

WOODLAND PARK ZOO

OPERATIONS AND MANAGEMENT AGREEMENT

December 17, 2001

This Woodland Park Zoo Operations and Management Agreement (the "Agreement") is made and entered into as of _____, 2001, by and between the CITY OF SEATTLE, a Washington first class city (the "City"), acting through its DEPARTMENT OF PARKS AND RECREATION (the "Parks Department"), and the WOODLAND PARK ZOOLOGICAL SOCIETY, a Washington non-profit corporation ("WPZS").

RECITALS

WHEREAS, the City currently owns public zoological gardens located in the City of Seattle and commonly known as the Woodland Park Zoo (the "Zoo"). The Zoo is located on certain park land owned by City and described in greater detail in Exhibit "A-2" attached hereto; and

WHEREAS, WPZS is a non-profit public benefit 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 currently provides a limited range of services for the City's Parks Department at the Zoo, including educational programs and activities; wildlife and habitat conservation; marketing, management and operation of Zoo food and gift services; and fundraising; and

WHEREAS, in 1976, the Zoo's first Long-Range Plan (the "1976 Long-Range Plan") was developed as a means of guiding the Zoo's evolution as a state-of-the-art zoo; and

WHEREAS, since 1976, the Zoo has been a leader in "immersion" exhibit design, beginning with the African Savanna, the Gorilla Exhibit, Primate Islands, North American Marsh and Swamp Exhibits. This naturalistic exhibit design has been used as a model for zoos around the world and has brought the Zoo international prominence and recognition; and

WHEREAS, in 1980, there was a crisis in the elephant population, leading to the "Save the Elephants" campaign. The "Save the Elephants" campaign led to the creation of Zoo Commission I in 1985, which was charged with evaluating the Zoo's deteriorating exhibits and physical facilities and recommending a method whereby the deficiencies could be addressed. Zoo Commission I was also a large citizen-based effort resulting in the recommendation for a sizable capital development program to rejuvenate the Zoo, financed through a regional, voter-approved taxing measure; and

WHEREAS, the 1985 King County Zoo Bond Issue provided \$31.5 million, and along with private donations in response to the “Save Our Elephants” campaign, WPZS raised an additional \$10 million from private donations to match the bond and to build additional elements of the 1976 Long-Range Plan; and

WHEREAS, the Zoo, which originated as a public park with a small menagerie of animals, is now an exceptional center for wildlife exhibition, education, conservation and scientific research; and

WHEREAS, the Zoo is currently funded by a combination of public support and private contributions, and through the City and WPZS combined employs approximately 388 full- and part-time staff members, and benefits from the services of nearly 900 volunteers; and

WHEREAS, WPZS membership and involvement has increased in recent years; and

WHEREAS, WPZS endeavors to be a creative partner with the City and other local governments in improving and operating the Zoo for the greatest public good; and

WHEREAS, in 1995, then-Mayor Norm Rice appointed the Zoo Commission II to review Zoo needs and to propose ways to finance the Zoo’s operations and continued development into the 21st Century. The Zoo Commission II believed that non-profit 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 in education and conservation; and

WHEREAS, in Resolution 29386 adopted on July 1, 1996, the City Council expressed its general support for the recommendations of Zoo Commission II; and

WHEREAS, the City and WPZS sought changes in state legislation to allow non-profit management of zoos; and

WHEREAS, in the 2000 state legislative session, Chapter 35.64 of the Revised Code of Washington was passed to authorize certain cities, including the City, to enter into contracts with non-profits or other public organizations for the overall management and operation of a zoo; and

WHEREAS, the City placed the Neighborhood Parks, Green Spaces, Trails and Zoo levy lid lift on the November 2000 ballot; and

WHEREAS, in November 2000, the citizens of the City approved the Neighborhood Parks, Green Spaces, Trails and Zoo levy lid lift, which provides increased funding for the City’s parks and recreation programs, including the Zoo; and

WHEREAS, by virtue of its purposes, interests and past successes, WPZS is both experienced and well suited to administer, plan, manage and operate the Zoo through an agreement with the City executed by the Superintendent of the Department of Parks and Recreation; and

WHEREAS, the City and WPZS believe that this Agreement will provide the greatest opportunity for success of the Zoo in fulfilling its mission in education, conservation of wildlife, recreation, providing benefits to the citizens of Seattle, and developing the Zoo as an important civic asset, cultural resource and attraction; and

WHEREAS, the Zoo is actively involved in efforts to preserve endangered species through Species Survival Plans, and WPZS intends to continue and enhance such efforts in the future; and

WHEREAS, this Agreement would continue City ownership of the Zoo property and facilities, consistent with the City Charter, and the City would retain control of the property through the conditions outlined in this Agreement; and

WHEREAS, two separate studies, the 1988 Gardener study and the 1998 Transpo Study, found that the existing parking lots at the Zoo were inadequate to handle the current and projected Zoo attendance and recommended the addition of up to 1000 new spaces; and

WHEREAS, the scoping process for the EIS for the 2002 revision to the Zoo's Long-Range Plan identified the impact of zoo visitor parking on the surrounding neighborhoods as the principal issue of the EIS; and

WHEREAS, over 20 meetings, presentations and workshops and other opportunities for public comment, participation and discussion related to the Long-Range Plan generated over 300 comments from over 100 participants focused on parking alternatives; and

WHEREAS, the proposed Woodland Park Zoo Long-Range Plan and EIS to be considered and adopted by the City Council in 2002 considered 5 parking garage alternatives; and

WHEREAS, as set forth in the Board minutes of the January 23, 1996, Board of Directors meeting, the Board of Directors of WPZS has determined, consistent with the recommendations of Zoo Commission II, that it would be in the best interest of the Zoo and its future development if the City were to enter into an agreement with WPZS to provide for the management by WPZS of the entire Zoo operation under the terms and conditions set forth herein;

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

AGREEMENT

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

1.1 “Annual Report” shall mean the annual report prepared by WPZS setting forth a summary of the operations of the Zoo and the services provided by WPZS at the Zoo for the preceding year, along with information regarding plans for the upcoming report year, as further described in 20.1 below.

1.2 “AZA” shall mean the American Zoo and Aquarium Association or its successor as the nationally recognized agency for accrediting zoos.

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

1.4 “Business Day” shall mean any day on which banks in the State of Washington are open for business, excluding Saturdays.

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

1.6 “City” shall mean the City of Seattle, State of Washington, and all of its boards, commissions, departments, agencies and other subdivisions.

1.7 “City Council” shall mean the City Council of the City of Seattle, State of Washington.

1.8 “City Documents” shall mean City-created records and City-owned records pertaining to operation and management of the Zoo that, on the Effective Date of this Agreement are in the City’s custody.

1.9 “City Employees” shall mean those persons who are and continue to be regularly appointed to a part-time or a full-time job by the Superintendent in positions authorized in the “Woodland Park Zoo” Program in the applicable, current City of Seattle Adopted Budget.

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

1.11 “Effective Date” shall mean March 1, 2002, or whatever later date the Superintendent and WPZS agree to but in no event later than June 1, 2002.

1.12 “Employee Transition Plan” shall mean the plan adopted by the parties pursuant to Section 18 of this Agreement.

1.13 “EIS” shall mean the draft environmental impact statement prepared for the Zoo’s draft Long-Range Plan 2001.

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

1.15 “Gross Revenue” shall mean all revenues, from whatever source, received by WPZS or the City from or in respect of the operation of the Zoo and from any income-generating activity associated with the Zoo, including but not limited to the following (a) all revenues received from admission fees, concessions, rental events, and fees and charges for all other goods and services provided to the public at the zoo; (b) membership fees received by WPZS from its members, limited to the admission component of such fees; (c) all revenue from pay telephones, vending machines and the selling price of all merchandise sold in, on, about or from the Zoo in the ordinary course of business; provided, however, that, with respect to pay telephone revenue and sales of merchandise by vending machines not owned by or leased to WPZS, only the amount paid to WPZS on account of such telephones or sales shall be included; and (d) all other charges of any character made by WPZS for the rendering of any service or goods or work of any kind conducted in, on, about or from the Zoo. Except for “basic” membership fees, as set forth in subsection (b) above, “Gross Revenue” shall not include contributions, donations, pledges or other gifts made by third parties to WPZS that are not derived directly from the services provided by WPZS related to the Zoo.

1.16 “Levy” shall mean the Neighborhood Parks, Green Spaces, Trails and Zoo levy lid lift approved by the City voters in November 2000.

1.17 “Long-Range Plan” shall mean the Zoo’s draft Long-Range Plan 2001, and any adoption or amendments thereto, prepared as a 20-year development plan and update of the 1976 Long-Range Plan.

1.18 “Lower Woodland Parking Area” shall mean the undeveloped parking area located at North 50th Street and Woodland Park Avenue North.

1.19 “Major Maintenance Funding” shall mean the funding provided by the City to WPZS to address the existing major maintenance backlog.

1.20 “Management Funding” shall mean all funding to be provided by the City to WPZS pursuant to Section 5 of this Agreement.

1.21 “Municipal Conservation Fund” shall mean the fund established by the City to fund cost-effective energy and water conservation measures in City facilities.

1.22 “Net Parking Revenue” shall mean the annual revenue, after deductions for reasonable operating and maintenance expenses directly related to parking, earned by WPZS from parking fees in the Parking Garage and all surface area parking spaces which is over and above \$537,713.

1.23 “Oversight Committee” shall mean the Parks and Green Spaces Levy Oversight Committee created by City Ordinance No. 120024.

1.24 “Operating Expenses” shall mean all operating and maintenance expenses incurred by WPZS in the operation of the Zoo, including without limitation the following: (a) salaries, payroll taxes and other payroll expenses; (b) charges for utility services; (c) expenses for repair and maintenance of equipment and furnishings; (d) expenses for maintenance and repair and for cleaning of the Zoo, including but not limited to expenses related to vandalism or other damage to gates, equipment, supplies or the Zoo Premises or Property; (e) the cost of supplies, equipment, and animals; (f) the cost attributable to noncapital replacement of equipment and animals; (g) license and permit fees; (h) the cost of insurance attributable to insuring the Property and insuring WPZS against liability relating to the management and operation of the Zoo; (i) the cost of Worker’s Compensation Insurance for employees of WPZS; (j) deductible amounts required and actually spent under any insurance policies; (k) amounts paid by WPZS in reasonable settlement of claims against WPZS that are not paid by insurance carriers; and (l) sales taxes and all other taxes paid by WPZS resulting from operation of the Zoo; (m) maintenance and repair of grounds, gardens and adjacent parks and landscape areas.

1.25 “Parks Board” shall mean the Board of Park Commissioners established by City Charter.

1.26 “Parks Department” shall mean City’s Department of Parks and Recreation.

1.27 “Parking Garage” shall mean the parking structure, structures or surface improvements to bring the Zoo’s visitor parking spaces to 1,450 or such other amount as called for in the Long-Range Plan adopted by the City.

1.28 “Personal Property” shall mean the personal property described in Section 3.3 below.

1.29 “Personnel Director” shall mean the director of the City’s Personnel Department or his or her functional successor.

1.30 “Pre-Existing Condition” shall mean any condition of disrepair, structural weakness, latent defect or other fault of any part of the Property, or any non-compliance of any part of the Property with any applicable local, state or federal law, that existed on or before the Effective Date of this Agreement, except that such condition or non-compliance is not a Pre-Existing Condition if either party knew of its existence on or before the Effective Date of this Agreement.

1.31 “Premises” shall mean the real property and improvements described in Section 3 below.

1.32 “Property” shall mean the Premises and the Personal Property, collectively.

1.33 “Public Affairs Committee” shall mean the committee of the same name formed by the WPZS Board of Directors.

1.34 “Restricted Parking Zone” shall mean any restricted parking zone or zones in the neighborhood areas surrounding the Zoo or any other similar parking restrictions in the areas surrounding the Zoo.

1.35 “Routine Repair and Maintenance Funding” shall mean the annual funding provided by the City to WPZS to fund Routine Repair and Maintenance.

1.36 “Routine Repair and Maintenance” shall mean all ordinary maintenance and repair of the Zoo facilities and equipment, and replacement of supplies that are normally performed on a day-to-day, periodic, or routine basis in order to keep such facilities and equipment in a good, clean, efficient and safe condition. “Routine Repair and Maintenance” shall include such minor improvements to the grounds, gardens, adjacent parks and landscaped area, the buildings, structures, equipment and facilities of the Zoo as are necessary in the reasonable discretion of WPZS to improve animal care and management.

1.37 “Superintendent” shall mean the Superintendent of the City’s Department of Parks and Recreation.

1.38 “Transferred Employees” shall mean those persons who elect Zoo-related employment with WPZS pursuant to the Employee Transition Plan.

1.39 “Zoo” shall mean the zoological gardens and related facilities operated on the Premises, which is the subject of this Agreement.

1.40 “Zoo Director” shall mean the Director of the Zoo, as determined by WPZS.

1.41 “Zoo Purposes” shall mean all purposes related to Zoo operations and development either on the Premises or elsewhere, including but not limited to charitable, scientific, educational, and wildlife and habitat conservation programs, activities, events, grounds, gardens, parks, exhibits or research.

2. Term of Agreement.

2.1 Term. The term of this Agreement (the “Term”) shall be for a period commencing on the Effective Date (the “Commencement Date”), and expiring on February 28, 2022 or whatever later date is one day before the day marking the twentieth anniversary of the Effective Date of this Agreement, but not later than May 31, 2022 (the “Termination Date”), unless sooner terminated as provided herein.

2.2 Option to Extend Terms. The Term of this Agreement may be extended for additional periods of ten (10) years beyond the Termination Date.

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, comprising (a) approximately ninety (90) acres of land and improvements shown on Exhibit “A-1” attached hereto and as described in Exhibit “A-2” attached hereto on which the Zoo is currently operated (“Current Zoo Premises”), and (b) the Off-Site Facility described in Section 3.2.3. Together the Current Zoo Premises and the Off-Site Facility shall be referred to collectively herein as the “Premises.”

3.2 Additional Premises.

3.2.1 Parking Garage. If and at such time that the Parking Garage referred to in Section 8 below is constructed on Zoo property, the Parking Garage shall be included within the definition of “Premises” under this Agreement.

3.2.2 Lower Woodland Parking Area. Possible use of the Lower Woodland Parking Area by WPZS and Zoo users may be included in the parking study called for in Section 8.1. If the City gives its approval, in such manner and at such time as the City in its sole discretion may determine, for the use of the Lower Woodland Parking Area as a site for additional Zoo parking, pursuant to the City adopted Long-Range Plan, then the Lower Woodland Parking Area shall thereupon be included within the definition of “Premises” under this Agreement.

3.2.3 Off-Site Facility. The property located at 22327 Southeast 464th Street, Enumclaw, Washington, and consisting of approximately 120 acres including a house, outbuildings and barn, which the City acquired for use as an off-site breeding facility, shall be included within the definition of “Premises” under this Agreement.

3.3 Personal Property

3.3.1 Personal Property. Subject to the terms, covenants and conditions set forth in this Agreement, the City agrees to transfer, at no cost to WPZS, existing personal property other than City Documents (the “Personal Property”) necessary to the operation and maintenance of the Zoo. WPZS shall maintain all such Personal Property in good condition and repair, subject to Pre-Existing Conditions, and shall replace with items of good quality any of the Personal Property that becomes inoperable or unusable if such item is necessary for the operation of the Zoo in WPZS’s reasonable discretion. The City and WPZS will develop a transition plan to identify the Personal Property and provide for its transfer. The transition plan will include provisions related to information technology hardware and software, including communication networks and the MICROS admissions system. The transition plan will also include provisions regarding vehicles and any accumulated fund balances or deficits related to vehicle replacement. The transition plan will be completed within ninety (90) days after the Effective Date of this Agreement and will require the approval of the Superintendent and WPZS. If a transition plan is

not developed and agreed to by the parties, either party shall have the right to terminate this Agreement.

3.3.2 City Documents Until agreed otherwise between the Superintendent and WPZS as provided in this Section 3.3.2, the City will retain custody of all City Documents. To allow WPZS to operate and manage the Zoo while the City retains that custody, the City will provide WPZS access to City Documents to the extent permitted by law. After the Effective Date of this Agreement, the City Records Manager shall propose and seek applicable state agency approval of a records retention schedule for City Documents that meets federal, state, and local requirements. After state approval of a records retention schedule for City Documents, the Superintendent and WPZS shall negotiate an agreement for transferring custody of City Documents to WPZS to the extent permitted by law. That agreement shall, at a minimum, condition the transfer of custody as follows, and shall hold WPZS liable to the City for failure to comply with WPZS's obligations under the agreement.

WPZS shall make the City Documents available to the Superintendent and other City designees immediately upon request; WPZS shall follow the Superintendent's instructions for responding to public records disclosure requests; WPZS shall comply with the records retention schedule for City Documents and make City Documents available for purposes of compliance audits. Custody of City Documents shall not be transferred to WPZS until the City Records Manager has completed training of WPZS and Parks Department records liaisons.

3.4 Use of the Premises.

3.4.1 Required Use. WPZS shall use and continuously occupy the Property during the Term solely for the operation of a public zoological gardens and related and incidental purposes and programs, including but not limited to conservation, education, enterprise operations, and visitor services, in accordance with this Agreement and the Long-Range Plan, and for no other purpose.

Notwithstanding the foregoing, the parties intend that: a) the Woodland Park Rose Garden; and b) the two neighborhood parks on the Premises, one at 50th and Phinney, and the other at 59th and Phinney (the "Neighborhood Parks"), not be programmed for Zoo purposes. 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 of this Agreement, provided that the Parks Department will have responsibility for the maintenance and upkeep of the children's' play area in the park at 59th and Phinney. The Parks Department retains the right to determine the uses of the Woodland Park Rose Garden and the Neighborhood Parks, provided that any change in such uses shall be adopted as part of the Long-Range Plan or by amendment of the Long-Range Plan.

Additionally, the water standpipe on the western perimeter of the Zoo will continue to be managed pursuant to the legislation establishing the standpipe and authorizing its location on Department of Parks and Recreation Park property.

3.4.2 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, except as to Pre-Existing Conditions.

4. Existing Third Party Agreements. The Parties specifically acknowledge that there are existing leases, agreements, and arrangements between the City and third parties or between WPZS and third parties. The City shall assign all such existing leases, agreements, and arrangements affecting the Zoo (as identified in Exhibit B to this Agreement) to WPZS and WPZS shall have the exclusive option (if the City had such option) of renewing such leases, agreements, and arrangements that expire during the term of this Agreement and any extensions thereto. WPZS is hereby released from its obligation to make payments due after the effective date of this agreement, under the concession contract dated January 25, 1993, which was approved by City Council Ordinance number 116574.

5. Maintenance and Operations.

5.1 WPZS Responsibility. WPZS shall manage and operate the Zoo as a state-of-the art zoo, consistent with the Long-Range Plan, with emphasis on the Zoo's scientific and educational purposes and programs.

5.2 City Operations Support Payments.

5.2.1 Fee and Escalation. Subject to Section 5.2.2 below, the City shall transfer to WPZS an annual operations payment (the "Operations Support") equal to FIVE MILLION DOLLARS (\$5,000,000.00) in the first Fiscal Year of this Agreement. For each year thereafter, the Operations Support shall be escalated by seventy (70) percent of the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton area, or its functional successor, measured as of June 30 of the prior year. The Operations Support shall be paid to WPZS in twelve equal monthly installments on or before the fifteenth (15th) day of each month. In the event that the Effective Date is not the first day of a Fiscal Year, the first year's 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 Fund Appropriation; Fiscal Emergency. The City intends to fund the payment of the Operations Support in each Fiscal Year from a General Fund appropriation. 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 total City General Fund revenue for a year is reasonably projected in the 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 revenue or by 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. If the amount provided is reduced due to a fiscal emergency, WPZS's match requirement as set forth in section 5.4.1 shall be reduced by an equal dollar amount for the year and in each subsequent year until the General Fund transfer reaches the amount provided prior to the fiscal emergency. The following example indicates how this provision is intended to apply. If the Operations Support in Year X is \$6,000,000, and the Adopted Budget for Year X+1 shows a fiscal emergency with a General Fund revenue decline of 2% between Year X and Year X+1, the Operations Support for Year X+1 can be reduced by a maximum of 2%, producing a total of \$5,880,000. If the Adopted Budget for Year X+2 shows that the fiscal emergency condition no longer applies because General Fund revenues are projected to grow between Year X+1 and Year X+2, the escalation factor for Year X+2 applies to the \$5,880,000. If the annual change in the appropriate Consumer Price Index as of June 30 in Year X+1 was 4%, the escalation factor for Year X+2 would be 70% of 4%, or 2.8%. Thus, the Operations Support for Year X+2 would be 2.8% more than provided in Year X+1, or \$6,044,640.

5.2.3 Grant Funding. The City shall allow WPZS to apply for grants in its name for which the Society might not otherwise be eligible subject to prior approval by the Superintendent of Parks or if the Superintendent instructs, the City Council. The City Council retains the right to accept or not accept 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.

5.3 City Routine Maintenance Payments.

5.3.1 Payment Schedule. The City shall transfer to WPZS a Routine Maintenance Payment equivalent to FIVE HUNDRED THOUSAND DOLLARS (\$500,000) of support on an annual basis, to be paid as follows:

Fiscal Year of Agreement	In-Kind Services	Cash Payment
First	\$500,000	\$0
Second	\$400,000	\$100,000
Third	\$300,000	\$200,000
Fourth	\$200,000	\$300,000
Fifth	\$100,000	\$400,000
Each Year Thereafter	\$0	\$500,000

Such required cash payments shall be due in quarterly installments to be paid on February 15, May 15, August 15, and November 15 of each year.

5.3.2 In-Kind Maintenance. In-Kind Maintenance shall include City labor, materials, and indirect maintenance services in substantially the same manner of

maintenance support that is currently provided by the City to the Zoo. The City shall document the actual and direct labor hours and any materials provided as a part of the In-Kind Maintenance and submit such documentation to WPZS on a monthly basis.

5.4 City Major Maintenance Payment.

5.4.1 Payment Schedule. To address the existing major maintenance backlog at the Zoo and planned 2002 major maintenance projects, the City shall transfer to WPZS a total of SIX MILLION FOUR HUNDRED THOUSAND DOLLARS (\$6,400,000) over the first seven years of this Agreement, pursuant to the following schedule:

Fiscal Year of Agreement	Amount
First	\$200,000
Second	\$1,000,000
Third	\$1,000,000
Fourth	\$1,000,000
Fifth	\$1,000,000
Sixth	\$1,000,000
Seventh	\$1,200,000

The Major Maintenance Payment shall be transferred to WPZS on May 15 of each year. WPZS will provide documentation to the City showing, to the reasonable satisfaction of the Superintendent, that these funds were expended solely on backlog major maintenance projects and consistent with any legal constraints on their use. Payments for major maintenance by the City will be matched by WPZS fundraising. The City will provide \$1.00 of major maintenance funding for each \$2.50 raised by WPZS, up to the maximum limits in the schedule above. If WPZS does not raise sufficient funds to meet the total matching requirement in any Fiscal Year, City funding for major maintenance will be reduced proportionately for the following year.

5.4.2 City Financing of Major Maintenance Projects. The City agrees to consider financing major maintenance projects subject to Section 7 below.

6. Levy Proceeds.

6.1 Generally. The City shall provide all of the proceeds from the Zoo portion of the Levy to WPZS to expand operations, maintenance, and programming at the Zoo.

6.2 Payment Schedule. Throughout the term of the Levy, the City shall transfer TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000), or as much of that total as is actually received, to WPZS on an annual basis. Such payment shall be due in quarterly installments on February 15, May 15, August 15, and November 15, based on Levy receipts in the previous calendar quarter. Annual amounts shall be escalated as set forth in the Levy, but the actual amounts transferred shall never exceed the amounts actually received by the City.

6.3 Levy Renewal. At least one year prior to expiration of the Levy, the City shall provide WPZS with notice indicating whether or not the City plans to commence the process for requesting voter approval of a renewal term for at least the Zoo portion of the Levy, on substantially the same terms and amounts as the original Levy. In the event that the City chooses not to request such voter approval, or the levy is not approved by the voters and the City does not provide for a replacement funding source of comparable magnitude, WPZS shall have the option of terminating this Agreement.

7. 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, other than debt issued for the Parking Garage described in Section 8, shall be the responsibility of WPZS. In the event WPZS fails to provide funds to pay debt service in a timely fashion, the City will pay such debt service from its own funds and will reduce its payments under Section 5.2 by a corresponding amount.

8. Parking Garage.

8.1 Study. The City and WPZS shall conduct a study to address traffic and parking issues raised in the EIS for the Long-Range Plan. The study will be paid for by WPZS using funds provided in the Agreement or other WPZS funds. The study will examine issues including the size of a parking structure or structures on the Zoo property, possible locations, estimated costs, possible ancillary uses, and expected Net Parking Revenue.

8.2 City Finance Responsibility. If a Parking Garage is identified in the Long-Range Plan adopted by the City, the City shall finance the Parking Garage. Such financing shall be authorized as soon as practicable after adoption of such Long-Range Plan. In the event such adopted Long-Range Plan identifies a garage and such financing has not been authorized by September 1, 2004, the WPZS may terminate this agreement. This date will allow construction of the garage to commence by December 31, 2004.

8.3 Debt Service. The debt service for the Parking Garage shall be paid from the following sources:

8.3.1 Net Parking Revenue. WPZS shall provide to the City the yearly Net Parking Revenue toward the debt service on the Parking Garage.

8.3.2 Remaining Share. After the Net Parking Revenue is deducted from the yearly debt-service payment as required by subsection 8.3.1 above, the remaining debt service payment shall be split between the City and WPZS, with the City paying three-fourths (3/4) of the balance and WPZS paying one-fourth (1/4) of the balance. WPZS shall communicate its actual Net Parking Revenue for six-month periods ending June 30 and December 31 of each year within 45 days after each date. The City will then invoice WPZS for this amount plus WPZS's 25% share of the remaining debt service on the Parking Garage. The City will invoice the WPZS in order to ensure timely payment of debt service on the City's bonds. If WPZS fails to pay the invoiced amount within 45 days after the date of the invoice, the City will pay such amount for debt service from its own funds and will reduce its payments

under Section 5.2 by a corresponding amount. Timely payment by WPZS is a central and material term of this Agreement. Notwithstanding the City's reduction of payments under Section 5.2 of this agreement, if WPZS two times within any five-year period fails to pay the invoiced amount within 45 days after the date of the invoice, that shall constitute a default and shall be grounds for the City to terminate this Agreement without the need to provide any period after the due date of the WPZS's debt service payment for WPZS to cure its default.

8.4 Design and Construction. WPZS shall be responsible for design and construction of the Parking Garage consistent with Section 13 below.

8.5 Parking Operation. WPZS shall be solely responsible for operating the Parking Garage. Operations responsibility shall include maintaining the Parking Garage consistent with Section 17 below. WPZS will implement policies and incentives to encourage Zoo visitors to use such a garage. WPZS shall have exclusive control over applicable rates for using the Parking Garage. WPZS agrees to set parking rates to encourage short-term parking and carpooling and to ensure that parking revenues provide the maximum feasible share of debt service on the Parking Garage. The City reserves the right to change any terms of this section 8.5 if and only to the extent that such changes are required, in the opinion of legal counsel to the City, to provide or maintain the tax-exempt status of bonds issued for the Parking Garage.

8.6 Restricted Parking Zone. The City shall not institute a Restricted Parking Zone or other preferential parking for residents in the area within four blocks of the Zoo boundaries until the earlier of December 31, 2004 or completion of structured parking called for in an adopted Long- Range Plan. In the event that WPZS successfully promotes establishment of an RPZ within four blocks of the Zoo following completion of any such garage, WPZS will pay for one permit fee per household within any such RPZ for an initial two-year period.

8.7 Alternative Transportation. To help relieve overflow parking in the neighborhood, WPZS will continue to develop an alternative transportation plan in conjunction with King County Metro and the City's policy office. The plan will provide incentives for improved transit, bicycle and pedestrian access, as well as bicycle corrals and transit options for major events. Improved transit, bicycle and pedestrian access will be built into all parking improvements. WPZS will also develop an employee trip reduction plan, dedicated employee carpool spaces, and explore extending transit pass subsidies to all Zoo staff, adding a flexcar and participation in the guaranteed ride home program.

8.8 Apprenticeship Program. WPZS and its prime contractor(s) will establish a target that fifteen percent (15%) of estimated hours of construction work on the Parking Garage will be assigned to apprentices. WPZS has stated its intention that at least ten percent (10%) of the value of the construction work on the Parking Garage be subcontracted to women or minority-owned business enterprises.

9. Long-Range Plan.

The Parties acknowledge that this Agreement contemplates the adoption by the City of the Long-Range Plan, as deemed acceptable by WPZS, on or before April 1, 2002. In the event that such a Plan is not adopted by April 1, 2002, WPZS may terminate this Agreement.

10. Permits, Licensing and Accreditation.

10.1 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 the Seattle-King County Health Department. Any failure on the part of WPZS to comply with this Section shall constitute a material breach of this Agreement.

10.2 Other Licenses and Permits. As part of the transition plan described in Section 3.3, the City and WPZS will develop a list of all licenses and permits currently held by the City in connection with the operation of the Zoo. Subject to any necessary approvals, the City hereby agrees to transfer all such licenses and permits to WPZS, and WPZS and the City shall use their best efforts to either have those licenses and permits legally transferred to WPZS or to have them canceled upon WPZS's obtaining replacement permits or licenses in its name if transfer is not possible except that certain licenses and permits shall remain in the possession of the City and under the City's name, and WPZS shall hereby be authorized as the agent of the City to perform such services under such licenses and permits as are required in the operation of the Zoo to the extent permitted by applicable law, if such licenses or permits are required to be held by a governmental entity and/or owner of the Premises or for such other reasons as may be agreed to by the parties. Upon any termination of this Agreement for any reason, WPZS shall transfer all licenses and permits back to the City and WPZS shall use its best efforts to assist the City with the documentation of any such transfer or reapplication for any such permit or license to be held in City's name after such termination.

11. New Facilities Operating and Maintenance Costs. As WPZS funds and builds new exhibits, support and visitor facilities, the corresponding increases in operating, program and maintenance costs will be the responsibility of WPZS, with the City being the owner of such new exhibits, support or visitor facilities (including the Parking Garage).

12. Admissions.

12.1 WPZS Responsibility. Subject to 12.2 and 12.3 below, WPZS shall have the authority to set Zoo admissions charges; provided that, the City and WPZS intend that the Zoo remain accessible to individuals from all economic circumstances. In general, admissions prices should reflect market rates for comparable attractions in Seattle and elsewhere and not increase by more than the rate of inflation being experienced by the Zoo (which includes, but is not limited to, costs such as personnel, supplies, equipment, and utilities). Prior City Council approval shall be required for increases in admission charges greater than such standard. WPZS shall retain all admission proceeds, including gate receipts, and expend such proceeds consistent with the Zoo's operation and programming.

12.2 Access. WPZS agrees to operate the Zoo with the goal of providing the widest possible access to the Zoo to the general public, at an affordable cost. In furtherance of that goal, WPZS agrees to at a minimum maintain the practice of providing substantially reduced admission to the Zoo for school groups, making available at least 40,000 free passes annually to human services agencies and to pursue other options for ease of access to the Zoo and special services at the Zoo for children, seniors, the disabled and low-income individuals.

12.3 Admissions Tax. The Parties acknowledge that no City admission taxes are currently charged on Zoo admission. The Parties further agree that the Zoo will continue to be exempt from City admission taxes, so long as similar facilities (such as the Seattle Aquarium and Pacific Science Center) are exempt from such taxes.

13. Capital Improvements and Alterations.

13.1 Improvements and Alterations, Generally. Subject to Section 13.3 below, the public participation terms in Section 20.6 of this agreement below, and the requirements of the Code, 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, all in accordance with the Long-Range Plan. Any 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, and WPZS shall obtain any required permits for such alterations and capital improvements, at its expense.

13.2 Alternative Public Works Contracting Authority. The City may, if lawful, access its authority to use alternative public works contracting procedures pursuant to Chapter 39.10 RCW and any amendments thereto for construction of any appropriate Zoo-related facilities by WPZS in a manner consistent with the requirements of such statutory authority.

13.3 Prohibited Capital Improvements and Alterations. WPZS shall not under any condition (a) make any capital improvement or alteration to the Property or the Zoo facilities inconsistent with the Long-Range Plan; or (b) make any capital improvement or alteration to the Property or the Zoo facilities that is subject to the approval of a City department, commission or agency, when such approval has not been obtained.

13.4 Title to Improvements. Except as otherwise provided in this Agreement, all appurtenances, fixtures, improvements, equipment, additions and other property attached to or installed in the Premises during the Term shall be and remain the property of City and shall not be removed by WPZS without approval of the Superintendent.

13.5 WPZS's Personal Property. All furniture, furnishings and articles of movable personal property installed in the Premises by or for the account of WPZS, without expense to City, and which can be removed without structural or other material damage to the Premises (all of which are herein called "WPZS's Property") shall be and remain the property of WPZS and may be removed by it subject to the provisions of Section 25. At least ten (10) days

prior to delinquency, WPZS shall pay all taxes levied or assessed upon WPZS's Property and shall deliver satisfactory evidence of such payment to City.

14. Utilities and Services.

14.1 Municipal Conservation Fund. The City agrees that the Zoo should have access to the Municipal Conservation Fund (or its substantive equivalent or successor) for conservation-related utility improvements.

15. Zoo Animals.

15.1 Rights to Animals. All Zoo animals currently owned by the City and all rights to animals acquired during the term of this Agreement (collectively, the "Zoo Animals"), shall be the sole property of WPZS, which shall also assume all obligations the City may have with respect to animals exhibited, housed, or otherwise kept or cared for at the Zoo during the term of this Agreement. The Zoo Animals shall become the property of the City when this Agreement is terminated. The Zoo Animals shall constitute Personal Property under this Agreement, but where the general terms of this Agreement relating to Personal Property conflict with this Section 15, the provisions of this Section 15 shall govern to the extent of the conflict.

15.2 Care of Animals. WPZS shall care for all Zoo Animals in accordance with all federal, state and local laws and regulations, and in accordance with the Long-Range Plan and policies and guidelines adopted by the AZA.

15.3 Sale and Purchase of Animals. WPZS shall have the authority to acquire or sell or otherwise dispose of Zoo Animals in the course of WPZS's operation of the Zoo. The acquisition, sale or other disposition of Zoo Animals shall be made in strict accordance with (a) all applicable federal, state or local laws, regulations and policies, (b) the guidelines and policies of the AZA, and (c) existing and any adopted acquisition and disposition policies approved by the City.

16. Naming Rights.

16.1 Zoo Name. Under no circumstances, with the exception of formal action by the Board of Parks Commissioners and the City Council, may the Zoo's name be changed from "Woodland Park Zoo."

16.2 Donation Acknowledgement. Any donor recognition at the Zoo will be consistent with the Parks Department'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 policy.

17. Maintenance.

17.1 Generally. WPZS shall maintain the Zoo in a clean, safe, sanitary and sightly condition, and as necessary to maintain all licenses and accreditations in accordance with Section 10 above; provided, however, that such obligation shall not, except as specifically set forth herein, require WPZS to repair or otherwise remedy a Pre-Existing Condition. WPZS shall employ sufficient personnel, or show evidence satisfactory to the City of personal service contracts which provide such 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.

17.2 Contractor Insurance. Each party hereto shall provide evidence acceptable to the other that every contractor engaged by a party to perform work on the Premises maintain insurance in amounts, on policies of coverage and offered by companies satisfactory to City and WPZS, 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.

18. Staffing and Employees

18.1 Generally. The Parties acknowledge that as of the date of this Agreement, there are approximately 170 City Employees employed in connection with the Zoo. The Parties' intent is that the City Employees will be given the choice of electing Zoo-related employment with WPZS or other employment within the City in so far as is practical and allowable under City rules, state, federal and local laws and collective bargaining agreements.

18.2 WPZS Supervision of Employees. Pursuant to RCW 35.64.010(4) and commencing ten (10) calendar days after WPZS first names a Zoo Director, WPZS shall, in carrying out the responsibilities under this Agreement, manage, supervise, and direct those employees of the City who are employed at the Zoo and may hire, fire, and otherwise discipline the City Employees subject to the provisions of the City Charter, City Municipal Code, City rules, state legislation and any applicable collective bargaining agreements. The Zoo Director shall be the ultimate appointing authority as provided for by City Charter and by City Ordinance. WPZS shall, in cooperation with the Personnel Director and the Superintendent, develop procedures for implementing this authority with regard to City Employees.

18.3 Employees. WPZS shall comply with all applicable federal, state and local laws, ordinances and regulations pertaining to all employees at the Zoo. In addition, the WPZS shall be an equal opportunity employer and make reasonable efforts to maintain a diverse work force.

18.4 Employee Transition Plan. WPZS and the Parks Department will develop and propose an Employee Transition Plan and present it to the City Council by December 31, 2002. The proposed Employee Transition Plan will be accompanied by one or more proposed ordinances to implementing elements of the Employee Transition Plan that require such City Council action and to amending this Agreement accordingly. Although City Employees may

voluntarily resign City employment and be hired by WPZS, no City position existing in the “Zoo Program” in the City’s Adopted Budget as of the Effective Date of this Agreement will be eliminated nor an employee involuntarily transferred to WPZS from these positions unless the change is adopted by the City Council by ordinance(s) described above.

18.4.1 City Employees Not Subject to Collective Bargaining Agreements.

The Employee Transition Plan may contain provisions for the following elements of employee transition for those employees not covered by City-negotiated collective bargaining agreements: 1) beginning and end dates for employees to elect transition to employment by WPZS; 2) the recognition and transfer of benefits such as retirement reserves, sick leave and vacation leave balances and employee status as might be offered under such transition; 3) the provisions for the City to “sunset” former Zoo jobs in the event that employees transition from City employment to WPZS employment; 4) provisions for employees to transition to other City jobs if the Employee Transition Plan calls for an absolute transition date for all employees; 5) a definition of the means by which WPZS shall direct and supervise the transitioned workforce to provide a high degree of courteous and efficient service to the public; and 6) such other provisions as the City and WPZS may deem appropriate.

18.4.2 City Employees Subject To Collective Bargaining Agreements.

The City has previously negotiated collective bargaining agreements with collective bargaining representatives representing certain City employees, and currently anticipates executing three-year labor contracts to be effective through 2004 covering these same bargaining units by December 31, 2001. The Parties recognize that the terms of these collective bargaining agreements are binding on the City unless altered by mutual agreement between the City and the collective bargaining agents and consistent with all applicable state, federal and local laws. WPZS agrees to supervise such employees consistent with those agreements. It is the intention of the Parties, subject to the Employee Transition Plan, that City employment positions at the Zoo subject to collective bargaining agreements shall become WPZS positions when: a) the position can remain a represented position under a collective bargaining agreement between WPZS and the union which represented such position under City employment; and b) WPZS can demonstrate that WPZS can offer employee benefits (including retirement benefits) that are comparable to City benefits.

18.5 City Payment of Certain Benefits. It is the City’s intention that the Employee Transition Plan shall have provisions for the carryover of certain benefits for those employees who move from City to Zoo employment. The Employee Transition Plan shall include the following financial elements:

18.5.1 Vacation. For employees who transition from City to WPZS employment, the City shall calculate the vacation balances for all employees who transfer to Zoo Society employment, pursuant to the Employee Transition Plan and pay the WPZS for carried over vacation leave that WPZS credits to those employees. The City shall provide WPZS with full funding for all vacation hours balances credited to Transferred Employees at their current rates of pay. The City shall pay the WPZS in eight equal quarterly payments beginning with the end of the first quarter wherein the employees transfer to WPZS employment such that the

liability for vacation will be paid out to the WPZS over a two-year period.

18.5.2 Sick Leave The Parties agree that WPZS will credit employees with carried over sick leave when they transition from City employment to WPZS employment. The City shall pay WPZS half of the value of the unused sick leave for Transferred Employees in equal annual installments over 5 years (10% per year).

18.5.3 Pension. The Employee Transition Plan shall address the means and the financial transactions for recognizing City Employee pension benefits. The Parties intend that City Employees who transition to employment with WPZS shall be credited by WPZS with their full retirement benefits they earned with the City. The Parties further intend that the City will pay to WPZS the present actuarial value of each employee's retirement benefit upon transition so that WPZS can offer roughly equivalent retirement benefits to transitioning employees. The funding for those benefits and City funding source(s) used to make that payment should be based on the value that most closely balances the objectives of making the transition neutral for City employees and neutral to the City's retirement system.

18.6 Payroll and Taxation.

18.6.1 City Payroll Until Transition. Until each City Employee leaves City employment, either to transition to WPZS employment or otherwise, that employee will remain on the City payroll for the continued provision of City compensation and benefits, employee status and payment of taxes and reporting, although the Zoo Director will supervise them.

18.6.2 WPZS Payroll After Transition. After each City Employee who chooses to transition to employment with WPZS does so, WPZS shall make or cause to be made all necessary payroll deductions for disability and unemployment insurance, social security, withholding taxes and other applicable taxes, and prepare, maintain and file or cause to be filed all necessary reports with respect to such taxes or deductions, and all other necessary statements and reports.

19. Fiscal Matters.

19.1 Capital Campaign. WPZS shall use its best efforts to make reasonable progress toward implementation of the Long-Range Plan through the term of this Agreement and any extensions thereto.

19.2 WPZS Revenue. All revenue collected by WPZS associated with the Zoo, including without limitation fees and receipts from admission, concessions, souvenirs 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.

19.3 Miscellaneous Fees and Prices. Subject to Section 12 of this Agreement, 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, souvenirs, parking, special exhibits and other special events.

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

19.5 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 the Operating Expenses, capital improvements at the Zoo and other Zoo Purposes in accordance with this Agreement, and to the administrative and operating expenses of WPZS. The City hereby agrees to use its reasonable efforts to assist WPZS in the solicitation of federal, state and county grants or other sources of public funding to support the operation of the Zoo.

19.6 Prior Contracts Between WPZS and the City. This Agreement supercedes all prior contracts and reimbursement arrangements between WPZS and the City.

20. Reporting Obligations and Public Involvement.

20.1 Annual Report to Superintendent. On or before May 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 complete financial accounting for all funds, including use of Levy proceeds, use of major maintenance funding, and a listing of all capital investments made at the Zoo. In addition, WPZS will also evaluate its performance in the area of customer service.

20.1.1 Annual Plan to the Superintendent. At least 30 days prior to the beginning of each fiscal year for WPZS, WPZS shall, at its sole expense, prepare and submit to the Superintendent for his or her information, an Annual Plan. The Superintendent or WPZS shall present this plan to the City Council at the discretion of the Chairperson of the Culture, Arts and Parks Committee or its successor as an informational item. The Annual Plan shall, at a minimum, present the one-year capital improvement plan for the Zoo, a description of major programmatic changes planned at that time for the ensuing year and any proposed changes in fees at the Zoo.

20.2 Supplementary Reports. In addition to submitting the Annual Report and Annual Plan to the Superintendent, WPZS shall also submit the following reports:

20.2.1 Reports to Parks Board. Beginning six (6) 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 Parks Board a quarterly report setting forth a summary of the operations of the Zoo and the services provided by WPZS at the Zoo for the preceding quarter.

20.2.2 Report to Oversight Committee. Beginning six (6) months after the mutual execution of this Agreement and on an annual basis thereafter throughout the term of this Agreement or the life of the Levy and any renewal thereof, whichever is shorter, WPZS shall, at its sole expense, prepare and submit to the Oversight Committee or its functional successor with respect to monitoring expenditure of Levy funds, an annual report detailing the expenditure of Levy funds received by WPZS for the preceding year.

20.2.3 Monthly Report to the Superintendent. Beginning one month after the mutual execution of this Agreement and on a monthly basis thereafter throughout the term of this Agreement, WPZS shall, at its sole expense, prepare and submit to the Superintendent a monthly report outlining the finances of the Zoo for the previous month. This report shall include a summary of revenue from various sources and an accounting of costs.

20.3 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.

20.4 Books and Records.

20.4.1 Financial Records. WPZS shall establish and maintain books, records and systems of account relating to the Zoo's Gross Revenue and Operating Expenses in accordance with generally accepted accounting practices for not-for-profit organizations. These records shall, to the extent necessary to meet requirements for audits under Section 20.5 of this Agreement, be retained by WPZS and made available to the City upon request.

20.4.2 Zoo Animal Records. The WPZS shall establish and maintain, consistent with City practice as of the Effective Date of this Agreement, records pertaining to the veterinary management and treatment of Zoo Animals in its care ("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 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.

20.5 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 and fees, 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.

20.6 Public Involvement.

20.6.1 Involvement on WPZS Board. Subject to the provision that all WPZS Board appointees shall be subject to qualification and approval based upon the criteria generally recognized for membership on the WPZS Board, the following ex officio members of the WPZS Board shall each have the authority to appoint persons to one citizen position, with a three-year term for each such position, on the WPZS Board: the Superintendent; the Mayor; and the City Council committee that generally oversees parks functions. Following the initial appointments to the three Board positions authorized under this subsection 20.6.1, 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.

20.6.2 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. The 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.

20.6.3 Public Involvement Process for Major Capital Projects. The City and WPZS agree that the development process for any major capital projects at the Zoo must include significant opportunities for public involvement. For each capital project, the Superintendent and WPZS will develop such a process for public involvement that is consistent with the Parks Department's Public Involvement Policy. In addition, the WPZS Public Affairs Committee can recommend to the Board of Directors as a whole that a public involvement process be held for other major activities at the Zoo. Such recommendation shall be subject to a vote of the Board of Directors.

20.6.4 Neighborhood Liaison. The City and WPZS agree that there are and will continue to be unique concerns for the immediate neighbors of the Zoo. WPZS agrees to designate a neighborhood liaison from both the WPZS Board and the WPZS staff to communicate with the Phinney Ridge, Wallingford, Fremont, and Greenlake communities on a regular basis. WPZS, in consultation with such neighborhoods, will develop protocols for communicating with such neighborhoods and for conveying citizen concerns and opinions to the WPZS Board for consideration and response. Such protocols will be developed by the end of the

first quarter of 2002. Among matters to be addressed by the WPZS through such liaisons is the impact of WPZS programming on the neighborhoods identified herein. The Neighborhood Liaison committee will also have a formal role in any decision by WPZS to consider implementation of an RPZ after completion of the parking structure.

20.6.5 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 internet 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.

20.7.1 WPZS Code of Ethics. The WPZS shall have a code of ethics governing its board members, employees and activities consistent with applicable requirements of State and federal laws and American Zoo and Aquarium Association 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.

20.7.2 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.

21. Insurance. The Parties will provide insurance and abide by the insurance provisions of this Agreement in accordance with Appendix A of this Agreement.

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

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

22.2 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.

22.3 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.

22.4 [Reserved.]

22.5 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.

22.6 Conflict with Orders, etc. 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.

22.7 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.

23. 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; or (c) any lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or 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.

24. Indemnities.

24.1 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 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.

24.2 WPZS's Indemnity. WPZS hereby agrees to indemnify, save harmless and defend the City from any and all losses, claims, actions or damaged 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 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.

24.3. Relationship to Insurance Obligations. Nothing contained in this Section 24 shall be construed to affect the allocation of responsibilities between the Parties or the insurance coverages required in Section 21 and Appendix A of this Agreement.

25. Default; Termination of Agreement; Remedies.

25.1 Termination by City. The 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 covenant or condition made under this Agreement, 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 not legally capable of cure within such 60-day period, WPZS shall have a reasonable period to complete such cure if WPZS promptly undertakes action to cure such default within such 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 Property by WPZS, without the prior written consent of 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.

25.2 Termination By WPZS. In the event the City fails to timely pay any portion of any fee due under this Agreement or to commence the process for requesting voter approval of a renewal term for the Levy or to perform any other obligation required to be performed by the City hereunder, and such failure is not cured within sixty (60) days after written notice of such failure has been delivered to the City by WPZS, WPZS shall have the right to terminate this Agreement; provided that if such default is not legally capable of cure within such 60-day period, the City shall have a reasonable period to complete such cure if the City promptly undertakes action to cure such default within such 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.

26. Surrender of Premises; Transition. Upon the Termination Date or other termination of this Agreement, WPZS shall (a) promptly remit to the City all Gross Revenues arising from admission fees or Management Fees, in either case not expended but held by WPZS, and (b) peaceably quit and surrender to the City the Premises and Property together with all permanent improvements approved by the City, in good order and condition, normal wear and tear and damage caused by casualty or condemnation excepted. In order to determine the proper remittance to the City under the foregoing clause (a), WPZS agrees throughout the term of this Agreement to segregate admission fees and Management Fees in an account or accounts separate from other funds held by WPZS. The Premises and Personal Property shall be surrendered free and clear of all liens and encumbrances other than presently existing liens and encumbrances and any other encumbrances created or approved in writing by 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 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 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 agreement, the execution of such documents and the convening of such meetings as may be reasonable required to effect such transfer.

27. Hazardous Materials.

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

27.1.1 “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.

27.1.2 “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.

27.1.3 “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 Property.

27.2 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 Property, or transported to or from the Property, 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 Property.

27.3 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) arising during or after the Term of this Agreement and relating to such Release; provided, however, that the Indemnity contained in this Section shall not apply to any Losses resulting from a Pre-Existing Condition. 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.

27.4 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 (including, without limitation, the loss or restriction of the use of the Premises or the Property and sums paid in fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Agreement and resulting from such Release; provided, however, that the foregoing Indemnity shall not include Indemnification for any Losses resulting from WPZS's aggravation of any Pre-Existing Condition 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 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.

28. [Reserved.]

29. 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 the Parks Department or other City agency) for the provision of any service required or allowed to be performed by WPZS under this Agreement.

30. Notices. All notices required to be given hereunder shall be in writing and either delivered personally or sent by certified mail to the appropriate address listed below, or at such other address as shall be provided by written notice. Notice shall be deemed communicated two City business days from the time of mailing if mailed as provided in this section. For

convenience of the parties, copies of notices may also be given by other means; however, neither party may give official or binding notice except by personal delivery or by certified mail.

If to the WPZS:

Woodland Park Zoological Society
601 North 59th Street
Seattle, Washington 98103-5858
Attn: Zoo Director

If to the City of Seattle

Parks Department:

City of Seattle Department of Parks and Recreation
100 Dexter Avenue North
Seattle, Washington 98109
Attn: Superintendent of Parks and Recreation

And to the:

Director of Finance:

City of Seattle
Department of Finance
MS 07-42-00
700 Fifth Avenue, Suite 4200
Seattle, Washington 98104
Attn: Director of Finance

31. Compliance with Laws.

31.1 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 the Parks Department), and shall comply with all applicable laws and regulations relating to labor employed in and relating to the operation of the Zoo.

31.2 Pre-Existing Conditions. Notwithstanding any other provision of this Agreement to the contrary, WPZS shall incur no liability for, or assume any obligation to correct, any Pre-Existing Condition; provided, however, that WPZS shall use its reasonable efforts to (a) identify all such Pre-Existing Conditions and notify the City immediately of their existence,

(b) take all reasonable action necessary to minimize any risk of injury or liability that may be occasioned by such a Pre-Existing Condition, and (c) to the extent funds are or become available, as referred to in the following sentence, take all reasonable action necessary to correct any such Pre-Existing Condition; provided further, however, that the foregoing shall not condition or limit City's Indemnity under Section 24.1.2 above. The City hereby agrees to use its reasonable efforts to assist WPZS in obtaining such grants or other funds as may be available to assist in the financing of any work performed to bring any building, structure or service within the Premises into compliance with any applicable local, state or federal law or regulation, including without limitation the Americans With Disabilities Act of 1990. Nothing in this Section shall eliminate any obligation of WPZS to ensure that all new construction, remodeling or rehabilitation work performed by WPZS at the Zoo is completed in compliance with all applicable local, state and federal laws and regulations. Either party shall have the option of terminating this Agreement in the event the parties are unable to satisfactorily resolve any Pre-Existing Condition.

31.3 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 the disabled public. WPZS further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. WPZS warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Agreement.

31.4 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.

32. 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. 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 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.

33. Miscellaneous.

33.1 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.

33.2 Liens. WPZS shall keep the Premises and Personal Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for WPZS and any other liens or encumbrances.

33.3 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.

33.5 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 Director, or their respective designee(s), shall meet to review and discuss the matter(s) in dispute; if the Superintendent and the Director 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 submit the matter to a non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution ("ADR") procedures. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent ADR 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.

33.6 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.

33.7 Headings and Subheadings. 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.

33.8 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.

33.9 Access to Zoo. The City, the Parks Department 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 City in its sole discretion.

33.10 Relationship of Parties. The services to be rendered by WPZS pursuant to this Agreement are as an independent contractor only and the relationship between WPZS and the City is solely that of owner and contractor. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or a relationship of employment or agency.

33.11 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.

33.12 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.

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

33.14 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 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.

33.15 Time of Essence. Time is of the essence of each provision of this Agreement.

33.16 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.

DATED this __ day of _____, 2001.

CITY OF SEATTLE, WASHINGTON, a
Washington municipal corporation

WOODLAND PARK ZOOLOGICAL
SOCIETY, a Washington non-profit
corporation

By
Its Superintendent of Parks and Recreation
By authority of Ordinance No. _____

By
Its

Exhibits: A-1 (diagram)
A-2 (description)
B (leases)

Appendix A:
Insurance Provisions

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Exhibit A-1 (diagram)

Exhibit A-2

WOODLAND PARK ZOO

OPERATIONS AND MANAGEMENT AGREEMENT

PROPERTY DESCRIPTION

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.

Appendix A 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. Said policy(ies): (i) shall be subject to approval by the City's Risk Manager as to company, form and coverage, and primary to all other insurance the City may secure; and (ii) must protect the City 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. Additionally, WPZS shall file with the City's Risk Manager, within twenty days of the Effective Date of this Agreement (and twenty days prior to any policy renewal), evidence of the policies required to be maintained by this Agreement.

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:

1. Bodily Injury and Property Damage:
 - (a) 2,000,000 per occurrence
 - (b) 5,000,000 annual aggregate

The minimum limits on these policies will be adjusted periodically by the City so that the limits generally reflect the values of the policies as of the date this agreement is signed.

Deductibles or self-insured retentions of no more than One Hundred Thousand Dollars (\$100,000.00) 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

The insurance required in this section A shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insureds if this can be done at little or no cost to WPZS, 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 cost. In addition, WPZS's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess of and not contributing insurance with WPZS's insurance.

WPZS shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of WPZS under this Agreement. 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.

B. 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) on City facilities, including Zoo facilities, as the City determines is fiscally responsible to maintain. The City will not determine what property insurance to maintain on Zoo facilities separately, but only as part of its overall determination as to the appropriate level of property insurance for City facilities citywide. Because the City's property insurance is a "scheduled" policy rather than a "blanket" policy, the parties shall review and concur on scheduled values for Zoo facilities on an annual basis prior to renewal of the City policy. Any property insurance maintained by the City shall, with respect to Zoo facilities, be endorsed to include WPZS as an additional insured, if this can be done at little or no cost to the City. If the cost of doing so is substantial, the WPZS may pay such cost. In addition, the City's insurance shall be primary as respects the WPZS, and any other insurance maintained by the WPZS shall be excess of and not contributing insurance with the City's insurance.

WPZS will be responsible for paying all deductibles, self-insured retention or other insurance shortfall up to \$500,000 for any individual Zoo facility, and \$2,000,000 in the aggregate in any policy period for damage to multiple Zoo facilities as required by the property insurance acquired by the City. If available under the City's property insurance policies, WPZS shall have the right to pay the incrementally increased premiums associated with lowering the deductibles

on such Zoo facilities and to such levels as WPZS deems reasonable. In the event that the City determines, consistent with the City’s obligation herein to maintain insurance on Zoo facilities comparable to any property insurance it maintains for City facilities city-wide, that it is financially responsible to have deductibles or self-insured retention levels that in the aggregate exceed \$500,000 for any single Zoo facility, or to otherwise insure individual Zoo facilities at levels where the replacement cost of the Zoo facility exceeds the amount of insurance coverage on an individual Zoo facility by more than \$500,000, the City shall give notice of such determination (the “Insurance Notice”) to WPZS. Until such time as the City gives WPZS the Insurance Notice, in the event of damage to a Zoo facility, the damage of which is covered by the City’s property insurance, the City will be responsible for the payment of any deductible, self-insured retention, or other shortfall in the amount of insurance coverage as it relates to the cost of repairing the damaged Zoo facility (in the aggregate the “Total Shortfall”), to the extent that the Total Shortfall exceeds \$500,000. At such time as the City gives WPZS the Insurance Notice, WPZS shall have the following options: a) attempt to negotiate changes to the Agreement to address the changes in the insurance coverages; or b) terminate the Agreement. For sixty (60) days following City presentation to the WPZS of the Insurance Notice or such earlier time the parties either agree on new insurance provisions or this Agreement is terminated, the City shall be responsible for all deductibles, self-insured retention, or other shortfalls in insurance coverage in excess of \$500,000 (which WPZS shall remain responsible for); thereafter, the WPZS shall be responsible for all deductibles, self-insured retention, or other shortfalls in insurance coverage regardless of amount.

In the event that damage to multiple facilities creates an aggregate obligation for WPZS greater than \$2,000,000 in any policy period, the City is not otherwise responsible for making up the shortfall as provided herein, and WPZS is unwilling or unable to make up the difference, the City, in its sole discretion, after consultation with WPZS, shall determine whether to repair all damaged facilities. At a minimum, the City will make repairs to the extent that would be required if the \$2,000,000 limit were not exceeded. If the City decides to not repair all damaged facilities, the City will consult with WPZS about which facilities to repair. If the City determines not to repair all damaged facilities, WPZS’ sole remedy will be to terminate the Agreement.

The \$500,000 and \$2,000,000 amounts for deductibles, self-insured retention, and other insurance shortfalls will be adjusted periodically by the City so that the limits generally reflect the values as of the date this agreement is signed.

To illustrate the operation of the foregoing, assume that the City has determined that it is fiscally responsible on a citywide basis to insure City facilities (including Zoo facilities) as follows:

Deductible	\$400,000
Self-insured retention for damages from	\$1.1 million to \$1.5 million
Insure City buildings at	90% of replacement value

Assume further that the Zoo facility in the following examples has a replacement value of \$4 million.

Example 1. The Zoo facility is damaged and the repair cost is \$375,000. In this example, WPZS is responsible for the entire \$375,000 whether the City gives WPZS the Insurance Notice or not.

Example 2. The Zoo facility is damaged and the repair cost is \$735,000. In this example, WPZS is responsible for the \$400,000 deductible and the insurance is responsible for \$335,000 whether the City gives WPZS the Insurance Notice or not.

Example 3. The Zoo facility is damaged and the repair cost is \$1.3 million. In this example, if the City has not given WPZS the Insurance Notice, WPZS is responsible for \$500,000 (\$400,000 deductible + first \$100,000 of self-insured retention), the City is responsible for \$100,000 (\$1.3 million total repair cost - \$1.2 million (\$1.1 million + first \$100,000 of self-insured retention paid for by WPZS)), and the insurance company is responsible for \$700,000. If the City has given WPZS the Insurance Notice (and WPZS has not elected to terminate the Agreement), WPZS is responsible for \$600,000 (\$400,000 deductible + \$200,000 of self-insured retention), the City is responsible for \$0 and the insurance company is responsible for \$700,000.

Example 4. The Zoo facility is completely destroyed. In this example, if the City has not given WPZS the Insurance Notice, WPZS is responsible for \$500,000 (\$400,000 deductible + first \$100,000 of self-insured retention), the City is responsible for \$700,000 (\$4 million total repair cost - \$3.6 million (policy limit) + \$300,000 remaining self-insured retention (\$1.5 million - \$1.2 million (\$1.1 million + first \$100,000 of self-insured retention paid for by WPZS))), and the insurance company is responsible for \$2.8 million. If the City has given WPZS the Insurance Notice (and WPZS has not elected to terminate the Agreement), WPZS is responsible for \$1.2 million (\$400,000 deductible + \$400,000 of self-insured retention + \$400,000 excess cost over policy limits), the City is responsible for \$0 and the insurance company is responsible for \$2.8 million.

To the extent that the cost of repairing damage to a Zoo facility is covered by insurance, the City and WPZS shall mutually agree as to whether the Zoo facility shall be repaired. In the event that insurance proceeds do not cover the cost of repair, the City is not otherwise responsible for making up the insurance shortfall, as provided herein, and WPZS is unwilling or unable to make up the difference, the City, in its sole discretion, after consultation with WPZS, shall determine whether to repair the damaged facility. If the City determines not to repair a damaged facility, WPZS' sole remedy will be to terminate the Agreement.

In the event that damage to multiple facilities creates an aggregate obligation for WPZS greater than \$2,000,000 in any policy period, the City is not otherwise responsible for making up the shortfall, and WPZS is unwilling or unable to make up the difference, the City, in its sole discretion, after consultation with WPZS, shall determine whether to repair all damaged facilities. At a minimum, the City will make repairs to the extent that would be required if the \$2,000,000 limit were not exceeded. If the City decides to not repair all damaged facilities, the City will consult with WPZS about which facilities to repair. If the City determines not to repair all damaged facilities, WPZS's sole remedy will be to terminate the Agreement.

The \$500,000 and \$2,000,000 amounts for deductibles, self-insured retention, and other insurance shortfalls will be adjusted periodically by the City so that the limits generally reflect the values as of the date this agreement is signed.

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 property 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.

C. Fidelity and Crime Coverage (Bond). WPZS, at no expense to the City, shall provide Fidelity and Crime coverage of the following minimum limit:

Blanket Fidelity Coverage \$250,000

D. 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.

E. 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 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.
- A copy of an endorsement stating that the coverages provided by this policy 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.
- For Commercial General Liability and Business Automobile Liability Insurance, a copy of a "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured - this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought.

F. 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-:VII or better in

the A.M. Bests 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.

G. 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.