the ten (10) calendar days, FARM BUREAU shall be responsible for removal of said animal(s).

X. Assignment. This Agreement is not assignable without prior written consent of the parties.

XI. Integration. This agreement, along with Form FB, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to matters covered hereunder.

XII. Survival of Provisions. All indemnification and hold harmless obligations shall survive the expiration or termination of this Agreement.

XIII. Notice and Demand. Any notice, demand, or communication under this Agreement by any party to the other party shall be given or delivered by first class, registered, or certified mail, postage paid, return receipt requested or delivered in person as follows to:

CITY:	CITY CLERK 900 Quay Street Manitowoc, WI 54220 920-686-6950	COPY: Recreation Team Leader City of Manitowoc 3330 Custer Street Manitowoc, WI 54220 920-686-3060
FARM BUREAU:	Roger Sinkula, President Manitowoc County Farm Bureau P. O. Box 130 Valders, WI 54245 920-775-4130	

The above addresses or designated party may be changed in any time by the parties by giving notice in writing in the manner provided above.

XIV. Amendments. This Agreement is the entire agreement between the parties and can only be modified or changed in writing executed in the same manner as this document by all parties.

XV. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns. Any transfer of any party's interest under this Agreement, shall not release the transferring party from its obligations hereunder.

XVI. Severability. If any provision of this Agreement is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and such remainder would then continue to be valid and enforceable to the fullest extent permitted by law.

XVII. Pronouns. Pronouns, verbs and/or other words in this Agreement importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.

XVIII. Section Headings. The section titles have been inserted in this Agreement primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.

XIX. Governing Law. This Agreement shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with, the law of the State of Wisconsin. All actions or proceedings relating directly or indirectly, to this Agreement whether sounding in contract or tort shall be litigated only in the circuit court located in Manitowoc County, Wisconsin.

XX. Relationship of Parties. Nothing in this Agreement nor any act of FARM BUREAU, farmer or CITY shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.

XXI. Rights and Remedies Cumulative. The rights and remedies of the parties, whether provided by law or provided by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of default, or of any remedies for any other event of default by the other parties. No waiver made by any party with respect to the performance or manner or time of any obligation of any party under the Agreement, shall be considered a waiver of any rights of a party to enforce any other obligations of the parties under this Agreement. Delay of any party in the enforcement of any term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any party's right to enforce said obligation.

XXII. Construction. All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute, or contest over the meaning, interpretation, validity or enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or

