

NIABI ZOO OVERSIGHT COMMITTEE AGENDA -- 02/04/16 at 5:00 PM
1601 River Drive, Suite 110, Moline, IL – Quad Cities Convention & Visitors Bureau



The Niabi Zoo oversight board will hold a special meeting at 5 p.m. Thursday, Feb. 4 at the conference room of the Quad Cities Convention and Visitors Bureau, 1601 River Drive Suite 110, Moline, IL for the purpose of discussing the draft Memorandum of Understanding (MOU) between the zoo and the Niabi Zoological Society.

Adjourn

The next meeting of the Niabi Zoo Oversight Committee will be Tuesday, February 16, 2016 at 5:00pm

* items are in members packets

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding is entered into between Rock Island County Forest Preserve District ("District") and the Niabi Zoological Society ("Society") this __ day of _____, 2016.

WHEREAS, the District is a body politic and corporate in the State of Illinois. The District has constructed and maintains a zoological park known as the Niabi Zoo ("Zoo") to collect and exhibit a collection of animals and to promote education and recreation to the residents of the District and visitors. The Zoo has become a major tourist attraction in Illinois, with a substantial and beneficial economic, cultural and educational impact on the District. The District has a commitment to operate, maintain and improve the Zoo; and

WHEREAS, the Society is a private, non-profit corporation organized under the laws of Illinois and with a tax exempt status under section 501(c)(3) of the Internal Revenue Code. It is separate and independent from the District. The Society was formed and has functioned for many years for the purpose of financially aiding the District in the development of the Zoo. Its mission is to promote conservation, education, exhibition of animals, research and recreation through fundraising and volunteerism; and

WHEREAS, the District and Society wish to assure the continued success and prosperous growth of the Zoo in the future. The District and the Society acknowledge that the continued operation, maintenance and improvement of the Zoo provides an invaluable asset to the residents of the District and the public in general. The District desires to continue to receive the support of the Society, its Board of Directors and volunteers. The Society desires to continue its support of the Zoo.

WHEREAS, In December of 2014, the District adopted a Strategic Action Plan for Niabi Zoo that would define the roles and responsibilities while providing a clear plan of action for the Forest Preserve District/Niabi Zoo Staff and Society. In August of 2015 the Forest Preserve Committee approved a due diligence review of the approved plan by the consulting firm, Schultz & Williams, was needed due to little to no action had been taken on implementing the plan.

WHEREAS, The due diligence review was conducted and a presentation by Rick Biddle of Schultz & Williams was made to a special meeting of the Forest Preserve Committee on October 7th, 2015. Mr. Biddle made the recommendation to better leverage the Zoo's resources the District and Society should mutually agree to move Niabi Zoo towards a revised or "new" public/private partnership with a "new" board of directors. Until a management agreement could be established Mr. Biddle recommended the creation of an Oversight Committee to assist the District with the

management of the Niabi Zoo; and

WHEREAS, The Commission has elected to create an Oversight Committee with the adoption of the Strategic Action Plan Updated October 13th, 2015 on November 17th, 2015; and

WHEREAS, by Resolution on November 17th, 2015 the Niabi Zoo Oversight Committee was established by the Forest Preserve Commission of Rock Island County, Rock Island, Illinois; and

WHEREAS, the Society acknowledges the Niabi Zoo Oversight Committee's purpose is to assist the District with the implementation of the approved November 2015 Updated Strategic Action Plan for Niabi Zoo through advisement and recommendation; and

NOW THEREFORE, for valuable consideration given and received by the District and the Society, the receipt of which is hereby acknowledged by all parties, the parties enter into this **MEMORANDUM OF UNDERSTANDING**:

1. RIGHTS AND OBLIGATIONS OF EACH PARTY

1.1 The District has the exclusive right and obligation to operate and maintain the Zoo in accordance with the policies and directives established by the District. The District and Society recognize that all District elected officials, employees and representatives, including the Niabi Zoo Oversight Committee and Director of the Zoo ("Director"), must comply with the District's ordinances and policies.

1.2 The Society is a private, non-profit corporation organized under Illinois statutes, with tax exempt status under section 501(c)(3) of the Internal Revenue Code. The Society has as its mission, to support the Zoo and raise funds to be used to develop and enhance the Zoo.

1.3 The District agrees to provide to the Society an office for administrative duties, an area for Zoo Membership sales and admission for its members, and at mutually agreeable times the Zoo grounds for fundraising purposes as it is reasonably necessary for the continued success and operation of the Society, including utilities, custodial and maintenance services and parking, as determined by the District.

1.4 The parties agree that the Society shall retain ownership of the carousel. The parties agree that matters concerning the carousel shall be controlled by the prior agreement between the parties dated June 19, 2001, incorporated herein by this reference. The Society shall be responsible for all permits, liability and operational expenditures. The District shall be reimbursed for all labor costs, repair and maintenance expenses.

1.5 The District and Society agree that the Zoo Director will oversee the management and operations of the carousel and the Society shall be provided a (100%) reimbursement of all gross carousel sales and the Society agrees to reimburse the Zoo the direct employment costs associated with the seasonal carousel employees employed

by the District.

1.6 The Zoo Director shall manage and oversee the Zoo Membership, Adopt and Memorial programs. The Society shall be provided an equal 50/50 split of the gross sales of the Zoo Membership program and a gross 100% reimbursement of Adopt program and Zoo Memorial program fees collected. The District agrees to staff the Zoo Membership admission window at no cost to the Society. The District agrees to provide free admission for those who have purchased a Zoo Membership throughout the stated term of the membership purchased. The District and Society agree that Zoo Membership program fees, promotions, discounts, the Adopt program and Zoo Memorial program should be reviewed by the Zoo Director and approved by the District and Society on a yearly basis.

1.7 The District Reimbursement of carousel sales, Zoo Membership sales, Adopt program sales and Zoo Memorials will be done at the completion of each month by the District. Within twenty (20) business days following the end of each month, District shall provide Society with a final statement of Gross Receipts. The Statement of Gross Receipts shall detail all Gross Receipts by revenue category for carousel and Zoo Membership receipts. Payment to Society for each month shall be made within thirty (30) calendar days following the issuance of the final statement of Gross Receipts.

1.8 The District agrees that the Society may offer to its members certain benefits and discounts, subject to the approval of the Zoo Director and/or the approval of the Forest Preserve Commission and Zoological Society Board of Directors.

1.9 The Society agrees to apply and receive grants whether they be applied for by the Zoo Director or Society in order to further the mission of the Society and/or benefit the Zoo. The Zoo Director shall inform the Society before the submission of any grant. The Society shall inform the Zoo Director of the Society's grant intentions. The District and Society agree that implementation of such grants shall be done cooperatively if necessary to fulfill the requirements of such grants when necessary. The District agrees that the Society has the responsibility to ensure that awarded grant requirements are followed correctly.

1.9 Both parties agree that the Zoo Director shall manage or oversee all daily aspects of the Zoo's operations, including food service and retail operations, according to the policies and procedures approved by the District in addition to any contracts not specifically addressed or discussed in this agreement.

2. MANAGEMENT OF DISTRICT AND SOCIETY AFFAIRS

2.1 The District and the Society agree that, as independent and separate entities, each entity maintains a staff and management structure. The parties recognize that for efficiency and economy purposes, the Society may request that District employee(s) time be used for the benefit of the Society and its events and programs.

2.2 Insofar as volunteer activities support the mission of the Zoo, the parties recognize that such individuals are volunteers for the District and will be directed by the Zoo Director, unless specifically designated as Society volunteers (e.g. Board of Directors).

2.3 To the extent that Society Board of Director's, employees and volunteers

conduct activities on Zoo premises, they are subject to Zoo policies and procedures with regards to, for example safety, security, animal protocol, emergency response, behind the scenes tours, use of radios, media contact, vehicle use, smoking on Zoo grounds and any other applicable policies and procedures. The Society understands that failure to comply with these policies and procedures by any Society member, employee, or volunteer may result in that individual being removed from the zoo property.

2.4 The Society agrees to adopt and follow a set of bylaws. A current copy of the Society's bylaws should be provided to the Zoo Director at all times.

2.5 The Zoo Director is the District official responsible for administration of the Memorandum for the District.

3. SOCIETY EVENTS

The District agrees that the Society may hold events on Zoo property for fundraising events or other events which benefit the Zoo. The District approves the use of Zoo facilities, grounds and personnel for such events, at the District's expense, upon approval by the Zoo Director unless otherwise agreed upon by the parties. The costs incurred by the District of such employees to work at such events shall be approved by the Zoo Director. Attendee access to exhibits shall also be subject to pre-approval and oversight by the Zoo Director.

4. CAPITAL PROJECTS

4.1 The District and the Society may agree from time to time to jointly or separately fund capital projects for the Zoo. All District funding requires approval of the appropriate authority within the District. To the extent that the Society funds are used, the Society shall obtain the approval of the Zoo Director and the Zoo Director shall obtain approval from the Forest Preserve Commission prior to commencement of any project, including entering third party contracts for services or acquisition or goods, services, or animal specimens. Upon completion of the project, all title, rights, responsibilities and ownership of such capital improvements shall be held by the District, unless expressly reserved for the Society by prior agreement of both parties.

4.2 The parties agree that any revenue generating activity from future projects will be the responsibility of the District, unless expressly reserved by the Society through a separate agreement.

4.3 The Zoo's updated and/or new facility concept plan, to be managed and developed by the Zoo Director and Zoo staff, shall identify the capital projects to be completed including sequencing, program plan and program budget.

5. SOLICITATIONS, DONATIONS & SPONSORSHIPS

5.1 The parties recognize that donors may wish to donate money or other items to the Zoo. The District agrees to establish and maintain a specially designated Niabi Zoo Capital Improvement Fund with the District's Treasurer to receive explicitly intended donations and that all donations will be deposited into that specific fund.

5.2 The District agrees to expend any funds received from the Niabi Zoo Capital Improvement Fund on only capital improvements for the zoo or according to the intent

of the donor.

5.3 The District agrees that such funds designated to be donated, bequeathed or otherwise given to "Niabi Zoo", shall be put in the Niabi Zoo Capital Improvement Fund, in addition to other funding by the District.

5.4 The Parties agree that often donors may intend for bequests to go to the Society, but the donor merely references "Niabi Zoo" in their donation or bequest. When the intent of the donor is not clearly explicit to donate to the Forest Preserve District, then the District will assume the intent of the donor was for the donation or bequest to be given to the Niabi Zoological Society and therefore not deposit the donation or bequest into the District Treasury or take any ownership and present the donation or bequest to the Niabi Zoological Society for processing according to the intent of the donor should it be noted. In the spirit of "what is best for the Zoo", the District will not reduce the customary and usual funding of the Zoo merely because of donations or bequests received from donors.

5.5 The District agrees that funds from the Niabi Zoo Capital Improvement Fund may be transferred to the Society if necessary when both parties are involved in a capital improvement construction project or to be of assistance in matching grant dollars for a capital improvement project. Such transfer requires approval of the Forest Preserve Commission.

5.6 The solicitation, acquisition and use of corporate sponsorships for zoo exhibits and amenities shall be coordinated and reviewed by the Zoo Director and the use or display of such businesses or corporations name at the zoo shall require the approval of the Forest Preserve Commission. Funds generated and received from corporate sponsorships shall be retained by the Society.

6. RECORDS

6.1 The District and the Society shall provide each other construction and other documents or records related to the construction of or disbursement of funds for capital improvement projects. These documents and records shall include an accounting of the amount of funds received and disbursed by each party for a particular capital improvement project, but need not include any documents which would contain information regarding individual donors or other sources of such funds.

6.2 The District and the Society shall provide each other with access to all documents or records related to co-sponsored events or programs. These documents and records shall include an accounting for the expenses incurred and funds received and disbursed by the Society and/or the District for such co-sponsored events or programs, but need not include any document which would contain information regarding individual donors or other sources of funds.

6.3 The District and Society understand that the District is a governmental entity, subject to the Freedom of Information Act and the Open Meetings Act and that all records, including records pertaining to donors, sources of funds, and expenditure of funds by the District are public records, the disclosure and discussion of which are subject to the above referenced Acts.

7. INDEPENDENT CONTRACTORS

In the performance of this Memorandum of Understanding, both the District and the Society will be acting in their independent capacity and not as agents, employees, joint ventures or associates of one another. The agents or employees of the one shall not be construed to be the agents or employees of the other. District employees shall remain employees of the District, under the control and direction of the Zoo Director, notwithstanding the fact that they may assist the Society.

8. TERM

8.1 The initial term of this Memorandum of Understanding is one (1) year. After the initial term, this Memorandum of Understanding remains in effect, unless and until terminated upon thirty (30) days written notice by either party to the other, or by mutual consent, at any time or if a management agreement should be developed and approved upon between the District and any other party.

8.2 This Memorandum of Understanding contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Memorandum of Understanding, shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein, unless contained in a written agreement entered into by both of the parties hereto. This Memorandum of Understanding, or any provision hereof or any right or obligation arising hereunder, is not assignable by either party in whole, or in part, without the express written consent of the other party.

9. APPLICABLE LAW

The validity, legality and all matters relating to the interpretation and effect of this Agreement, including any amendment, shall be governed by the laws of the State of Illinois. The parties agree that all causes of action arising under this MOU shall be brought in the 14th Judicial Circuit in Rock Island, Illinois.

10. INSURANCE

10.1 The District agrees to provide adequate insurance (or adequately funded self insurance) for Niabi Zoo, and its employees and volunteers, including, but not limited to, commercial general liability insurance, property and any necessary insurance which is commercially reasonable.

10.2 The Society agrees to provide adequate liability insurance for its employees, volunteers, projects and events.

11. INDEMNIFICATION

11.1 The Society shall indemnify, hold harmless and defend District, its officers, directors, employees and agents from and against any and all losses, liabilities, claims, damages, causes of action, arising from Society's breach of any covenants or obligations set forth in this Agreement. This obligation shall survive the termination of this Agreement.

12. NOTICE

12.1 Any notice or notices required or permitted to be given pursuant to this Memorandum of Understanding may be personally served on the other party by the party giving such a notice, or may be served by certified mail, postage prepaid, return receipt requested.

12.2 All notices to the District shall be sent addressed to the following: States Attorney Office - Chief of the Civil Division, 1504 Third Avenue, Rock Island, Illinois, 61201

12.3 All notices to the Society shall be sent addressed to the following:
President,
Niabi Zoological Society, 12908 Niabi Zoo Road, Coal Valley, Illinois, 61240.

**ROCK ISLAND COUNTY
FOREST PRESERVE DISTRICT**

NIABI ZOOLOGICAL SOCIETY

Steve Ballard
Commission President

John Ferrell
Niabi Zoological Society Board Chair