

WOODLAND PARK ZOO OPERATIONS AND MANAGEMENT AGREEMENT

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OPERATIONS AND MANAGEMENT AGREEMENT

This Woodland Park Zoo Operations and Management Agreement (the “Agreement”) is made and entered into as of , 2021, by and between THE CITY OF SEATTLE, a Washington first class city (“City”), acting through its SEATTLE PARKS AND RECREATION department (“SPR”), and the WOODLAND PARK ZOOLOGICAL SOCIETY, a Washington nonprofit corporation (“WPZS”) (collectively, the “Parties”).

RECITALS

WHEREAS, the City owns the public zoological gardens commonly known as the Woodland Park Zoo (“the Zoo”). The Zoo is located on certain park land owned by the City

shown in Exhibit 1 and legally described in Exhibit 2 both attached hereto; and

WHEREAS, WPZS is a nonprofit corporation organized in 1965 for charitable, scientific and educational purposes for the study and promotion of zoology and wildlife conservation and for the education and recreation of the public. WPZS initially funded and provided a limited range of services in support of SPR at the Zoo, including educational programs and activities; wildlife and habitat conservation efforts; marketing, management and operation of Zoo food and gift services; and fundraising; and

WHEREAS, in 1995, the Zoo Commission II, appointed by the Mayor of Seattle, concluded that nonprofit management and stable public funding would result in increased private contributions and allow the Zoo to continue to develop and realize its potential for leadership and education and conservation; and

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WHEREAS, the City and WPZS desired to enter into a mutual benefit agreement that would continue City ownership of the grounds and facilities, with WPZS managing the day-to-day operations of the Zoo. Accordingly, the first Woodland Park Zoo Operations and Management Agreement, the (“Prior Agreement”), was approved by the City Council by ordinance that became effective in January 2002 and signed by the appropriate representatives of the City of Seattle and the Board of Woodland Park Zoological Society; and

WHEREAS, the Prior Agreement reflected a collaboration between the independent non profit WPZS and the City under which both parties brought unique resources and capabilities to the relationship for the public benefit of the City and enhancement of zoological offerings in the Pacific Northwest; and

WHEREAS, with the Prior Agreement expiring on February 28, 2022, WPZS and the City now seek to update and renew this agreement prior to such date. This Agreement continues the collaboration between WPZS and the City; and

WHEREAS, the Zoo is a world-class zoo that emphasizes wildlife conservation, animal welfare and, the provision of extraordinary visitor experiences, all empowering visitors to make conservation a priority in their lives; and

WHEREAS, the Zoo and WPZS have been accredited by the Association of Zoos and Aquariums (“AZA”) since the program’s inception in the 1980s and is certified by American Humane Society for animal welfare; and

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WHEREAS, the Zoo, under WPZS stewardship, has historically been the second most awarded zoo in North America by the AZA. Awards range from exhibit design, education programs, wildlife conservation, youth empowerment and volunteer programs; and

WHEREAS, the Zoo is a global leader in wildlife conservation, and in addition to inspiring and educating visitors on the role they can play in conservation, the Zoo takes direct steps to save critically threatened and endangered species within Washington State and around the world. Total conservation spending by the Zoo has increased over the years, adding to total contributions of \$14.1 million towards saving threatened species and habitats during the recent 10-year period of 2009 to 2018, including expansion of its Living Northwest program which resulted in saving the only native species of turtles in Washington State from extinction, as well as supporting other local animal conservation and species recovery programs; and

WHEREAS, WPZS innovation in wildlife conservation has been recognized by the United Nations as a model for community-based conservation programs for conservation work in Papua New Guinea; and

WHEREAS, WPZS has rapidly expanded outreach programs beyond the Zoo grounds, including an innovative Mobile Zoo, citizen science programs such as “Coexistence with Carnivores,” a Youth Climate Action Program focused on mentoring the next generation of conservationists, as well as partnerships with many community groups in our region to make widely available opportunities to join our social movement for conservation; and

WHEREAS, WPZS has embarked on an ambitious Diversity, Equity and Inclusion (DEI) journey that monitors and sets goals for the composition of its visitors, volunteers, staff workforce, board of directors, and contractors. Since adoption of this DEI strategy in 2018, all staff and

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volunteers have received DEI training. WPZS has received a major federal grant to diversify its 1000+ volunteer workforce with inclusion training. As part of this DEI strategy, racial and ethnic diversity among WPZS staff rose from 16% to 21% between 2016 and 2018; and

WHEREAS, WPZS seeks to inspire, educate, advocate for, and empower people to support wildlife conservation both locally and around the world. Through conservation leadership, educational programming, outreach, volunteerism and community access programs, WPZS engages a diverse community to inspire a broad social movement for wildlife conservation. As part of its efforts to grow the inclusion of audiences of all abilities, WPZS joined Special Olympics USA, and is a gold partner of the Down Syndrome Community of Puget Sound, and a founding member of WIN, the Welcome Inclusion Initiative of Washington State; and

WHEREAS, WPZS by 2014 had nearly doubled its access program offerings and reached the level of 100,000 free or reduced admissions provided annually by 2017, making it one of the largest access programs in the cultural sector in Washington State. Through these programs, WPZS has been visited by 820,000 students, teachers and chaperones over the last 10 years, with more than 1/3 of these visits coming from low-income schools and supported through the Zoo's free admission Community Access Programs. Furthermore, WPZS has distributed tickets through 600 community-based service organizations, such as Mary's Place, the Wounded Warrior Project, and Treehouse; and

WHEREAS, as a major regional cultural institution, the Zoo draws both local residents and visitors from around the world, connecting approximately 1.39 million guests annually (2019 total) with its more than 1,100 animals from 300 species, many of which are critically threatened or endangered. The Zoo is one of the most visited cultural attractions in the greater Seattle region,

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with visitors coming from every county in Washington State and every state in the USA. With approximately 33,000 member households as of 2019, WPZS has one of the largest memberships of any environmental or cultural organizations in the Greater Seattle area; and

WHEREAS, the Zoo operates on and activates the City's 92-acre park and gardens Premises, providing a green oasis in the fast-growing city of Seattle, connecting visitors to nature, providing a park where families and individuals of all cultural, economic and social backgrounds can come to re-connect with each other and with nature; and

WHEREAS, an economic impact study covering the recent 10-year period of 2009 to 2018 estimated that Zoo operations generated a combined direct, indirect, and induced revenue

impact of approximately \$833.8 million and the Zoo's visitors generated an estimated revenue impact of \$981 million for the state of Washington; and

WHEREAS, WPZS has embarked on a sustainability program to reduce its ecological footprint, which has resulted in a 10% reduction of the Zoo's carbon footprint below its 2009 baseline. Strong composting and recycling programs have diverted nearly 81% of waste away from landfills. Its ZooDoo compost ranks as one of the most sought-after compost options by Seattle gardeners. Single-use plastic bottles and straws have been eliminated from Zoo sales; and

WHEREAS, in order to establish meaningful reduction goals in the areas of electric energy, water, natural gas and carbon/transportation, the Zoo has committed to investing in the utility analysis infrastructure and other systems that will be necessary to achieve such specific, metrics based goals that will be included in the Zoo's new Long-Range Plan. Such infrastructure will include: (a) consolidated metering to monitor and facilitate reduction in greenhouse gas emissions from zoo operations; (b) systems that enable stormwater and grey water reuse as well as smart

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irrigation; (c) measures to achieve greenhouse gas emission reductions for new construction projects consistent with the City's guidelines for City buildings; (d) waste reduction through composting and the Zoo's popular ZooDoo program; and (e) striving for migration to an all alternative fuel vehicle fleet; and

WHEREAS, the Zoo's original Long-Range Physical Development Plan was approved by the City in 2002, and major elements such as Banyan Wilds, Zoomazium, and many updated exhibits, such as for penguins and jaguars, have been accomplished. With input and approval from the City, WPZS intends to update its Long-Range Physical Development Plan within five years of the renewal of this Agreement to enhance the City Premises, improve visitor experiences, animal welfare, environmental sustainability, diversity, equity and inclusion, and

accessibility, while reinforcing its economic viability and validating broad community support; and

WHEREAS, King County leaders and voters continued to recognize the regional impact of the Zoo by approving significant funding for the Zoo in County park taxes through votes in 2008, 2013 and 2018; and

WHEREAS, in 2014, City voters approved the formation of the Seattle Park District to provide additional funding for park and recreation purposes through Seattle Parks and Recreation; and

WHEREAS, since 2002 WPZS has raised funds for and invested nearly \$42 million in new capital construction projects, infrastructure upgrades and repairs to successfully maintain the Zoo's public assets to modern accreditation and compliance standards as well as generating operating support for WPZS; and

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WHEREAS, since 2002 the City has demonstrated its ongoing support for the Zoo by providing a total of approximately \$169 million in direct financial assistance to WPZS as well as providing additional assistance through property use rights and other accommodations; and

WHEREAS, WPZS has increased private support, philanthropy and earned revenue, so that the portion of public support from the City and the County for general operations of the Zoo has decreased from 40% in 2002 to 27% in 2018, thus proving the theory of change established by the Zoo commission established by the City; and

WHEREAS, the City and WPZS continue to believe that this Agreement represents the greatest opportunity for the Zoo to succeed in fulfilling the Parties' shared mission of wildlife

conservation and education, and to provide benefits to the people of Seattle as an important civic asset and cultural resource; and

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration exchanged between the Parties, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

AGREEMENT

Section 1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

1.1 “Acceptable Work Site” is defined as a Work Site that is appropriate, productive, and safe for all workers. An Acceptable Work Site is free from behaviors that may impair

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production or undermine the integrity of the work conditions including but not limited to job performance, safety, productivity, or efficiency of workers.

1.2 “Agents” is defined below in Section 31.3.

1.3 “Annual Report” shall mean the annual report prepared by WPZS pursuant to Section 16.1.

1.4 “AZA” shall mean the Association of Zoos and Aquariums or its successor as the nationally recognized agency for accrediting zoos.

1.5 “Business Day” shall mean Monday through Friday, excluding Saturday, Sunday, and City holidays.

1.6 “CEO” shall mean the Chief Executive Officer of the Zoo, or functional successor, as

determined by WPZS.

1.7 “City” shall mean the City of Seattle, a Washington first class city, and all of its boards, commissions, departments, agencies and other subdivisions.

1.8 “City Council” shall mean the City Council of the City of Seattle.

1.9 “Code” shall mean the Seattle Municipal Code, as it may be amended from time to time.

1.10 “Director of Finance” shall mean the City’s Director of Finance or functional successor.

1.11 “Effective Date” shall mean March 1, 2022.

1.12 “Environmental Laws” is defined below in Section 24.1.1.

1.13 “Events of Default” is defined below in Section 22.1.

1.14 “Fiscal Year” shall mean a twelve- (12-) month period beginning on January 1 of each calendar year and ending on December 31 of the same calendar year.

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1.15 “Force Majeure” is defined below in Section 20.

1.16 “Hazardous Material” is defined below in Section 24.1.2.

1.17 “Long-Range Plan” or “Plan” shall mean the Long-Range Physical Development Plan required under this Agreement, or any successor thereto.

1.18 “Losses” is defined below in Section 24.3.

1.19 “Major Maintenance Support” is defined below in Section 5.2.3.

1.20 “Neighborhood Parks” shall mean the two (2) neighborhood parks on the Premises, one at 50th Street and Phinney, and the other at 59th Street and Phinney.

1.21 “Off-Site Facility” is defined below in Section 3.1.

1.22 “Operations Support” is defined below in Section 5.2.1.

1.23 “Personal Property” shall mean the furniture, furnishings, and articles of moveable personal property brought onto the Premises by or for account of the WPZS, either prior to or during the Term of this Agreement, without expense to the City, and which can be removed without structural or other material damages to the Premises. Personal Property does not include items set out in Section 9.2.

1.24 “Premises” or “Zoo Premises” is defined in Section 3.1.

1.25 “Prior Agreement” shall mean the Woodland Park Zoo Operations and Management Agreement between the Parties authorized by City Ordinance 120697 and effective March 1, 2001.

1.26 “Property” shall mean the City’s Zoo property, consisting of the Premises and including all buildings and items set out in Section 9.2 below, as well as any items of personal property the City may from time to time bring or cause to be brought onto the Premises at the City’s expense and with WPZS’s concurrence for Zoo use.

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1.27 “Public Affairs Committee” shall mean the committee of the same name formed by the WPZS Board, or its functional successor.

1.28 “Release” is defined below in Section 24.1.3.

1.29 “Social Equity Work” includes WMBE, apprenticeship, Acceptable Work Sites and prevailing wage compliance as set forth in Section 11.3.

1.30 “SPR” shall mean the City’s Seattle Parks and Recreation department. 1.31
“Superintendent” shall mean the Superintendent of the City’s SPR and any person or persons designated by the Superintendent to act on behalf of the Superintendent for purposes of this Agreement.

1.32 “Termination Date” is defined below in Section 2.1.

1.33 “Term” is defined below in Section 2.1.

1.34 “Women or Minority Business Enterprise” or “WMBE” means a business that self identifies or is certified by the Office of Minority and Women’s Business Enterprise that is at least 51 percent owned by women and/or minority group members; including African Americans, Native Americans, Asians/Pacific Islanders, and Hispanics/Latinos.

1.35 “WPZS Board” shall mean the Board of Directors of the Woodland Park Zoological Society.

1.36 “Zoo” shall mean the public zoological gardens and related facilities operated on the Premises, commonly known as Woodland Park Zoo, which is the subject of this Agreement. 1.37 “Zoo Animals” shall mean all animals owned by WPZS, and all animals acquired by WPZS during the Term, but excludes animals on loan from or to other zoos under AZA auspices.

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1.38 “Zoo Animal Records” shall mean reasonable records pertaining to the veterinary treatment of Zoo Animals cared for at the Zoo, but excludes records at other institutions of animals on loan from or to other zoos.

1.39 “Zoo CapEx Project(s)” shall mean any capital improvement, non-routine maintenance, construction, alteration, or repair projects for which independent contractors are retained.

1.40 “Zoo Purposes” shall mean all purposes related to Zoo operations and development either on the Premises or elsewhere, including but not limited to cultural, charitable, scientific, research, educational, animal health and welfare, wildlife and habitat conservation programs and activities, as well as events, grounds, gardens, parks and exhibits, including WPZS administration and operations in support of these purposes.

Section 2. Term of Agreement.

2.1 Term. The Term of this Agreement shall begin on the Effective Date and expire on December 31, 2041 (the “Termination Date”) unless extended or terminated sooner as provided herein.

2.2 Option to Extend Term. The Term of this Agreement may be extended by the Superintendent, subject to City Council approval, by mutual written agreement for additional periods of up to ten (10) years beyond the initial Termination Date if WPZS submits a written request for such an extension to the Superintendent at least six (6) months before the initial Termination Date and is not in Default at the time the request is made or on the initial Termination Date. Any such extension shall serve as a renewal term of this Agreement under RCW 35.64.010(1) rather than a separate renewal contract under RCW 35.64.010(2). If extended, the

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Termination Date shall be no later than December 31, 2051, the date falling one day before the tenth anniversary of the extension of this Agreement.

Section 3. Management and Operation of Premises and Personal Property. 3.1 Premises. Subject to the terms, covenants and conditions set forth in this Agreement, WPZS shall exclusively manage and operate the Zoo Premises, comprising (a) approximately ninety-two (92) acres of land and improvements owned by the City and depicted on Exhibit 1 and as described in Exhibit 2 both attached hereto, on which the Zoo is currently operated, and (b) the property located at 22327 Southeast 464th Street, Enumclaw, Washington, and consisting of approximately 120 acres including a house, outbuildings, and barn, owned by the City and used as an off-site breeding facility for the Zoo (the “Off-Site Facility”), collectively referred to as the “Premises”

or “Zoo Premises.” The Parties may expand the Premises to include additional sites for Zoo use by executing an amendment to this Agreement pursuant to Section 31.10.

3.2 Property.

3.2.1 Real Property. The Parties hereto acknowledge that real property on the Premises, including the land and all improvements (including buildings) is owned by the City and operated under the jurisdiction of SPR. The structure that shelters the Historic Carousel is City property. The Historic Carousel is WPZS property.

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3.2.2 Personal Property. The Parties hereto acknowledge that Personal Property, including the Zoo Animals, is owned by WPZS. WPZS shall properly care for Zoo Animals and maintain all Personal Property in good condition and repair and shall replace with items of good quality any Personal Property that becomes inoperable or unusable if such item is necessary for the operation of the Zoo in WPZS’s reasonable discretion. WPZS shall pay all taxes levied or assessed on Personal Property at least ten (10) days prior to delinquency and shall, on City’s request, deliver satisfactory evidence of such payment to City.

3.3 Use of the Premises.

3.3.1 Required Use. WPZS shall use and continuously occupy the Property during the Term solely for Zoo Purposes, including the operation of a public zoological gardens and related and incidental purposes and programs, including but not limited to conservation, education, research, enterprise operations in support of the Zoo, and visitor

services, in accordance with this Agreement and the Long-Range Plan, and for no other purpose.

Notwithstanding the foregoing, WPZS shall maintain and operate the Woodland Park Rose Garden and the Neighborhood Parks as they are being used and/or utilized on the Effective Date, with the understanding that these spaces are primarily used for park, recreation, and open space purposes incidentally related to Zoo Purposes, provided that SPR will have responsibility for the maintenance and upkeep of the children's play area in the park at 59th Street and Phinney. SPR retains the sole right to determine the use and approve any changes to the Woodland Park Rose Garden and the Neighborhood Parks,

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after reasonable consultation with WPZS. If SPR materially changes the Woodland Park Rose Garden or the use of its site, WPZS shall no longer be required to maintain it.

Additionally, the water standpipe on the western perimeter of the Zoo will continue to be managed by the City.

Section 4. No Illegal Uses or Nuisances. WPZS shall not use or occupy any of the Premises, and shall not permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, and shall not permit to be carried on any activity that would constitute an actionable nuisance under the laws of the State of Washington. WPZS shall take all reasonable precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises.

Section 5. Maintenance and Operations.

5.1.1 WPZS Responsibility. WPZS shall manage, operate, maintain, and develop

the Zoo consistent with its multi-faceted mission such that the Zoo retains and continues to provide public zoo services; strengthens its standing among the world's leading zoos; and provides substantial public benefits to the City and its residents and visitors as a major cultural, conservation and educational institution and attraction. Except as otherwise provided herein, WPZS shall be responsible for raising, earning or otherwise securing the funding, other than the City support committed herein, sufficient to enable it to meet its responsibilities under this Agreement. This general responsibility shall not limit the other obligations and responsibilities assigned to WPZS under this Agreement.

5.1.2 Required Permits, Licenses and Accreditation. Throughout the Term (including any extensions thereof), WPZS shall cause both itself and the Zoo to be at all times:

- (a) accredited by the AZA;
- (b) licensed with the United States Department of Agriculture; and
- (c) licensed by Public Health – Seattle and King County.

Any failure on the part of WPZS to comply with this Section shall constitute a default.

5.2 City Funding. For the duration of the Term of this Agreement, the City will provide two forms of ongoing support payments as set out in this section and subject to the terms and conditions of this Agreement.

5.2.1 Operations Support Payments and Escalation. Subject to Section 5.2.2, the City shall transfer to WPZS an annual operations support payment (“Operations Support”) equal to \$7,620,887 in 2022, the first Fiscal Year of this Agreement. For each year

thereafter, the Operations Support shall be escalated by the increase in the Consumer Price Index for Urban Consumers for the Seattle-Tacoma-Bremerton area, or its functional, widely recognized and utilized successor index as determined by City, measured as of June 30 of the prior year. The Operations Support shall be paid to WPZS in twelve (12) equal monthly installments on or before the fifteenth (15th) day of each month. The parties acknowledge that the Effective Date is not the first day of a Fiscal Year, and the first year Operations Support shall be reduced pro rata. Operations Support in all subsequent years shall be calculated as if the first year's payment had been the full annual amount.

5.2.2 Operations Support Fund Appropriation; Fiscal Emergency. City payment of Operations Support each Fiscal Year shall be contingent on City legislative appropriation of funding sufficient for such payment. The Superintendent will request such annual appropriation either from the City through City Council approval or from the Park District through Park District Governing Board approval. The payment of the Operations Support in any Fiscal Year shall also be governed by and subject to the following fiscal emergency provisions. For purposes of this Agreement, a “fiscal emergency” shall arise when either total City general fund or Park District revenue for a year is reasonably projected in the City's adopted budget to be less than the revenue projected, at the time of adoption of the budget for that next year, to be received in the previous year (the year during which the budget for the next year is adopted). In the event of a fiscal emergency, the Operations Support can be reduced from the amount provided the previous year by up to the percentage decline in expected general fund or Park District revenue or by five percent (5%), whichever is less. In subsequent years when the

fiscal emergency criterion no longer applies, the Operations Support shall be adjusted annually from the prior year's amount using the escalation factor defined in Section 5.2.1.

5.2.3 Major Maintenance Support Payments. Subject to Section 5.2.4, the City will pay WPZS an annual major maintenance support payment ("Major Maintenance Support") to be used solely for the maintenance and improvement of the Premises consistent with Zoo Purposes. Each year as a condition for payment of Major Maintenance Support, WPZS shall provide both a list of projects to be funded by Major Maintenance Support in the Annual Plan pursuant to Section 16.2 and a list of projects funded by Major Maintenance Support in the prior year in the Annual Report pursuant to Section 16.2. The

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City is providing Major Maintenance Support with the expectation that the funding will enhance the Zoo as a public amenity, preserve and improve the Premises, and remediate any pre-existing conditions that may not have been addressed during the term of the Prior Agreement. WPZS will be responsible for providing all maintenance services, deploying the Major Maintenance Support consistent with this Agreement and legal requirements, and paying the costs of any Premises maintenance needs in excess of the Major Maintenance Support payments. If WPZS discovers a latent defect or other pre-existing condition, WPZS shall prioritize application of Major Maintenance Support funding to remediate the condition. In the first Fiscal Year, in 2022, City will pay an amount equal to \$2,149,470. The parties acknowledge that the Effective Date is not the first day of a Fiscal Year, and the first year's Major Maintenance Support shall be reduced pro rata. For each year thereafter, the Major Maintenance Support shall be escalated by the increase in the Consumer Price Index for Urban Consumers for the Seattle-Tacoma-Bremerton area, or its functional, widely recognized and utilized successor index as determined by City,

measured as of June 30 of the prior year.

5.2.4 Major Maintenance Support Fund Appropriation; Fiscal Emergency. City payment of Major Maintenance Support each Fiscal Year shall be contingent on City legislative appropriation of funding sufficient for such payment. The Superintendent will request such annual appropriation either from the City through City Council approval or from the Park District through Park District Governing Board approval. In the event of a fiscal emergency, as defined in Section 5.2.2, the City may in its sole discretion reduce or withhold Major Maintenance Support Payment for the duration of the fiscal emergency. In subsequent years, when the fiscal emergency criterion no longer applies, City will resume

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Major Maintenance Support Payments without obligation to reimburse WPZS for any payments missed or reduced during the fiscal emergency.

5.2.5 Grant Funding. To enhance Zoo programs and benefits, the City agrees to work cooperatively with WPZS, at the request of WPZS, with respect to WPZS' grant funding goals for the Zoo. The City will allow WPZS to apply for grants in the City's name for which the Society might not otherwise be eligible subject to prior approval by the Superintendent, which may be contingent on authorization from the City Council. The City Council retains the right to accept or not accept such grant funds so applied for. All grants to the City received for the Zoo shall be transferred to WPZS within thirty (30) days of the receipt of the grant funds, if permitted by the terms of the grant. In no event shall a grant be accepted where it would require encumbering the Property with a deed, covenant or other restriction on title, unless first authorized by the City Council.

5.3 County Funding. The Parties acknowledge that funding provided to WPZS in support of Zoo Purposes from County parks levies has been an important element of public support for the Zoo, replacing a portion of funding formerly provided by the City under the Prior

Agreement. The Superintendent agrees, to the extent allowed by law, to take reasonable action to advocate for the continued inclusion in future County parks levies of funding for the Zoo in amounts not less than funding provided to support the Zoo in the most recent County levy that included such funding. In the event the County fails to include such funding in future levies, or County voters reject any such proposed levy that includes such funding, the Parties agree to make a reasonable good faith effort to identify sufficient alternative resources for Zoo operations or otherwise modify this Agreement such that WPZS may continue to perform its functions under this Agreement. If County levy funding remains unavailable and is not replaced, WPZS may

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request permission to reduce or change services and operations under this Agreement to a level commensurate with funds available to WPZS and City shall not unreasonably withhold, condition or deny such request.

Section 6. City Financing. If requested by WPZS, the City will consider issuing debt for capital purposes at the Zoo. Funding for debt service on such debt shall be the responsibility of WPZS unless otherwise agreed by the City. The decision whether to issue debt will be in the sole discretion of the City and subject to such terms and conditions as the City may require. In the event WPZS fails to provide funds to pay debt service on any such City debt in a timely fashion, the City may in its discretion or as otherwise agreed in writing pay such debt service from its own funds and will reduce its payments under Section 5.2 by a corresponding amount.

Section 7. Accessibility and Neighborhood Impacts. The Parties will continue to collaborate to facilitate public access to the Zoo consistent with the character of the neighborhood and to improve access by disadvantaged persons and families. The new Long-Range Plan contemplated under this Agreement will address accessibility issues and neighborhood impacts.

Section 8. Long-Range Plan. The Parties reaffirm their mutual intent that the Zoo's physical plan continues to evolve through improvements consistent with a Long-Range Plan mutually acceptable to the WPZS and the City.

a. WPZS shall develop the Long-Range Plan in close collaboration with the Superintendent to ensure that any improvements to City property are consistent with City purposes and comply with SPR's standards for construction of major improvements to SPR's facilities. The

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Parties shall consult and collaborate as the planning process proceeds. WPZS's collaboration with the City shall include, at a minimum, periodic updates for the Superintendent on Plan development (including in the Annual Report), and inclusion of City representatives selected by the Superintendent on WPZS committees or work groups preparing the Long-Range Plan. A purpose of the consultation and collaboration process is to identify and resolve any SPR concerns or questions about any aspect of such Plan as it evolves before its formal submission to the Superintendent for the City's review and approval set out in Section 8(b). The Plan shall consider and address the guiding principles identified in Exhibit 4 hereto. It is the Parties' mutual expectation to have a Plan that provides WPZS with sufficient certainty and direction for the future development of the Zoo in a manner that also respects the City's priorities for stewardship of its Zoo assets. The Parties acknowledge that development or improvement of specific projects identified in the Plan must also comply with all applicable City ordinances, land use requirements, and other regulatory requirements in effect at the time any such projects are undertaken. Within five (5) years of the Effective Date of the City ordinance approving this Agreement, WPZS shall submit to the Superintendent a new Long-Range Plan that has been prepared through the consultation and collaboration process for the City's review and approval.

b. The Superintendent shall review the proposed Plan and may provide preliminary approval of the Plan or identify in writing any remaining concerns about the Plan as submitted. Alternatively, the Superintendent may provide preliminary approval of the Plan with the exception of any concerning elements or components. After providing written preliminary approval to WPZS, the Superintendent will transmit for Council review the Plan, or any portions of the Plan approved by the Superintendent. Council will retain full discretion to approve, reject, or approve in part the Plan or any portion of the Plan preliminarily approved by the Superintendent. On

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approval by Council via resolution or other mechanism Council determines to be appropriate, the City will be deemed to have approved the Plan. Any portion of the Plan not approved by either the Superintendent or Council will be deemed disapproved. If the City approves the Plan in part, WPZS may then implement the resulting modified Plan except for the elements or components of concern that were not approved. The Parties may continue to work together to resolve the City's concerns as stated by the Superintendent or Council about any disapproved elements or components for a period of up to two (2) years after submission in order to achieve a final approved Plan, or WPZS may accept the City's decision to approve the Plan in part, in which case the requirement that the City approve a Plan within two (2) years of submission by WPZS shall be deemed to have been satisfied and WPZS may no longer terminate this Agreement as provided in Section 22.3.

c. In the event the City does not approve the Long-Range Plan, or, if applicable, excepted elements of the Plan, within two (2) years of submission, WPZS and SPR will confer in good faith to determine whether to continue to seek agreement on a revised Long-Range Plan; continue operations under this Agreement without a Long-Range Plan; or take other action as the Parties may determine to be in the mutual best interest of the City and WPZS. If the City does not

approve a Long-Range Plan that is reasonably acceptable to WPZS within two years of initial submission, thereafter either party may exercise its right to terminate this Agreement under Section 22.3; provided, however that neither Party may exercise its termination right under Section 22.3 if the other Party is engaging in good faith negotiation to resolve the City's concerns about the pending Plan as initially submitted; provided further, that the negotiation period shall not extend longer than four (4) years after WPZS submitted the initial Long-Range Plan.

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d. WPZS agrees to use its good faith best efforts to raise the funds needed to construct the improvements contemplated in the Long-Range Plan to be adopted under this Agreement, except as provided herein. WPZS may request City funding for discrete capital improvement projects identified in the Long-Range Plan; but City approval of the Long-Range Plan shall not be construed as a commitment to fund any such project unless explicitly agreed in writing by the City.

The City will consider in good faith any such request and the impact the proposed improvements would have on the City's Premises, improved access, and increased activation of the Zoo. WPZS and the City may mutually agree on project scope and financing, which may in the City's sole discretion include an additional City funding commitment with any such terms, conditions, and consideration to the City as may be appropriate for the funding commitment.

e. The Plan may include procedures for updating and amending the Long-Range Plan when necessary or otherwise appropriate if mutually agreed in writing by the Parties.

Section 9. Capital Improvements and Alterations.

9.1 Improvements and Alterations. Subject to Sections 9.4, 11.3, 11.4, 11.5, and 16.7,

WPZS may make such capital improvements and alterations to the Premises and the Zoo facilities as WPZS shall determine in its reasonable discretion are necessary to operate the Zoo, as long as these capital improvements and alterations are in accordance with WPZS obligations under this Agreement or the Long-Range Plan.

9.2 Title to Improvements. Except as otherwise provided in this Agreement, all appurtenances, fixtures, and improvements attached to or installed in the Premises shall be and remain the property of the City and shall not become WPZS Personal Property.

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9.3 Other Capital Improvements and Alterations. Subject to the Non-Discrimination and Labor Harmony provisions in Section 11.3, Social Equity provisions in Section 11.4 and the Public Involvement provisions in Section 16.7, WPZS may propose such other capital improvements and alterations to the Premises and Zoo facilities as the WPZS may determine, in its reasonable discretion, are necessary to operate or improve the Zoo that may not be addressed in or are at variance from the Long-Range Plan. The Superintendent may only approve capital improvements or alterations not in the Long-Range Plan that the Superintendent determines do not rise to the level of a major improvement that should be addressed by the Plan. The Superintendent's approval or rejection of any such capital improvement or alteration shall be at the Superintendent's reasonable discretion. The Superintendent may further condition approval of any proposed capital improvement or alteration on amendment of the Long-Range Plan.

9.4 Requirements and Restrictions. WPZS may not (a) undertake any capital improvements or alterations to the Property inconsistent with the Long-Range Plan as it may be updated and approved by the City from time to time; or (b) make any capital improvements or alterations to the Property that are subject to the approval of a City department, commission or agency unless such approval has been obtained. Any major maintenance, alterations, or capital

improvements made by WPZS to or on the Premises shall comply with any and all applicable local, state and federal laws, rules and regulations, including applicable Washington public works requirements, and WPZS shall obtain any required permits for such work at its expense, before proceeding with such alterations or capital improvements. The Parties affirm and agree, to the extent consistent with this Agreement and the Long-Range Plan, to continue to observe the requirements of the May 1, 2003 Memorandum of Understanding between the Parks and Recreation Department and WPZS regarding coordinated planning for and Department review of

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the design and construction of WPZS capital projects, as updated to reflect this new Agreement and attached hereto as Exhibit 3. Such Memorandum may be updated and modified as the Department and WPZS may periodically agree in writing.

Section 10. Admissions.

10.1 WPZS Responsibility. Subject to the continuous provision by WPZS of public benefits as required under Section 11.1, WPZS shall have the authority to set the amount of all prices and fees for admissions, services rendered or sales made to the public or otherwise at the Zoo, including without limitation, food and drink concessions, membership passes, retail, special exhibits and other special events. City and WPZS intend that the Zoo remain affordable to individuals from all economic circumstances and particularly, to families with children. In furtherance of that goal, WPZS will continuously provide the public benefits delineated in Section 11 and Appendix A. In general, WPZS's daily general admissions pricing structure should reflect market rate pricing determined by reference to the daily general admissions pricing structures of comparable attractions in Seattle. Prior written approval by the Superintendent shall be required annually for any increases in WPZS's daily general admissions pricing structure.

10.2 Admissions Tax. The Parties acknowledge that on the execution date of this Agreement, the City exempts the Zoo from City admission taxes on admission charges. City tax policy is, however, a governmental function outside of the scope of this Agreement and is subject to change. Any change to City tax policies, including changing or withdrawing the Zoo exemption from admission taxes, will not constitute a breach of this Agreement by the City.

Section 11. Public Benefits, Equity and Inclusion.

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11.1 Public Benefits. A central element of this Agreement is WPZS's commitment to the ongoing provision of certain public benefits, as described herein or as such may evolve over time. In fulfillment of WPZS's commitment, WPZS shall perform or otherwise ensure the continuing provision of the basic public benefits identified in Appendix A. Although the specific means of delivering such public benefits will evolve, WPZS will continue providing public benefits at no less than the scale and impact of the effort reflected in the current specific programs described in Appendix A. In particular, the dollar value of public benefits to be provided annually by WPZS shall escalate each year by the increase in the Consumer Price Index for Urban Consumers for the Seattle-Tacoma-Bellevue area, or its functional, widely recognized and utilized successor index as determined by the City, measured as of June 30 of the prior year.

11.1.1 Public Benefit Report. WPZS will include in each annual Public Benefits Report a description of the public benefits WPZS has provided, including at a minimum a description of the benefits provided during the reporting period, scale and impact of those public benefits, and commercially reasonable dollar valuation of those benefits. If the Superintendent reasonably determines that the value of public benefits set out in the reporting period does not equal or exceed the minimum public benefit value required for that reporting period, the Superintendent will notify WPZS of the basis for the

Superintendent's determination and the dollar value of public benefits WPZS failed to provide for the reporting period. In that case, WPZS shall remedy the shortfall in the next reporting period by increasing public benefits provided and reported to include the required minimum annual value plus the dollar value of public benefits required but not delivered in the prior year. A shortfall in public benefit valuation during any reporting period will not constitute an event of default as long as WPZS has provided all agreed public benefit

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services during the previous reporting period and WPZS remedies the shortfall as set out in this Section 11.1.1.

11.1.2 Financial Disruptions. The Parties understand that the ability of WPZS to continuously provide and increase the value of public benefits as required herein may be compromised by unanticipated reductions in attendance or revenue associated with economic recessions identified by the National Bureau of Economic Research (NBER) or its functional successor; emergency zoo closures; the loss of County levy funding; a reduction in City funding resulting from a fiscal emergency as provided in Sections 5.2.2 and 5.4.4; and other events beyond WPZS's reasonable control. While the WPZS will make a good faith effort to maintain public benefits under such circumstances, the City understands that the scale and value of such benefits that the Zoo can reasonably sustain during periods affected by such events may be reduced. When the impact of such events dissipates, the WPZS shall endeavor to restore the scale and value of its public benefits to the level before WPZS revenue declined as soon as reasonably possible.

11.1.3 Five-Year Review. WPZS agrees that it will provide at an initial level and value public benefits as summarized in this Section 11.1 and Appendix A. The parties recognize that over the Term of the Agreement, WPZS or the City may develop new

programs and strategies that may more effectively achieve the desired outcomes and, in particular, equity outcomes. Five (5) years following the Effective Date and every five (5) years thereafter during the Term, the City and WPZS shall review the public benefits outlined herein and, if reasonably approved by both parties, shall modify Appendix A to reflect the goal of providing public access to Seattle's underserved populations and allow room for adjustments based on programming and facility changes. While the value of

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WPZS public benefits shall escalate at the level set out in Section 11.1 above, the program and strategies used by WPZS to deliver that value will be evaluated every five (5) years following the Effective Date in conjunction with the program evaluation.

11.2 Equity and Inclusion Value Statement. In addition to the public benefits requirements set forth in Appendix A, the parties share the core value of ensuring resources such as the Zoo are operated with deliberate attention to promoting equity, including geographic equity and inclusion. Therefore, WPZS will develop programs and conduct outreach to serve historically underserved populations and create more equitable access to the Zoo resources. To achieve such results, WPZS shall implement a variety of strategies, such as the following:

- (a) Adopting and implementing staffing policies aimed at developing and sustaining diverse staff, volunteers, and board members reflecting the diversity of the larger community;

- (b) Lowering economic, physical, and cognitive barriers too, so that the Zoo is accessible to everyone;

- (c) Providing free and low-cost access to the Zoo and programs sponsored by the Zoo, as described, by way of current examples, in Appendix A;

- (d) Supporting partnerships and collaborative relationships with diverse regional and community based cultural organizations, and;

(e) Providing trainings to the Zoo's employees and board of directors on best practices related to race, equity and inclusion.

WPZS shall include in its annual Public Benefits Report each year a summary of the strategies implemented pursuant to this section and the outcome of these strategies, along with supporting metrics.

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11.3 Non-Discrimination, Labor Harmony and Social Equity. WPZS shall follow such social equity efforts, requirements and accountability metrics (“Social Equity Work”) as the City reasonably determines appropriate for Zoo CapEx Projects. Social Equity Work requirements will be generally consistent with but not more stringent than requirements for City-managed public works contracts, including, but not limited to, Acceptable Work Site requirements. The requirements set out in Section 11.3 shall be the minimum requirements for Social Equity Work. Individual project or any generic master agreements required under Section 11.3.3 will set out additional Social Equity Work provisions as the City reasonably determines necessary and appropriate to achieve City social equity goals. The City may in its discretion require that any community workforce agreement described in Section 11.3.3 be entered using a form provided by the City and reflecting the City's then-current contracting policies. For any Zoo CapEx Project directly funded in whole or in part by the City, the City may further require WPZS to engage the City's Department of Finance and Administrative Services (FAS) Purchasing and Contracting Division, or the functional successor to that City unit, to oversee Social Equity Work, at WPZS's expense or otherwise, if the City determines in its reasonable discretion that site oversight is necessary to achieve social equity goals. The City will oversee implementation of this Section 11.3 on City-funded Zoo CapEx Projects through SPR and/or the City's Department of Finance and Administrative Services (FAS) Purchasing and Contracting Division or its functional successor, as City deems appropriate, and subject to all applicable public works laws.

11.3.1 Non-Discrimination. Without limiting WPZS's general obligation to comply with applicable law for the duration of the Term, WPZS, and all parties contracting under the authority of WPZS, shall comply with all applicable equal employment

opportunity and non-discrimination laws of the United States, the State, the County, and the City.

11.3.2 Women and Minority-Owned Business Enterprises Inclusion. On Zoo CapEx Projects with a total construction budget of \$300,000 or more and City funding, WPZS shall ensure open and fair opportunities for minority and women-owned businesses (“WMBEs”) to obtain or compete for contracts and subcontracts. With respect to hiring CapEx Project contractors, WPZS shall further require contractors of every tier to make affirmative efforts to solicit and contract with WMBEs and to make good faith efforts to ensure that goals of the participation of WMBEs are met. Efforts may include but are not limited to use of WMBE inclusion plan with goals and metrics appropriate to contract type and goods or services procured.

11.3.3 Community Workforce Agreement. On Zoo CapEx Projects involving City funding and with a total construction budget of \$5 million (\$5,000,000) or more, WPZS shall enter into a master community workforce agreement or project specific agreements with applicable trades, which shall include provisions that advance inclusion of a diverse workforce reflecting King County's diverse population and inclusion of workers from economically distressed areas of King County. With respect to hiring CapEx Project contractors, WPZS shall require its contractors and subcontractors to assent to any such agreement or agreements.

11.3.4 Prevailing Wages. For Zoo CapEx Projects, WPZS, its contractors and subcontractors shall adhere to the prevailing rates for all craft workers in effect at the time their respective contracts are executed. Prevailing wage rates, when required, may not be less than the prevailing wage rate established by Washington State Labor and Industries.

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11.3.5 Training and Opportunities for Women and Persons of Color in the Construction Trades. WPZS commits to evaluate and support efforts by labor organizations to create and expand opportunities for women and people of color to gain valuable experience in the course of completing Zoo construction, major maintenance, and Zoo CapEx Projects. WPZS concurs that there is a need for increased training and apprenticeship opportunities in the construction industry and that a diverse and well-trained workforce is important to the economic and social vitality of the region. On Zoo CapEx Projects involving City funding and with a total construction budget of \$1 million (\$1,000,000) or more, WPZS shall require utilization of apprentices to the extent required by law and encourage its Zoo CapEx Project contractors to utilize apprentices on Zoo projects in a manner generally consistent with comparable requirements for City major capital improvement projects.

11.3.6 Labor Peace. At its earliest opportunity, WPZS shall cause the entity operating or managing the principal food and beverage concession, franchise, or operation at the Zoo, including WPZS if it elects to operate or manage such food and beverage concession, franchise or operation, to enter into a labor peace agreement. Such opportunity includes but is not limited to negotiation of substantial modifications to its existing concessions and catering operating agreement requested by the current concessionaire and any assignment or extension of same as well as negotiation of any successor agreement or combination of agreements of similar scope. For purposes of this

Section, “labor peace agreement” means an agreement with a labor organization that contains, at a minimum, provisions prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with the Zoo’s

operations. “Labor organization” means a labor organization as defined in 29 U.S.C. 152(5).

11.4 Periodic Review. Social Equity Work will evolve over the Term to address changing social requirements and laws. From time to time, but no less frequently than every fifth year, the Parties shall review and revise measures required under this Section 11 for Zoo CapEx Project for alignment with City social equity goals and general consistency with then-current City inclusion and equity policies and practices required of City-funded major capital improvement projects.

Section 12. Zoo Animals.

12.1 Rights to Animals. The Zoo Animals shall be and remain the Personal Property of WPZS for the duration of the Term. The Zoo Animals, together with the WPZS animals on loan to other zoos, shall become the property of the City when this Agreement is terminated. Notwithstanding any other provisions of this Agreement to the contrary, the provisions of this Section 12 shall govern to the extent of any conflict.

12.2 Care of Animals. WPZS shall care for all Zoo Animals, as well as any animals on loan from other zoos, under AZA auspices in accordance with all applicable federal, state and local laws and regulations, and policies and guidelines adopted by the AZA.

12.3 Animal Collection, Acquisition and Disposition. WPZS shall have the authority to determine the composition of the Zoo Animal collection, including breeding, acquisition, sale or

other disposition of Zoo Animals in the course of WPZS's operation of the Zoo. In implementing such authority to acquire, sell or otherwise dispose of its Zoo Animals, WPZS shall strictly comply

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with requirements of (a) all applicable federal, state or local laws, regulations and policies; and
(b) the guidelines and policies of the AZA.

Section 13. Naming Rights.

13.1 Zoo Name. The Zoo's name may not be changed from "Woodland Park Zoo" without the prior written approval of the Superintendent.

13.2 Donation Acknowledgement. Any donor recognition with respect to zoo buildings, spaces and other features or objects at the Zoo will be consistent with SPR's naming policy for Zoo facilities, as those policies may be amended from time to time by the Superintendent. The Superintendent shall consult with WPZS prior to making any changes to the Zoo facility naming policies.

Section 14. Maintenance.

14.1 General. WPZS shall maintain the Zoo in a clean, safe, sanitary and sightly condition, and as necessary to maintain all licenses and accreditations. WPZS shall employ sufficient personnel to perform the maintenance and repair work in a prompt and efficient manner in order to keep the Zoo Premises at all times in an operating condition that is clean, safe and attractive.

14.2 Contractor Insurance. In addition to the Parties' insurance requirements set out in Section 18 and Appendix B, WPZS shall ensure that every contractor engaged to perform work

on the Premises maintains insurance in amounts, on policies of coverage and offered by companies reasonably satisfactory to WPZS and consistent with standard City requirements for comparable work, including but not limited to Worker's Compensation Insurance (including Employers'

Liability Insurance) and insurance against liability for injury to persons and property arising out of all such contractor's operations, and the use of owned, non-owned or hired automotive equipment in the pursuit of all such operations.

Section 15. WPZS Fiscal Authority.

15.1 WPZS Revenue. All revenue generated by WPZS and revenue WPZS receives under agreements with concessionaires, licensees or others related to Zoo operations, including, without limitation, charges, fees and receipts from admissions, concessions, retail, programs and other services offered by WPZS to the public at or in association with the Zoo, and all contributions collected by WPZS from any other source, shall be expended or invested by WPZS exclusively for Zoo Purposes.

15.2 Miscellaneous Charges, Fees and Prices. Subject to Section 10, WPZS shall have the authority to set the amount of all charges, prices and fees for admissions, services rendered or sales made to the public or otherwise at the Zoo, including without limitation, food and drink concessions, membership passes, retail, parking, special exhibits, programs and other special events.

15.3 Franchises or Concessions. WPZS shall have exclusive authority to grant to any nonprofit or for-profit corporation or other public or private organization franchises or concessions that further the public use and enjoyment of the Zoo.

15.4 Solicitation of Private and Public Funding. WPZS shall (a) use its best efforts to (i) actively solicit private support for WPZS through membership fees and charitable contributions;

and (ii) actively solicit federal, state or local grants or other funds to support the operation and purposes of the Zoo; and (b) apply all funds contributed to it as membership fees, charitable donations, public grants or loans, or any other sources to Zoo Purposes, including

without limitation, operating expenses, capital improvements, and programming. The City hereby agrees to use reasonable efforts to assist WPZS in the solicitation of sources of public funding to support the operation of the Zoo, to the extent allowed by law and consistent with City policy.

Section 16. Reporting Obligations and Public Involvement.

16.1 Annual Report to Superintendent. On or before June 1 of each year throughout the Term of this Agreement, WPZS shall, at its sole expense, prepare and submit to the Superintendent for his or her review, the Annual Report. This report will provide a general summary of the Zoo's operations and will include (a) an audited financial accounting for all funds, including Operations Support funding provided by the City pursuant to Section 5.2.1; (b) a listing of major maintenance projects undertaken and an accounting for Major Maintenance Support funds provided by the City pursuant to Section 5.2.3; (c) a listing of all capital investments made at the Zoo; (d) current admission prices; (e) a description of public benefit services provided, as set out in Section 11.1; (f) a description of equity and inclusion programming and outreach as set out in Section 11.2; (g) a self-evaluation by WPZS of its performance in the area of customer service; (h) a listing of WPZS efforts to conserve species and natural habitats, address climate change, and promote public engagement in conservation actions as well as conservation and environmental sustainability impacts achieved as a result; and (i) a listing of sustainability-related measures taken and projects completed at the Zoo and, following the approval of the Long-Range Plan, progress made toward achieving the sustainability, ecological footprint, and climate change-related aspects of such Plan.

16.2 Annual Plan to the Superintendent. At least thirty (30) days prior to the beginning of

each Fiscal Year for WPZS, WPZS shall, at its sole expense, prepare and submit to the Superintendent an Annual Plan. The Annual Plan shall, at a minimum, include (a) the one-year capital improvement plan for the Zoo; (b) a description of major programmatic changes planned

at that time for the ensuing year; (c) a description and estimated cost of projects intended to be funded by Major Maintenance Support payments for the following year; and (d) admission charges WPZS plans to implement in the coming fiscal year that have been approved by the Superintendent as provided in Section 10.

16.3 Supplementary Reports. In addition to submitting the Annual Report and Annual Plan to the Superintendent, WPZS shall also submit the following reports: 16.3.1 Quarterly Reporting to the Superintendent. Beginning three (3) months after the mutual execution of this Agreement and on a quarterly basis thereafter throughout the term of this Agreement, WPZS shall, at its sole expense, prepare and submit to the Superintendent a year-to-date income statement for the current year. This report shall include a summary of revenue from various sources and an accounting of costs. In addition, the quarterly report will set forth a summary of the operations of the Zoo and services provided by WPZS for the preceding quarter.

16.4 Annual Independent Audit. Within sixty (60) days after the end of each Fiscal Year, WPZS shall arrange for an audit of its books and records by an independent, certified public accountant; this audit shall be conducted at WPZS's sole cost and expense and shall cover the previous Fiscal Year. WPZS shall deliver to the Superintendent an original, signed copy of each such annual audit, by the earlier of (a) thirty (30) days after the completion of such audit; or (b) 150 days after the end of the Fiscal Year covered by such audit.

16.5 Books and Records.

16.5.1 Financial Records. WPZS shall establish and maintain books, records and systems of account relating to the Zoo's revenues and expenses in accordance with

shall, to the extent necessary to meet requirements for audits under Section 16.6 of this Agreement, be retained by WPZS and made available to the City upon request. 16.5.2 Zoo Animal Records. In order to sustain the health and welfare of Zoo Animals, the WPZS shall maintain the Zoo Animal Records. WPZS shall make Zoo Animal Records reasonably available to the Superintendent upon the Superintendent's request to enable the City to determine that Zoo Animals are receiving proper care and treatment at the Zoo consistent with the requirements of this Agreement. The Superintendent shall make Zoo Animal Records used by the Superintendent or in the Superintendent's possession available for disclosure to the public through routine City records disclosure procedures. If the Superintendent receives a request from a member of the public for identifiable Zoo Animal Records that the Superintendent does not possess, the Superintendent will forward that request to the WPZS, and the WPZS shall promptly make the requested Zoo Animal Records available to the requester. If the WPZS receives a request from a member of the public for identifiable Zoo Animal Records, the WPZS shall promptly make the requested Zoo Animal Records available to the requester. 16.6 City Audit Participation. If requested by the City, WPZS shall make available all information reasonably necessary for the City and the State Auditor to perform audits of the use and application of all revenues, grants, fees and charges and all City funds, except for private fundraising activities and private donor information, received by WPZS during the current and preceding year, including Zoo operations and management.

16.7 Public Involvement.

16.7.1 Involvement on WPZS Board. Subject to the requirement that all WPZS Board appointees shall be qualified and approved by the WPZS Board based upon

the criteria generally recognized for membership on the WPZS Board, the following shall each have the authority to appoint one person to one citizen position (total of three positions), with a three (3) -year term for each such position, on the WPZS Board: the Superintendent; the Mayor; and the City Council committee that generally oversees SPR. Following the initial appointments to the three WPZS Board positions authorized under this subsection 16.7.1, succeeding new appointments to these three positions by the appointing authorities may only be made effective upon the occurrence of a vacancy or expiration of the preceding term. In order to allow the four neighborhoods adjacent to and most impacted by operation of the Zoo, Fremont, Green Lake, Phinney Ridge, and Wallingford, to have a voice in WPZS governance, the WPZS Board shall recruit at least two members who reside in two of such neighborhoods. The WPZS Board shall also recruit two members who are members of historically underserved communities or reside in neighborhoods with a high percentage of residents living below the poverty line.

16.7.2 Public Review of Annual Report and Annual Plan. WPZS shall provide the public with an opportunity to review and comment on the Annual Report and further agrees to respond to such comments in a supplementary report to the Superintendent. WPZS shall provide the public with an opportunity to review and comment on its draft Annual Plan and further agrees to respond to any such comments in the final Annual Plan to be submitted to the Superintendent.

16.7.3 Public Involvement Process for Major Capital Projects. The Parties agree that the development process for any major capital projects at the Zoo must include significant opportunities for public involvement. WPZS shall develop a public involvement process to be conducted for each such major capital project as well as other major activities

at the Zoo. This public involvement process will be implemented after receiving approval of the Superintendent.

16.7.4 Neighborhood Liaison. The Parties recognize that there are and will continue to be unique concerns about the Zoo on the part of the immediate neighbors of the Zoo. WPZS agrees to designate a neighborhood liaison from the WPZS staff to communicate with the Phinney Ridge, Wallingford, Fremont, and Green Lake communities at least annually. WPZS, in consultation with such neighborhoods, will develop protocols for communicating with such neighborhoods and for conveying resident concerns and opinions to the WPZS Board for consideration and response. Among matters to be addressed by the WPZS through such liaisons is the impact of WPZS programming, including events, on the neighborhoods identified herein.

16.7.5 WPZS Board Meetings; Notice and Public Participation. Approximately one week in advance of any regularly scheduled WPZS Board meeting, the WPZS Board shall provide notice of WPZS Board meeting times, location and proposed agenda items as of the date of the notice to any member of the public who submits a written request for such notice. Any written request for such notice shall identify whether the requesting party wishes to receive such notice by electronic or regular mail. The WPZS Board shall also post such notice on the WPZS web page approximately one week in advance of any regularly scheduled WPZS Board meeting. The proposed agenda identified in the notice shall be subject to change until the commencement of the meeting. The WPZS Board Chair shall provide for a public comment period at each meeting.

Section 17. WPZS Code of Ethics. WPZS shall have a code of ethics governing its board members, employees and activities consistent with applicable requirements of state and federal laws and AZA standards. The City may request from WPZS those documents necessary for the City to confirm the establishment of an ethics and conflict of interest policy. WPZS will report on compliance with the ethics and conflict of interest policy and any issues that have arisen as a result, in the Annual Report.

Section 18. Insurance. The Parties will provide insurance and abide by the insurance provisions of this Agreement in accordance with Appendix B of this Agreement.

Section 19. Representations and Warranties. WPZS hereby represents and warrants to the City and covenants as follows:

19.1 Experience. WPZS is experienced in aspects related to the operation and management of the Zoo and care of animals and hereby agrees to apply its best efforts and most efficient methods in the full operation and management of the Zoo.

19.2 Formation. WPZS is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State of Washington. WPZS shall at all times during the Term of this Agreement maintain its tax-exempt status under Sections 501(c)(3) of the Internal Revenue Code.

19.3 Authority. WPZS has full power and authority (corporate or otherwise) to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of WPZS and no other corporate or other action on the part of WPZS is necessary to authorize the execution and delivery of this Agreement.

The individual executing this Agreement for WPZS has full authority to do so and thereby to bind WPZS to its terms.

19.4 Conflicts and Consents. The execution and delivery by WPZS of this Agreement and the performance by WPZS of the transactions contemplated in it will not violate any federal, state or local law, rule or regulation, or conflict with or result in any breach or violation of, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or constitute an event or condition that would permit termination or acceleration of the maturity of, the Articles of Incorporation, bylaws or partnership agreement of WPZS (as applicable) or any indenture, mortgage, lease, agreement or other instrument or obligation to which WPZS is a party or by which it may be bound whose termination or acceleration would materially adversely affect the ability of WPZS to perform its obligations under this Agreement. No approval, authorization, consent or other order or action of, or filing or registration with, any person, entity or governmental authority is required for the execution and delivery by WPZS of this Agreement.

19.5 Conflict with Government Orders. The execution and delivery by WPZS of this Agreement will not conflict with any order, judgment or decree of any court, government, government agency or instrumentality, whether entered pursuant to consent or otherwise, by which WPZS may be bound or affected.

19.6 Litigation. There is no litigation, action, arbitration, grievance, administrative proceeding, suit or claim filed and pending, nor is there any investigation by a governmental agency of WPZS or any of its affiliates that, if adversely decided, could have a material adverse impact on WPZS's ability to perform its obligations under this Agreement.

Section 20. Force Majeure. As used herein, the term “Force Majeure” with respect to a delay in performance shall mean any delay that is attributable to (a) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party hereto), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (b) any changes in any applicable laws or the interpretation thereof; (c) any lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, public health emergency; or (d) any other cause beyond the reasonable control of the party from whom performance is required and of its contractors or other representatives. Any prevention, delay or stoppage in a party’s performance hereunder due to Force Majeure shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage; provided, however, that during the period of any such delay or stoppage, the party whose performance hereunder is excused shall take all reasonable steps to minimize the length of such delay or stoppage.

Section 21. Indemnities.

21.1 City’s Indemnity. The City hereby agrees to indemnify, save harmless and defend WPZS from any and all losses, claims, actions or damage suffered by any person or entity by reason of or resulting from any act or omission of the City or any of its officers, agents, employees, or invitees in connection with use or occupancy of the Property, including trademark, patent, and copyright infringement; but only to the extent such claims, actions, costs, damages or expenses are caused by the negligence or intentional misconduct of the City, its authorized officers, agents, employees or invitees. The indemnification provided for in this section shall survive any

termination or expiration of this Agreement. The City waives, with respect to WPZS only, its immunity under RCW Title 51, Industrial Insurance. This indemnification provision is the result of mutual negotiation. The City's obligations under this indemnification Section 21.1 and under Section 24.4 shall not exceed the appropriation authorized at the time the City must fulfill its indemnity obligations and nothing in this Agreement may be considered as insuring that the City will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the City's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

21.2 WPZS's Indemnity. WPZS hereby agrees to indemnify, save harmless and defend the City from any and all losses, claims, actions or damages suffered by any person or entity by reason of or resulting from any act or omission of WPZS or any of its officers, agents, employees, or invitees in connection with use or occupancy of the Property, including trademark, patent, and copyright infringement, but only to the extent such claims, actions, costs, damages or expenses are caused by the negligence or intentional misconduct of WPZS, its authorized officers, agents, employees or invitees. The indemnification provided for in this section shall survive any termination or expiration of this Agreement. WPZS waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance. This indemnification provision is the result of mutual negotiation.

21.3 Relationship to Insurance Obligations. Nothing contained in this Section 21 shall be construed to affect the allocation of responsibilities between the Parties or the insurance coverages required in Section 21 and Appendix B.

Section 22. Default; Termination of Agreement; Remedies.

22.1 Termination by City. The City shall have the right to terminate this Agreement following an Event of Default. The following shall constitute “Events of Default” under this Agreement:

(a) Failure of WPZS to perform or comply with any material covenant or condition made under this Agreement that the City, or failure of any representation or warranty made by WPZS in this Agreement to have been or to continue to be true and correct, provided WPZS shall have a period of sixty (60) days from the date of written notice from the City within which to cure such default, or, if such default is curable but not capable of cure within such sixty (60) -day period, WPZS may request and Superintendent shall grant if reasonable a longer period not to exceed one-hundred eighty (180) days to complete such cure so long as WPZS promptly undertakes action to cure such default within such sixty (60) day period and thereafter diligently prosecutes the same to completion;

(b) Abandonment or assignment or encumbrance or transfer of this Agreement or of the Premises by WPZS, without the prior written consent of the City; and (c) The appointment of a receiver to take possession of all or substantially all of the assets of WPZS, or an assignment by WPZS for the benefit of creditors, or any action taken or suffered by WPZS under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

The foregoing is in addition to any other right to terminate explicitly given to the City elsewhere in this Agreement.

22.2 Termination by WPZS. WPZS shall have the right to terminate this Agreement in

the event that:

(a) The City fails to make any payment due to WPZS under this agreement within thirty (30) days of the agreed due date, including an Operations Support payment required under Section 5.2.1 or a Major Maintenance Support payment required under Section 5.2.3.

The City may cure any failure to provide funds within sixty (60) days after written notice of such failure has been delivered by WPZS; provided that, if such failure is not legally capable of cure within such sixty (60) day period, the City shall have a reasonable period to complete such cure if either promptly undertakes action to cure such default within such sixty (60) day period and thereafter diligently prosecutes the same to completion. The foregoing is in addition to any other right to terminate explicitly given to WPZS elsewhere in this Agreement.

22.3 Termination by Either Party. Either Party may terminate this Agreement if the City does not approve a Long-Range Plan mutually agreeable to the Parties within two (2) years of its submission to the Superintendent and the Parties fail to agree to an alternative plan for carrying out this Agreement as provided in Section 8.

Section 23. Surrender of Premises; Transition. Within 181 days of the Termination Date or other termination of this Agreement, or such other transition period as the Parties may mutually agree,

WPZS shall (a) promptly remit to the City all unexpended revenues generated from Zoo operations, admissions and other charges, but excluding philanthropic donations other than funds necessary to complete any CapEx Projects in progress; and (b) peaceably quit and surrender to the City the Premises, together with all permanent improvements approved by the City and Personal Property reasonably determined necessary for Zoo operations in good order and

condition, normal wear and tear and damage caused by casualty or condemnation excepted. During the period between the Termination Date and surrender of the Premises, WPZS may not

dispose of any Zoo Animals without written permission from the Superintendent, notwithstanding rights that might otherwise be available during the Term under Section 12.3. The Premises shall be surrendered free and clear of all liens and encumbrances other than any encumbrances on the Premises created or approved in writing by the City. WPZS shall, immediately before the Termination Date or other termination of this Agreement, remove all of WPZS's Property as provided in this Agreement, and repair any damage resulting from the removal. WPZS's obligations under this Section shall survive the Termination Date or other termination of this Agreement. Any items of WPZS's Personal Property which shall remain in the Premises after the Termination Date of this Agreement may, at the option of the City, be deemed abandoned and in such case may be disposed of by the City in any manner allowed by law.

Upon the termination of this Agreement for any reason, WPZS and the City shall cooperate to the fullest reasonable extent in effecting an orderly and efficient transfer of the operation and management of the Zoo from WPZS to the City or its designee. Such cooperation shall include without limitation the entry into such agreements, the execution of such documents and the convening of such meetings as may be reasonable required to effect such transfer.

Section 24. Hazardous Materials.

24.1 Definitions. As used herein, the following terms shall have the meanings set forth below:

24.1.1 "Environmental Laws" means any applicable federal, state and local laws (whether under common law, statute, ordinance, rule, regulation, code or otherwise),

permits, orders, decrees, and other requirements of governmental authorities relating to the protection of human health or the environment, whether existing as of the date hereof, previously enforced, or subsequently enacted.

24.1.2 “Hazardous Material” means any element, compound, chemical, chemical mixture, or other substance that is identified as, or determined to be, a hazardous, toxic or dangerous substance, pollutant, contaminant, waste or material under, or is otherwise regulated under, any Environmental Law or other law relating to chemical management, environmental contamination, environmental cleanup or nuisances, including, without limitation, petroleum and petroleum products, asbestos, radon and other radioactive materials, bio-hazards and lead-based paint.

24.1.3 “Release” when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about any other part of the Premises.

24.2 No Hazardous Materials. WPZS covenants and agrees that neither WPZS nor any of its agents or invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises, provided that WPZS may use such substances in such limited amounts as are customarily used in the operation and maintenance of a zoological gardens so long as such use is in compliance with all applicable Environmental Laws. Each party hereto shall immediately notify the other party if and when such party learns or has reason to believe there has been any Release of Hazardous Material on or about the Premises.

24.3 WPZS’s Environmental Indemnity. If WPZS breaches any of its obligations contained in this Article, or, if any act, omission or negligence of WPZS or any of its agents or invitees results in any contamination of the Premises or any other part of the Property or in the Release of Hazardous Material from, on, about, in, on or beneath the Property, then WPZS shall

indemnify the City from and against all losses (including, without limitation, the loss or restriction of the use of the Property and sums paid in settlement of claims, fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs (collectively, "Losses")) arising during or after the Term of this Agreement and relating to such Release; provided, however, that the indemnity obligation contained in this Section shall not apply to any Losses resulting from any Release before the commencement date of the Prior Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Property to its prior condition. Without limiting the foregoing, if WPZS or any of its agents or invitees causes or permits the Release of any Hazardous Materials on, about, in or beneath the Property, WPZS shall, immediately, at no expense to the City, take any and all necessary actions to abate and remediate the Release in accordance with all Environmental Laws. WPZS shall afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

24.4 City's Environmental Indemnity. If any act, omission or negligence of the City or any of its agents (other than WPZS) results or has resulted in any contamination of the Property or in the Release of Hazardous Material from, on, in, on or beneath the Property, then the City shall

indemnify WPZS from and against all Losses resulting from such Release, provided, however that the foregoing indemnity obligation shall not include indemnification for any Losses resulting from WPZS's aggravation of any Release occurring before the commencement date of the Prior Agreement through WPZS's actions or inactions, or the actions or inactions of its agents, officers

or employees, whether negligent or non-negligent. The foregoing indemnity obligation includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Property to its prior condition. The City shall afford WPZS a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material. The City's obligations under this environmental indemnification Section 24.4 and under Section 21.1 shall not exceed the appropriation authorized at the time the City must fulfill its indemnity obligations and nothing in this Agreement may be considered as insuring that City will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the City's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

Section 25. Prior Operations and Management Agreement. This Agreement supersedes that certain Woodland Park Zoo Operations and Management Agreement, dated December 17, 2001 that became effective as of March 1, 2002, as well as subsequent amendments, specifically

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including Amendment 1 dated December 23, 2004 and Amendment 2 dated July 7, 2014, memoranda, “side letters” and supplements, except as specifically provided herein.

Section 26. Assignments; Subcontracting. WPZS has been chosen by the City to operate and manage the Zoo in reliance upon WPZS's stated and unique expertise, skill and experience. WPZS shall not assign, transfer, mortgage or encumber its interest in this Agreement or any

other right, privilege or license conferred by this Agreement, either in whole or in part. Any assignment or encumbrance shall be voidable and, at the City's election, shall constitute a material default under this Agreement. Without limiting the obligations of WPZS under this Agreement, WPZS shall have the right and the authority to enter into contracting arrangements with any other person or entity (including without limitation SPR or other City agency) for the provision of any work or service required or allowed to be performed by WPZS under this Agreement so long as WPZS maintains supervisory or management authority over such work or service.

Section 27. Notices. All notices required to be given hereunder shall be in writing and either delivered personally, sent by certified mail, or sent via email with return receipt requested or such alternative electronic means as may be agreed in writing between the Parties to the Primary Contact address listed below, or at such other address as shall be provided by written notice. Notice shall be deemed communicated two (2) Business Days from the time of mailing by certified mail, or when personally delivered, or when sent via email with return receipt requested. The Parties further agree to provide additional copies to the courtesy copy recipients below, but notice shall be deemed communicated regardless of whether a courtesy copy is sent or received.

If to the WPZS:

Primary Contact:

Woodland Park Zoological Society

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5500 Phinney Avenue North
Seattle, WA 98103-5858
Attn: President and CEO
Email: Alejandro.Grajal@Zoo.org

Courtesy copy to:

Pacifica Law Group
1191 2nd Avenue, Suite 2000

Seattle, WA 98101-3404
Attn: B. Gerald Johnson
Email: Gerry.Johnson@Pacificalawgroup.com

If to the City of Seattle

Primary Contact:

City of Seattle
Seattle Parks and Recreation
100 Dexter Avenue North
Seattle, WA 98109
Attn: Superintendent of Parks and Recreation
Email: Jesus.Aguirre@Seattle.gov

Courtesy copy to:

Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Attn: Chief Civil Deputy City Attorney
Email: Jessica.Nadelman@seattle.gov

Section 28. Compliance with Laws.

28.1 Generally. WPZS shall comply and conform with all laws and all governmental regulations, rules and orders that may from time to time be put into effect relating to, controlling or limiting the use and operation of the Zoo. WPZS shall secure, or cooperate with the City in its securing, all permits and licenses specifically required for the operation of the Zoo (copies of which shall be promptly provided to SPR), and shall comply with all applicable laws and regulations relating to labor employed in and relating to the operation of the Zoo.

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28.2 Americans with Disabilities Act. WPZS acknowledges that the Americans with Disabilities Act (the “ADA”) requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to persons with a disability. WPZS further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation, including but not limited to the Americans

with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (“ADA”); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; and the Washington Law Against Discrimination, Wash. Rev. Code Ann. § 49.60. WPZS warrants that it will fulfill that obligation, and that it will not discriminate against persons with a disability in the provision of services, benefits or activities pursuant to this Agreement.

Section 29. Non-Discrimination Ordinances. WPZS shall comply with all provisions of Chapter 20.44 and 20.45 of the Seattle Municipal Code, as amended, recodified or reenacted from time to time, relating to equal opportunity in employment and business practices. Such provisions are incorporated herein and by reference made a part of this Agreement as though fully set forth herein.

Section 30. Taxes, Assessments, Licenses, Permit Fees and Liens. WPZS agrees to pay taxes of any kind, including any possessory interest taxes (unless exempt under Washington law), that may be lawfully assessed on or on account of the performance of this Agreement and to pay all other taxes, excises, licenses, permit charges and assessments based on WPZS’s use of the Premises that may be imposed upon WPZS by law, all of which shall be paid when the same become due and payable and before delinquency. The City agrees to support WPZS in securing

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or affording tax treatment of the Zoo under this Agreement that is consistent with the taxation of other major cultural institutions. WPZS agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that WPZS, if so desiring, may have reasonable opportunity to contest the validity of the same. If WPZS intends to contest or to fail to pay when due any tax or fee referred to in the preceding sentence, WPZS shall provide the City with at least

thirty (30) days' notice of that intention before the tax is due, explaining its reasons. The City may choose to pay the tax on behalf of the WPZS, and if it is later determined the tax or some portion of it was validly owing, WPZS shall reimburse the City.

Section 31. Miscellaneous.

31.1 Liability of the City. The City's obligations to WPZS under this Agreement shall be limited to the terms and conditions set forth herein. Notwithstanding any other provision in this Agreement to the contrary, in no event shall the City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including without limitation lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

31.2 Liens and Encumbrances. WPZS shall keep the Property and Personal Property free from any liens and encumbrances arising out of or resulting from WPZS's use and occupancy of the Premises or performance of work under this Agreement. If, because of any act or omission of WPZS, any mechanic or other lien or order for payment of money shall be filed against the Property or Personal Property, WPZS shall promptly notify the City of the same and, at WPZS's

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sole expense, cause the same to be discharged or bonded within thirty (30) days after the date of notice of such filing. At the City's request, WPZS shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Property if not paid.

31.3 Parties and Their Agents. As used herein, the term "agents" when used with respect to either party shall include the agents, employees, officers and representatives of such party. All approvals, consents or other determinations permitted or required by the City hereunder shall be made by or through the Superintendent unless otherwise provided in this Agreement or unless the

City gives notice otherwise to WPZS.

31.4 Dispute Resolution. In the event of a dispute between or among WPZS and the City regarding any term of this Agreement, the Parties shall attempt to resolve the matter informally through the following mechanism: the Superintendent and the CEO, or their respective designee(s), shall meet to review and discuss the matter(s) in dispute; if the Superintendent and the CEO are unable to reach a mutual resolution, the WPZS Board Chair(s) shall meet with the Superintendent and other City representatives, as appropriate, to review and discuss the matter(s) in dispute. If such persons are unable to resolve the matter informally, either party may request non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution procedures. Any positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent alternative dispute resolution or legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available. City and WPZS may in the alternative or additionally utilize the dispute resolution process for set out in Exhibit 3 for matters subject to the MOU.

31.5 No Implied Waiver. No failure by either party hereto to insist upon the strict performance of any obligation of the other party under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues (except in cases where this Agreement expressly limits the time for exercising rights or remedies arising out of a breach), shall constitute a waiver of such breach or of that party's right to demand strict compliance such term, covenant or condition or operate as a surrender of this Agreement. No waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than

the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of either party hereto given in any instance under the terms of this Agreement shall not relieve the other party of any obligation to secure the consent of the other party in any other or future instance under the terms of this Agreement.

31.6 Interpretation. The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference and such captions in no way define or limit the scope or intent of any provision of this Agreement. A reference in this Agreement to section numbers shall be interpreted as a reference to the provisions set out in this Agreement within the referenced section number. A reference in this Agreement to the singular shall include a reference to the plural and vice versa.

31.7 Successors and Assigns. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the City and WPZS and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third party beneficiaries to this Agreement.

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31.8 Access to Zoo. The City, SPR and their duly authorized agents shall have access to the Premises and other Property at all times (a) for the purpose of inspection and to make any repairs, additions or renovations as the City may have the right to do under the provisions of this Agreement; and (b) for use by the City in case of emergency, as determined by the City in its sole discretion.

31.9 Relationship of Parties. This Agreement delineates the Parties' respective ownership interests, obligations, and responsibilities concerning Zoo operations and management pursuant to RCW Chapter 35.64. Nothing contained in this Agreement shall be construed to create a

legally recognizable partnership, joint venture, or relationship of employment or agency.

31.10 Agreement Made in Washington. This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of Washington. Venue of any action brought by one party against the other to enforce or arising out of this Agreement shall be in King County Superior Court.

31.11 Integrated Agreement; Modification. This Agreement contains all the agreements of the Parties hereto relating to the subject matter addressed herein and cannot be amended or modified except by a written agreement approved by the Seattle City Council and mutually executed between each of the Parties hereto.

31.12 Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

31.13 Non-Liability of Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to WPZS, its successors and assigns, in the event of any default or breach by the City or for any

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amount which may become due to WPZS, its successors and assigns under this Agreement, or for any obligation of the City under this Agreement. Likewise, no board member, member, officer, employee or other agent of WPZS shall be personally liable to the City, its successors and assigns under this Agreement, in the event of any default or breach by WPZS or for any amount which may become due to the City, its successors and assigns, or for any obligation of WPZS under this Agreement.

31.14 Time of Essence. Time is of the essence of each provision of this Agreement. 31.15 Survival of Indemnities. Termination of this Agreement shall not affect the right of either party

to enforce any and all Indemnities and representations and warranties given or made to the other party under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof.

Att 1 – WPZS O&M
Agreement D1

DATED this _____ day of _____, 20_____.

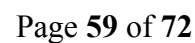
CITY OF SEATTLE, WASHINGTON, a
Washington Municipal Corporation

3 (MOU between SPR and WPZS)
4 Guiding Principles for a New Long-Range
Plan for Woodland Park Zoo
Appendix A: Public Benefits Requirements
Appendix B: Insurance Provisions
WOODLAND PARK ZOOLOGICAL
SOCIETY, a Washington nonprofit
Corporation

By: Jesús Aguirre
Superintendent of Parks and Recreation
By authority of Ordinance No. _____

Exhibits:
1 (Premises Depiction)
2 (Premises Legal Description)

By: Alejandro Grajal
President and CEO



OPERATIONS AND MANAGEMENT AGREEMENT

EXHIBIT 2 PREMISES LEGAL DESCRIPTION - SEATTLE

Beginning at a point which is 30 feet north of and 280 feet east of the Southwest corner of block 69, Plat of Woodland Park Addition to the City of Seattle, Washington, Vol. 3, page 123 of plats, said southwest corner of block 69 is identical with the southwest corner of the north half of the southwest quarter of said section 7, township 25 North, R.4E.W.M Said True Point of Beginning is the intersection of the east line of Phinney Ave. N., with the north line of North 50th Street;

Thence north along the east line of said Phinney Avenue North, to the intersection of the south line of North 59th Street;

Thence east along said south line of North 59th Street to the west margin of Aurora Avenue;

Thence south along said west margin of Aurora Ave. North to the north margin of North 50th Street;

Thence west along said north margin of North 50th Street to the True Point of Beginning. Said parcel containing 90.7 acres more or less.

PREMISES LEGAL DESCRIPTION – ENUMCLAW

The northeast quarter of the northwest quarter and the west half of the northeast quarter of Section 33, Township 20 North, Range 6 East, W.M., in King County, Washington; EXCEPT the north 30 feet of the northwest quarter of the northeast quarter for S.E. 464th Street; AND EXCEPT the north 30 feet of the east 30 feet of the northeast quarter of the northwest quarter for S.E. 464th Street;

AND EXCEPT that portion lying southerly of the White River;

AND EXCEPT that portion lying southerly of the King County-Pierce County Line.

OPERATIONS AND MANAGEMENT AGREEMENT

EXHIBIT 3

May 1, 2003 as updated July 2021
Memorandum of Understanding (MOU)
Between

Seattle Parks and Recreation (SPR) and Woodland Park Zoological Society (WPZS)

Design, Approval, and Construction Management of the below ground elements of WPZS Capital Projects

Note: Purpose of this MOU is to address capital project implementation details not addressed by Sections 9, 11 and 16 of the Woodland Park Zoo Operations and Management Agreement. Nothing in this MOU creates an additional payment or financial support obligation. In the event of a conflict between this MOU and the main Agreement, the Agreement shall control

Category	Principle/Guideline	Implementation approach
Funding	SPR and the WPZS jointly benefit from implementation of capital projects.	• Approach projects as partners. • WPZS funds project costs including reimbursement of an agreed upon level of review/inspection effort for SPR staff costs.
Quality	SPR and WPZS both have interest in identifying how SPR standards will be applied to WPZS projects. • SPR needs to preserve long term investment. • WPZS needs flexibility in operation and maintenance decisions.	• WPZS capital projects will meet or exceed SPR standard specifications and details for sewers, storm sewers and subsurface drainage. Deviation from these standards would occur only with SPR approval. Other underground utilities (i.e. power, communications, water and gas) and potential exposure/handling of underground environmental hazards will also be subject to SPR review. • The WPZS may modify other standard specifications and details for use on WPZS projects provided current building codes are met.
Design Reviews	• SPR needs timely information and opportunity for input on underground utilities (i.e. sewers, storm sewers, sub surface drainage, power, communications, water and gas) during design. • WPZS needs timely notification of issues or exceptions SPR takes to the project design of underground utilities. • Maintenance projects may not require full design documents.	• Park Engineer is provided with 5 sets of design documents of the underground elements for review at concept/schematic, 50% CD, and 95% CD stages • Park Engineer provides written comment to WPZS's Project Manager regarding deficiencies, required changes, required additions, or required clarifications regarding the construction documents. • The WPZS responds in writing. • If a project alters underground utilities the Zoo Society will notify the Park Engineer and Facilities Division of their intent, Park Engineer and Facilities provide informal review, Facilities provides field inspection during installation, WPZS provides as-built documentation.

Final Approval	• SPR and the WPZS need a record of agreement on design of projects.	• The WPZS will provide completed construction documents of the underground elements with a modified "Bidding Document Requirements" form for approval to proceed with construction. This form also delineates the planned Inspection Plan (including agreed to reimbursable inspections conducted by Parks staff) • The Park Engineer, on behalf of the Superintendent will sign the plans and specifications to indicate that SPR approves the design for Zoo purposes. Note that the Park Engineer signature does not transfer responsibility for or liability from the plans and specifications from WPZS to City.
Construction phase Accountability	• The WPZS is responsible for guaranteeing that the project is constructed as designed.	• Construction changes related to previously approved underground utility design must be approved by the Park Engineer.
Construction management	• The WPZS is responsible for management and inspection of WPZS construction projects.	• Designated SPR staff as agreed upon in the inspection plan shall coordinate site visits and inspections of underground utility installation with WPZS Project Manager. • If SPR inspectors have concerns about work completed, underway, or about to commence should direct these concerns to the WPZS's Project Manager in writing.
Misc. Contract Administration	• The Management Agreement calls for a review of insurance documents of WPZS contractors by the parties reviewing	• The WPZS Senior Finance Department staff has been trained by the City risk manager to perform normal City reviews. Copies of all documents will be submitted to the City after review.
Preferred Dispute Resolution Process	• WPZS Project Manager and SPR staff address and resolve issues as they come up during design and construction of the project.	• Should WPZS Project Manager and • SPR Staff fail to resolve a dispute; the matter should be referred to the Society • President/CEO and the Superintendent of SPR, or their designees for resolution.
Record Documents	• SPR and the WPZS jointly benefit from documentation of completed capital projects.	• WPZS will provide to SPR one complete set of record drawings on Mylar, one copy of the Project Manual, and one copy of the O&M Manual.

APPROVED:

DEPARTMENT OF PARKS AND RECREATION WOODLAND PARK ZOOLOGICAL SOCIETY Kenneth R. Bounds Deborah B. Jensen, Ph.D.
Superintendent President and CEO

By:  03/03/21 By:  03/03/21
Signature Date Signature Date

BELOW ARE THE CURRENT AUTHORIZED SIGNERS APPROVING MODIFICATIONS TO THIS DOCUMENT:

DEPARTMENT OF PARKS AND RECREATION Jesús Aguirre Superintendent  By: Signature	07/09/2021 Date	WOODLAND PARK ZOOLOGICAL SOCIETY Alejandro Grajal, Ph.D. President and CEO  By: Signature	07/09/2021 Date
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**WOODLAND PARK ZOO
OPERATIONS AND MANAGEMENT AGREEMENT
EXHIBIT 4**

Guiding Principles for a New Long-Range Plan for Woodland Park Zoo

The physical development of Woodland Park Zoo has been governed by a Long-Range Plan. Originally approved in 1976 and revised in 2004, the plan defined a long-term vision for the zoo and pioneered modern design principles for zoos around the world. Following this farsighted plan, a new Long-Range Plan should incorporate the original design parameters and animal exhibit principles of the original plan, with modern updates that include requirements for animal welfare, increased social relevancy of zoos as community spaces for education, advancing environmental conservation and connections with nature. A new Long-Range Plan shall incorporate City policies and community participation. Technical criteria for a new Long-Range Plan should include:

Compliance and Accreditation: Zoo accreditation standards by the Association of Zoos and Aquariums (AZA) accreditation continue to evolve. Similarly, continuous compliance with evolving requirements by USDA, OSHA, ADA, Green Building and City of Seattle require a campus-wide inventory and physical infrastructure investment.

Diversity, Equity and Inclusion: New design and interpretation principles should strive to remove colonial perspectives and include multi-cultural viewpoints and narratives. A physical plant should reduce or eliminate accessibility obstacles for people with physical, psychological or sensorial disabilities.

Visitor convenience and business opportunities: Modern visitor needs and amenities require a revision of meeting spaces, food and beverage offerings, restroom accessibility and IT infrastructure. Earned income opportunities should create year-round spaces for itinerant exhibits, winter attractions, evenings, catering amenities, cultural and community events.

Education and Conservation: A new plan needs to address recent advances in early childhood development, nature connections, youth empowerment and career opportunities. It also needs to take into consideration emerging technologies for distant and virtual learning, citizen science, civic engagement and community participation in environmental action.

Sustainability, Ecological Footprint and Climate Change: A new plan shall incorporate a long range sustainability plan that minimizes the zoo's carbon emissions and establishes quantifiable goals for water, solid waste and effluent impacts.

Animal Welfare and Population Sustainability: Zoo population requirements will demand increased space for breeding and holding facilities. Similarly, animal welfare requirements and technology will require significant upgrade to existing exhibit facilities and in a few instances, new exhibits. The Enumclaw property will become essential in developing off-site animal breeding and holding capacity.

Community Participation, Accessibility and Empowerment: As required under Section 8 of the Agreement, the Parties will develop and implement an extensive community participation plan (“Community Participation Plan”) as a feature of a Long-Range Plan creation process with the inclusion of the Seattle Parks and Recreation department, as well as a variety of stakeholders, such as local communities, cultural and tribal organizations, neighbors, elected officials, donors and regional leaders. The Chair of the City Council committee with jurisdiction over the relationship with the Zoo shall be consulted in the development of the Community Participation Plan and may identify individuals – drawn from staff and residents of the four neighborhoods adjacent to the Zoo, Fremont, Green Lake, Phinney Ridge, and Wallingford – to be involved in the participation process set out by the Community Participation Plan.

Fundraising and Capital Investment: A new Long-Range Plan is needed to establish a credible fundraising plan for capital improvements and to provide the philanthropic and earned revenue opportunities that will accompany the zoo’s growth in future decades.

Appendix A to
WOODLAND PARK ZOO
OPERATIONS AND MANAGEMENT AGREEMENT

PUBLIC BENEFITS REQUIREMENTS

Under this new agreement, WPZS agrees to continue providing substantial public benefits in the areas of public access, scholarships, programs, community outreach events, volunteer programs, capital improvements, and other miscellaneous items as further described in the table below and consistent with the provisions in Sections 11.1.1 through 11.1.3, and the annual reporting due date noted in Section 16.1. Although specific examples of the means and programs currently used to satisfy the public benefit requirements are reflected herein, the Parties recognize and agree that, such specific means of delivering such public benefits likely will evolve and may change over time.

WPZS' Commitment to Public Benefits

Public Access: WPZS agrees to operate the Zoo with the goal of providing the widest possible access by targeting efforts based on community needs. WPZS commits to improve its accessibility for people with disabilities through both physical improvements and programming.

Programs: WPZS agrees to continue programs for every age group from infants to seniors to instill environmentally sustainable actions, including students, teachers and chaperones through its onsite and offsite education programs, continuing school-age programs that provide opportunities for STEM education, and integrated mentorship and training programs for teens to develop the next generation of impactful global conservationists.

Race and Social Equity and Inclusion: WPZS commits to racial and social equity in line with the City of Seattle priorities and invest in equity programming and robust engagement strategies to build better partnerships with under resourced communities.

Economic Benefits: WPZS commits to seek philanthropic support and earned income that continues to diminish the proportion of public support needed to sustain the Zoo, which is a substantial supporter of our regional economy through direct and indirect revenues, jobs and economic opportunities.

Conservation: WPZS commits to continue its efforts to conserve species and natural habitats locally and worldwide, address climate change, and promote public engagement in conservation. Specifically, WPZS shall consistently comply with AZA guidelines regarding conservation programs and projects and annually commit not less than three percent (3%) of gross revenue from all sources to such programs and projects related to species and habitat conservation locally and worldwide. This commitment to conservation shall focus on population biology, monitoring, rescue, rehabilitation and reintroduction of endangered species; creation and support of natural protected areas and habitats; combating illegal wildlife trafficking; supporting

conservation legislation; supporting community-based conservation programs and resident science monitoring projects; environmental education programs and engagement in pro conservation campaigns; and promoting resident engagement and sustainable consumer choices.

ANNUAL PUBLIC BENEFIT TABLE
Example of Annual Public Benefit Values Based on Calendar Year 2019

Service Category	Public Benefit Description	Target Metrics	Value of Services
Public Access (Free Zoo Tickets) (Family Discount Days) (Seattle Public Library Museum Pass Program) (Promotion Commitment)	Community Access Program (CAP) tickets were distributed to community-based organizations (such as Seattle Housing Authority, El Centro de la Raza). Average Ticket Price was \$14.60 each in 2019.	100,000 Individuals	\$1,460,000
	A free carousel ride (\$3 value) was included on each CAP ticket	100,000	\$300,000
	Beginning in 2022, WPZS will create a program (working title “Family Discount Days”) that offers a 50% discount over regular admissions for 18 days between October and March. These days will be advertised and will include one weekday and one weekend per month.	90,000 Visitors	\$720,000 (beginning in 2022)
	Beginning in 2022, WPZS will participate in the Seattle Public Library Museum Pass Program. If possible, such passes should be allocated for use by patrons of Library branches located in or near neighborhoods with high percentages of residents living below the poverty line.	Will vary with utilization	Will vary with utilization
	Beginning in 2022, WPZS will purchase annually up to \$25,000 in promotional advertising targeted at people who might use our free and discounted admission programs.	N/A	\$25,000 (beginning in 2022)
Scholarships	Scholarships to Zoo camps, based on requested assistance applications. Camp scholarships are awarded to applicants based on their level of income.	59 Individuals	\$15,000
Programs	Zoo Admission Ticket and Membership Discount Programs for foster and kinship families (including Tribal welfare agencies) or recipients of Basic food benefit (EBT)/Washington Quest or State Woman, Infants, and Children Nutrition Program (WIC) assistance		
	• Explorer Pass \$35 membership (avg discount of \$65)	750 Explorer memberships	\$49,000

	• Discover Ticket \$5 regular admission tickets (avg \$8.60 discount)	3,500 Discover tickets	\$30,000
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	• Free School Group Admission for field trips for students from schools with 30% or more students eligible for free or reduced-price meals (avg. \$7 student rate)	25,000	\$175,000
Community Outreach Events	Discounted Educational Programs: Up CLOSE (WPZS’ ambassador animal outreach program) and programming for community organizations and schools are provided at subsidized rates (avg. discount of \$500)	100 events	\$50,000
Zoo Volunteer Programs	WPZS runs various Zoo Volunteer programs, which record approximately 92,500 hours per year from approximately 800 volunteers	N/A	N/A

Capital Improvements	Privately funded capital improvements to City Facilities 2019 spending on zoo exhibit improvements: the largest projects were remodeling the Northern Trail into the “Living Northwest Trail” and ZooDoo improvements.	Depending on annual projects, ranges between \$500K and \$5 million	\$858,000
Specific Services to City/ Miscellaneous Public Benefits	WPZS offers discounts for seniors, military personnel, guests with disabilities, City of Seattle’s Mayor’s Office Flash and Gold Cards*. Columns to the right include 2019 ticket prices. * <u>Gold Card</u> : - (Healthy Aging Resources for Seattle and King County Residents age 60+) * <u>Flash Card</u> (Fun Leisure Access Savings and Health): - identification card for Seattle and King County adults with disabilities	Senior: 18,925 tickets	\$37,850
		Military: 18,551 tickets	\$74,204
		Disability: 944 tickets	\$1,593
		Gold*: 1,593 tickets	\$24,802
		Flash*: 226 tickets	\$3,428

Total Public Benefit

Provided \$3,823,877

Appendix B to **WOODLAND PARK ZOO OPERATIONS AND MANAGEMENT AGREEMENT** INSURANCE PROVISIONS

A. Liability Insurance. WPZS, at no expense to the City, shall obtain and maintain continuously, throughout the Term of this Agreement, policies of insurance as enumerated below, if applicable. Said policy(ies): (i) shall be subject to periodic review and the reasonable approval

by the City's Risk Managers as to company, form and coverage, and be primary to all other insurance the City may secure; and (ii) must protect WPZS from any and all claims and risks in connection with any activity performed by WPZS, or any of its respective officers, employees, agents, contractors or assigns, by virtue of this Agreement or any use and occupancy of the Premises authorized by this Agreement.

The insurance required in this Section A where applicable shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insureds and shall not be reduced or canceled without sixty (60) days prior written notice to the City. If the cost of naming the City as an additional insured is substantial, the City may pay such reasonable cost. After each renewal WPZS shall provide a Certificate of Insurance (COI) and endorsements to the City Risk Management Office naming the City as an Additional Insured.

WPZS shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of all operations and activities of WPZS. WPZS shall ensure that all such claims, whether processed by WPZS or WPZS' insurers, either directly or by means of an agent, will be handled by a person with a permanent office in the Seattle area.

1. A policy of Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01) or equivalent including all the usual coverages known as:

- a. Premises/Operations Liability
- b. Products/Completed Operations
- c. Personal/Advertising Injury
- d. Contractual Liability
- e. Owners and Contractors Protective Liability
- f. Stop Gap or Employers Contingent Liability
- g. Host Liquor Liability
- h. Employees as Additional Insured

Such policy(ies) shall provide the following minimum limit:

Bodily Injury and Property Damage:

- (a) 2,000,000 per occurrence
- (b) 5,000,000 annual aggregate

Such insurance (i) may be evidenced with primary limits or any combination of primary and/or excess/umbrella limits, (ii) shall include "The City of Seattle, its officers, elected officials,

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employees, agents, and volunteers" as additional insureds for primary and non-contributory limits of liability for the full limits of liability available under WPZS's liability insurance program, whether such limits are primary, excess, contingent or otherwise. Deductibles or self-insured retentions of no more than One Hundred Thousand Dollars (\$100,000) for property damage and/or bodily injury are acceptable.

2. A policy of Business Automobile Liability Insurance, including coverage for any owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent. The following coverage extension shall also be included: Pollution Liability Broadened Coverage for Covered Autos (CA 99 48), (MCS90) or equivalent.

Such policy or policies must provide the following minimum limit:

Bodily Injury and Property Damage

\$1,000,000 per accident

3. **Umbrella or Excess Liability Insurance.** WPZS shall provide minimum Excess or Umbrella Liability coverage limits of \$15,000,000 each occurrence in excess of the primary CGL and Automobile liability insurance limits specified in this Appendix B. The minimum total limits requirement of \$17,000,000 may also be satisfied with primary CGL and/or Automobile liability insurance limits or any combination of primary and excess/umbrella limits.

B. **Worker's Compensation.** WPZS shall provide Worker's Compensation coverage for industrial injury to WPZS's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

C. **Property Insurance.** The City currently maintains property insurance on a citywide basis for its facilities, including facilities on the Premises. Throughout the Term of this Agreement, the City shall maintain such property insurance and be responsible for all premiums for such insurance or cancel such property insurance and move to self-insurance on City facilities, including Zoo facilities. WPZS is recognized as an additional insured on Zoo facility property insurance coverage maintained by the City. The City may any time during the Term seek reimbursement from WPZS for the cost of such insurance premiums on all facilities subject to WPZS operations if and when the City notifies WPZS that it is applying or intends to apply within the next year for similar requirements to other cultural institutions operating City-owned facilities.

The City recognizes that WPZS has specialized expertise in the unique nature of zoo facilities that will be helpful in determining appropriate replacement value of Zoo Property and evaluating any damage that may befall Zoo Property. The City will therefore consult with and seek WPZS input on these matters as more specifically set out in this subsection.

WPZS will work with the City to seek equitable recovery for the damaged property in as quickly a manner as possible. WPZS will work with the City to evaluate any damage. The City in consultation with the WPZS will determine the replacement value of damaged property pursuant to the terms of the insurance policy and submit the claim request to the City's insurer; the City in consultation with the WPZS shall manage any dispute resolution process set forth in the policy including without limitation an appraisal process and in consultation with the WPZS shall settle

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the claim, all subject to the terms and conditions of the Policy, unless the City decides to assign such authority to WPZS. WPZS will at all times act professionally and in good faith in the claims settlement process taking into consideration the relationship between the City and its property insurer. If WPZS receives approval from the City to manage the claim, WPZS will keep the City informed of the progress of any claim (1) providing the City Superintendent of Parks and Recreation and the City's Risk Manager with copies of all correspondence and studies and other documents concerning a claim; (2) notifying the City of significant upcoming events and meetings between WPZS and the insurer including giving the City the opportunity to attend and participate in; and (3) attending separate meetings with the City about the claim as reasonably requested. WPZS will be responsible for paying all deductibles, self-insured retention or other insurance shortfall for any individual Zoo facility loss recovery under the City's coverage.

Given that the City may change its form of property insurance over time (blanket vs, scheduled coverage, self-insured, etc.) both parties will endeavor to maintain a reasonable replacement value, construction, occupancy, protection and exposure listing for city-owned zoo buildings, and

update this listing no less frequently than every five years unless otherwise and mutually agreed between the Parties, but it is understood that these values are estimates. Any losses to a building on this listing estimated to be above the deductible must be submitted by the City to their insurance carrier. Any building fixtures will be included under the City's coverage, while business personal property inside the City-owned buildings will be covered by WPZS's property coverage. The City shall retain to the maximum extent allowed by law the sole right to change or cancel property insurance, move to self-insurance, and to determine whether to file a claim and the value of any claim. When the City becomes aware of significant changes or cancellation, the City will provide notice to the WPZS as soon as reasonably possible. The City shall not reimburse any deductibles not covered by insurance, self-insured retention or other insurance shortfall for any individual Zoo facility loss recovery under the City's insurance coverage.

WPZS will have responsibility to seek equitable recovery for the loss of business personal property covered by WPZS's property coverage in as quickly a manner as possible. WPZS's responsibility includes the right to evaluate any loss and determine the amount of any claim, to engage in any dispute resolution process set forth in the policy including without limitation an appraisal process, to litigate the claim if necessary, and to settle the claim, all subject to the terms and conditions of the Policy. WPZS will at all times act professionally and in good faith in prosecuting any claims taking into consideration the relationship between the City and its property insurer.

In the event of any damage to or destruction of facilities on the Premises or building fixtures included under the City's coverage, settlement of claims rest with the City of Seattle's Risk Management in consultation with the WPZS. The City's Risk Management will have final and full authority. As noted above, the City may assign authority to WPZS to adjust the loss and settle all claims with the insurance companies issuing such policies in accordance with policy terms and conditions. The parties irrevocably assign the proceeds from such insurance policies to the City. All proceeds of the insurance shall be paid into a fund under the control of the City for repair, restoration, rebuilding or replacement, or any combination thereof, of the Premises or of the improvements in the Premises.

Any insurance proceeds in excess of such proceeds necessary for such repair, restoration, rebuilding, replacement or any combination thereof shall be the sole property of the City subject to any rights of WPZS. If the proceeds necessary for such repair, restoration, rebuilding or

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replacement, including any deductible amount deducted from the final settlement or any combination thereof shall be inadequate to pay the cost thereof, the City shall not be responsible for the deficiency. WPZS shall be entitled to receive withdrawals from such fund, from time to time, upon presentation of proof acceptable to the City that labor and materials for which payment is being made have been furnished or delivered on site.

D. No Limitation of Liability. The limits of insurance coverage specified herein in Appendix B are minimum limits of insurance coverage only and shall not be deemed to limit the liability of WPZS's insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of insurance coverage required by WPZS, whether such limits are primary, excess, contingent or otherwise. Any limitations of insurance liability shall have no effect on WPZS's obligation to indemnify the City.

E. Changes in Insurance Requirements. The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss

exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to WPZS. Should WPZS, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.

F. Fidelity and Crime Coverage Insurance. WPZS, at no expense to the City, shall provide Fidelity and Crime coverage of the following minimum limit:

Fidelity and Crime Coverage \$1,000,000 per occurrence.

G. Business Interruption Insurance. The City will not be responsible for any “business interruption” losses suffered by WPZS as a result of damage to a Zoo facility. WPZS shall determine whether to acquire insurance to cover any such losses.

H. Builder’s Risk Insurance. The City may provide or require WPZS to provide builder’s risk insurance for Zoo Capital Improvements and Alterations at limits and coverages consistent with the City’s requirements for builder’s risk insurance for its own projects of similar scope. The party responsible for securing the builder’s risk insurance shall be responsible for paying the premium. Should WPZS be responsible for securing this builder’s risk insurance, WPZS shall include the City as Loss Payee.

I. Evidence of Insurance. The following applies to all insurance coverage required to be provided by WPZS. The following documents must be provided as evidence of insurance coverage:

A copy of the policies’ declaration pages, showing the insuring company, policy effective dates, limits of liability, and the schedule of forms and endorsements. The City reserves the right to require copies of all policies and requested endorsements.

A copy of the endorsement naming The City of Seattle as an Additional Insured, showing the

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policy number, and signed by an authorized representative of the insurance company on Form CG20 10 (ISO) or equivalent for Commercial General Liability insurance and CA20 48 (ISO) or equivalent for Business Auto Liability Insurance.

The coverages provided by WPZS to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least sixty (60) days prior written notice to the City of Seattle.

J. Policy Rating and Primary Insurance Requirements. All policies shall be subject to approval by the City’s Risk Manager as to insurance company (must be rated A-:V or better in the A.M. Best’s Key Rating guide and licensed to do business in the State of Washington or issued as a surplus lines by a Washington Surplus Lines broker), form and coverage, and primary to all other insurance.

K. Mutual Waiver of Subrogation Rights. WPZS and the City hereby mutually release each other from all liabilities and claims and waive all rights of recovery against each other for and to the extent of their respective insurance coverages for such liabilities and claims, including any extended coverage and endorsements thereto; provided, however, that this release and waiver shall be inapplicable if it would have the effect, but only to the extent that it would have the

effect, of invalidating any insurance coverage of either party.

L. Remedies Upon Failure to Insure. The Superintendent shall notify WPZS whenever the Superintendent has a reasonable belief that WPZS has failed to secure or maintain insurance as required by this Agreement. At the option of the Superintendent, the City may procure the required insurance for and at the ultimate expense of WPZS, from whatever source the Superintendent or the City's Risk Manager deems reasonable. In the event the insurance required of WPZS is procured by the City, WPZS shall also reimburse all costs incurred by the City to secure such insurance coverage as well as a service charge, the initial amount of which shall be Two Hundred and Fifty Dollars (\$250.00), which reimbursement and service charge, at the discretion of the Superintendent, may be either credited against any compensation or expense reimbursement due to WPZS or invoiced to them for payment to the City.

M. Settlement of Claims. WPZS will have full and final authority over settlement of insurance claims under insurance policies carried by WPZS. WPZS will consult with the City on these claims should there be an allegation of the City being at fault, provided this does not prevent the City from tendering a claim under its additional insured status. Property Insurance claims under insurance policies carried by the City as outlined above shall be managed by the City in consultation with the WPZS. The City's Risk Manager will have final and full authority to determine whether and for how much to settle property damage insurance claims in accordance with policy terms and conditions of the City's property insurance policy.