



SEATTLE CITY COUNCIL

Public Assets and Native Communities Committee

Agenda

Tuesday, December 7, 2021

2:00 PM

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or
Seattle Channel online.

Debora Juarez, Chair
Alex Pedersen, Vice-Chair
Lisa Herbold, Member
Teresa Mosqueda, Member
Kshama Sawant, Member
Dan Strauss, Alternate

Chair Info: 206-684-8805; Debora.Juarez@seattle.gov

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SEATTLE CITY COUNCIL
Public Assets and Native Communities
Committee
Agenda
December 7, 2021 - 2:00 PM

Meeting Location:

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or Seattle Channel online.

Committee Website:

<http://www.seattle.gov/council/committees/public-assets-and-native-communities>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

Pursuant to Washington State Governor's Proclamation No. 20-28.15 and Senate Concurrent Resolution 8402, this public meeting will be held remotely. Meeting participation is limited to access by the telephone number provided on the meeting agenda, and the meeting is accessible via telephone and Seattle Channel online.

Register online to speak during the Public Comment period at the 2:00 p.m. Public Assets and Native Communities Committee meeting at <http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the Public Assets and Native Communities Committee meeting will begin two hours before the 2:00 p.m. meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to Councilmember Juarez at Debora.Juarez@seattle.gov

Sign-up to provide Public Comment at the meeting at <http://www.seattle.gov/council/committees/public-comment>

Watch live streaming video of the meeting at <http://www.seattle.gov/council/watch-council-live>

Listen to the meeting by calling the Council Chamber Listen Line at 253-215-8782 Meeting ID: 586 416 9164

One Tap Mobile No. US: +12532158782,,5864169164#

Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Chair's Report

5 minutes

D. Public Comment

8 minutes

E. Items of Business

1. [CB 120164](#) **AN ORDINANCE relating to Seattle Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into an agreement with the Woodland Park Zoological Society for operation and management of the Woodland Park Zoo.**

Attachments: [Att 1 - \(Proposed\) Woodland Park Zoo Operations and Management Agreement v2](#)

Supporting

Documents: [Summary and Fiscal Note](#)
[Summary Att A – Key Points of O & M Agreement](#)

Briefing, Discussion, and Possible Vote (45 minutes)

Presenters: Brian Goodnight, Council Central Staff; Alejandro Grajal, President/CEO, Woodland Park Zoo; Jesús Aguirre, Superintendent, Seattle Parks and Recreation

2. [Res 32034](#) **A RESOLUTION relating to Seattle Parks and Recreation; authorizing the Superintendent of Parks and Recreation to act as the authorized representative/agent on behalf of The City of Seattle and to legally bind The City of Seattle with respect to certain projects for which the City seeks grant funding assistance managed through the State Recreation and Conservation Office (RCO).**

Attachments: [Att 1 - Sample RCO Project Agreement](#)

Supporting

Documents: [Summary and Fiscal Note](#)
[Summary Att A – Property Maps](#)

Briefing, Discussion, and Possible Vote (15 minutes)

Presenters: Traci Ratzliff, Council Central Staff; Jesús Aguirre, Superintendent, Seattle Parks and Recreation

3. [CB 120188](#) **AN ORDINANCE creating an Indigenous Advisory Council for tribal and urban Indian engagement; adding a new Chapter 3.75 to the Seattle Municipal Code; and amending Section 3.35.050 of the Seattle Municipal Code.**

Supporting

Documents: [Summary and Fiscal Note](#)

Briefing, Discussion, and Possible Vote (25 minutes)

Presenters: Lish Whitson, Council Central Staff; Francesca Murnan, Indigenous Advisory Council Liaison, Department of Neighborhoods; Negheen Kamkar, Office of Seattle City Councilmember Debora Juarez

F. Adjournment



Legislation Text

File #: CB 120164, Version: 2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to Seattle Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into an agreement with the Woodland Park Zoological Society for operation and management of the Woodland Park Zoo.

WHEREAS, the City currently owns the public zoological gardens located in Seattle commonly known as the Woodland Park Zoo; and

WHEREAS, the Woodland Park Zoological Society is a nonprofit 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; and

WHEREAS, in 2000, the Washington State Legislature adopted Chapter 35.64 of the Revised Code of Washington to authorize certain cities, including The City of Seattle, to enter into contracts with nonprofit corporations or other public organizations to manage and operate their zoos and aquariums; and

WHEREAS, The City of Seattle and the Woodland Park Zoological Society believe that the proposed Agreement will provide the greatest opportunity for success of the Zoo to continue to fulfill its mission in education, conservation of wildlife, recreation, providing benefits to the residents of Seattle, and developing the Zoo as an important civic asset, cultural resource, and attraction; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Superintendent of Seattle Parks and Recreation and recommended by the Mayor, the Superintendent is hereby authorized to enter into an agreement (“Agreement”), substantially in the

form of Attachment 1 to this ordinance, between The City of Seattle, acting through Seattle Parks and Recreation, and the Woodland Park Zoological Society (WPZS), a nonprofit public benefit corporation in the State of Washington.

Section 2. The Superintendent is authorized to manage the Agreement on behalf of the City under the terms therein and provide such approvals as may be necessary or desirable to carry out the Agreement. The Superintendent shall administer the agreement in full consultation with the City Council by transmitting all information, drafts, and proposals, including the Long-Range Plan contemplated by the agreement, to Council in a timely fashion. The Superintendent is further and specifically authorized to execute and perform such ancillary and related agreements as reasonably deemed necessary to carry out the terms of the Agreement.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by me in open session in authentication of its passage this _____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment 1 - (Proposed) Woodland Park Zoo Operations and Management Agreement

WOODLAND PARK ZOO OPERATIONS AND MANAGEMENT AGREEMENT

OPERATIONS AND MANAGEMENT AGREEMENT

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

RECITALS

WHEREAS, the City owns the public zoological gardens commonly known as the Woodland Park Zoo (“the Zoo”). The Zoo is located on certain park land owned by the City shown in Exhibit 1 and legally described in Exhibit 2 both attached hereto; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, an economic impact study covering the recent 10-year period of 2009 to 2018 estimated that Zoo operations generated a combined direct, indirect, and induced revenue impact of approximately \$833.8 million and the Zoo's visitors generated an estimated revenue impact of \$981 million for the state of Washington; and

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

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

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

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

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

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

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

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

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

WHEREAS, the City and WPZS continue to believe that this Agreement represents the greatest opportunity for the Zoo to succeed in fulfilling the Parties' shared mission of wildlife conservation and education, and to provide benefits to the people of Seattle as an important civic asset and cultural resource; and

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

AGREEMENT

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

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

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

1.2 “Agents” is defined below in Section 31.3.

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

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

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

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

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

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

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

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

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

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

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

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

- 1.15 “Force Majeure” is defined below in Section 20.
- 1.16 “Hazardous Material” is defined below in Section 24.1.2.
- 1.17 “Long-Range Plan” or “Plan” shall mean the Long-Range Physical Development Plan required under this Agreement, or any successor thereto.
- 1.18 “Losses” is defined below in Section 24.3.
- 1.19 “Major Maintenance Support” is defined below in Section 5.2.3.
- 1.20 “Neighborhood Parks” shall mean the two (2) neighborhood parks on the Premises, one at 50th Street and Phinney, and the other at 59th Street and Phinney.
- 1.21 “Off-Site Facility” is defined below in Section 3.1.
- 1.22 “Operations Support” is defined below in Section 5.2.1.
- 1.23 “Personal Property” shall mean the furniture, furnishings, and articles of moveable personal property brought onto the Premises by or for account of the WPZS, either prior to or during the Term of this Agreement, without expense to the City, and which can be removed without structural or other material damages to the Premises. Personal Property does not include items set out in Section 9.2.
- 1.24 “Premises” or “Zoo Premises” is defined in Section 3.1.
- 1.25 “Prior Agreement” shall mean the Woodland Park Zoo Operations and Management Agreement between the Parties authorized by City Ordinance 120697 and effective March 1, 2001.
- 1.26 “Property” shall mean the City’s Zoo property, consisting of the Premises and including all buildings and items set out in Section 9.2 below, as well as any items of personal property the City may from time to time bring or cause to be brought onto the Premises at the City’s expense and with WPZS’s concurrence for Zoo use.

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

1.28 “Release” is defined below in Section 24.1.3.

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

1.30 “SPR” shall mean the City’s Seattle Parks and Recreation department.

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

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

1.33 “Term” is defined below in Section 2.1.

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

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

1.36 “Zoo” shall mean the public zoological gardens and related facilities operated on the Premises, commonly known as Woodland Park Zoo, which is the subject of this Agreement.

1.37 “Zoo Animals” shall mean all animals owned by WPZS, and all animals acquired by WPZS during the Term, but excludes animals on loan from or to other zoos under AZA auspices.

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

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

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

Section 2. Term of Agreement.

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

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

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

Section 3. Management and Operation of Premises and Personal Property.

3.1 Premises. Subject to the terms, covenants and conditions set forth in this Agreement, WPZS shall exclusively manage and operate the Zoo Premises, comprising (a) approximately ninety-two (92) acres of land and improvements owned by the City and depicted on Exhibit 1 and as described in Exhibit 2 both attached hereto, on which the Zoo is currently operated, and (b) the property located at 22327 Southeast 464th Street, Enumclaw, Washington, and consisting of approximately 120 acres including a house, outbuildings, and barn, owned by the City and used as an off-site breeding facility for the Zoo (the “Off-Site Facility”), collectively referred to as the “Premises” or “Zoo Premises.” The Parties may expand the Premises to include additional sites for Zoo use by executing an amendment to this Agreement pursuant to Section 31.10.

3.2 Property.

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

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

3.3 Use of the Premises.

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

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

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

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

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

Section 5. Maintenance and Operations.

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

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

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

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

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

5.2.1 Operations Support Payments and Escalation. Subject to Section 5.2.2, the City shall transfer to WPZS an annual operations support payment (“Operations Support”) equal to \$7,620,887 in 2022, the first Fiscal Year of this Agreement. For each year thereafter, the Operations Support shall be escalated by the increase in the Consumer Price Index for Urban Consumers for the Seattle-Tacoma-Bremerton area, or its functional, widely recognized and utilized successor index as determined by City, measured as of June 30 of the prior year. The Operations Support shall be paid to WPZS in twelve (12) equal monthly installments on or before the fifteenth (15th) day of each month. The parties acknowledge that the Effective Date is not the first day of a Fiscal Year, and the first year Operations Support shall be reduced pro rata. Operations Support in all subsequent years shall be calculated as if the first year’s payment had been the full annual amount.

5.2.2 Operations Support Fund Appropriation; Fiscal Emergency. City payment of Operations Support each Fiscal Year shall be contingent on City legislative appropriation of funding sufficient for such payment. The Superintendent will request such annual appropriation either from the City through City Council approval or from the Park District through Park District Governing Board approval. The payment of the Operations Support in any Fiscal Year shall also be governed by and subject to the following fiscal emergency provisions. For purposes of this Agreement, a “fiscal emergency” shall arise when either total City general fund or Park District revenue for a year is reasonably projected in the City’s adopted budget to be less than the revenue projected, at the time of adoption of the budget for that next year, to be received in the previous year (the year during which the budget for the next year is adopted). In the event of a fiscal emergency, the Operations Support can be reduced from the amount provided the previous year by up to the percentage decline in expected general fund or Park District revenue or by five percent (5%), whichever is less. In subsequent years when the fiscal emergency criterion no longer applies, the Operations Support shall be adjusted annually from the prior year’s amount using the escalation factor defined in Section 5.2.1.

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

City is providing Major Maintenance Support with the expectation that the funding will enhance the Zoo as a public amenity, preserve and improve the Premises, and remediate any pre-existing conditions that may not have been addressed during the term of the Prior Agreement. WPZS will be responsible for providing all maintenance services, deploying the Major Maintenance Support consistent with this Agreement and legal requirements, and paying the costs of any Premises maintenance needs in excess of the Major Maintenance Support payments. If WPZS discovers a latent defect or other pre-existing condition, WPZS shall prioritize application of Major Maintenance Support funding to remediate the condition. In the first Fiscal Year, in 2022, City will pay an amount equal to \$2,149,470. The parties acknowledge that the Effective Date is not the first day of a Fiscal Year, and the first year's Major Maintenance Support shall be reduced pro rata. For each year thereafter, the Major Maintenance Support shall be escalated by the increase in the Consumer Price Index for Urban Consumers for the Seattle-Tacoma-Bremerton area, or its functional, widely recognized and utilized successor index as determined by City, measured as of June 30 of the prior year.

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

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

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

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

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

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

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

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

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

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

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

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

c. In the event the City does not approve the Long-Range Plan, or, if applicable, excepted elements of the Plan, within two (2) years of submission, WPZS and SPR will confer in good faith to determine whether to continue to seek agreement on a revised Long-Range Plan; continue operations under this Agreement without a Long-Range Plan; or take other action as the Parties may determine to be in the mutual best interest of the City and WPZS. If the City does not approve a Long-Range Plan that is reasonably acceptable to WPZS within two years of initial submission, thereafter either party may exercise its right to terminate this Agreement under Section 22.3; provided, however that neither Party may exercise its termination right under Section 22.3 if the other Party is engaging in good faith negotiation to resolve the City's concerns about the pending Plan as initially submitted; provided further, that the negotiation period shall not extend longer than four (4) years after WPZS submitted the initial Long-Range Plan.

d. WPZS agrees to use its good faith best efforts to raise the funds needed to construct the improvements contemplated in the Long-Range Plan to be adopted under this Agreement, except as provided herein. WPZS may request City funding for discrete capital improvement projects identified in the Long-Range Plan; but City approval of the Long-Range Plan shall not be construed as a commitment to fund any such project unless explicitly agreed in writing by the City. The City will consider in good faith any such request and the impact the proposed improvements would have on the City's Premises, improved access, and increased activation of the Zoo. WPZS and the City may mutually agree on project scope and financing, which may in the City's sole discretion include an additional City funding commitment with any such terms, conditions, and consideration to the City as may be appropriate for the funding commitment.

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

Section 9. Capital Improvements and Alterations.

9.1 Improvements and Alterations. Subject to Sections 9.4, 11.3, 11.4, 11.5, and 16.7, WPZS may make such capital improvements and alterations to the Premises and the Zoo facilities as WPZS shall determine in its reasonable discretion are necessary to operate the Zoo, as long as these capital improvements and alterations are in accordance with WPZS obligations under this Agreement or the Long-Range Plan.

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

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

9.4 Requirements and Restrictions. WPZS may not (a) undertake any capital improvements or alterations to the Property inconsistent with the Long-Range Plan as it may be updated and approved by the City from time to time; or (b) make any capital improvements or alterations to the Property that are subject to the approval of a City department, commission or agency unless such approval has been obtained. Any major maintenance, alterations, or capital improvements made by WPZS to or on the Premises shall comply with any and all applicable local, state and federal laws, rules and regulations, including applicable Washington public works requirements, and WPZS shall obtain any required permits for such work at its expense, before proceeding with such alterations or capital improvements. The Parties affirm and agree, to the extent consistent with this Agreement and the Long-Range Plan, to continue to observe the requirements of the May 1, 2003 Memorandum of Understanding between the Parks and Recreation Department and WPZS regarding coordinated planning for and Department review of

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

Section 10. Admissions.

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

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

Section 11. Public Benefits, Equity and Inclusion.

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

11.1.1 Public Benefit Report. WPZS will include in each annual Public Benefits Report a description of the public benefits WPZS has provided, including at a minimum a description of the benefits provided during the reporting period, scale and impact of those public benefits, and commercially reasonable dollar valuation of those benefits. If the Superintendent reasonably determines that the value of public benefits set out in the reporting period does not equal or exceed the minimum public benefit value required for that reporting period, the Superintendent will notify WPZS of the basis for the Superintendent’s determination and the dollar value of public benefits WPZS failed to provide for the reporting period. In that case, WPZS shall remedy the shortfall in the next reporting period by increasing public benefits provided and reported to include the required minimum annual value plus the dollar value of public benefits required but not delivered in the prior year. A shortfall in public benefit valuation during any reporting period will not constitute an event of default as long as WPZS has provided all agreed public benefit

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

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

11.1.3 Five-Year Review. WPZS agrees that it will provide at an initial level and value public benefits as summarized in this Section 11.1 and Appendix A. The parties recognize that over the Term of the Agreement, WPZS or the City may develop new programs and strategies that may more effectively achieve the desired outcomes and, in particular, equity outcomes. Five (5) years following the Effective Date and every five (5) years thereafter during the Term, the City and WPZS shall review the public benefits outlined herein and, if reasonably approved by both parties, shall modify Appendix A to reflect the goal of providing public access to Seattle’s underserved populations and allow room for adjustments based on programming and facility changes. While the value of

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

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

- (a) Adopting and implementing staffing policies aimed at developing and sustaining diverse staff, volunteers, and board members reflecting the diversity of the larger community;
- (b) Lowering economic, physical, and cognitive barriers too, so that the Zoo is accessible to everyone;
- (c) Providing free and low-cost access to the Zoo and programs sponsored by the Zoo, as described, by way of current examples, in Appendix A;
- (d) Supporting partnerships and collaborative relationships with diverse regional and community based cultural organizations, and;
- (e) Providing trainings to the Zoo’s employees and board of directors on best practices related to race, equity and inclusion.

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

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

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

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

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

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

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

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

11.3.6 Labor Peace. At its earliest opportunity, WPZS shall cause the entity operating or managing the principal food and beverage concession, franchise, or operation at the Zoo, including WPZS if it elects to operate or manage such food and beverage concession, franchise or operation, to enter into a labor peace agreement. Such opportunity includes but is not limited to negotiation of substantial modifications to its existing concessions and catering operating agreement requested by the current concessionaire and any assignment or extension of same as well as negotiation of any successor agreement or combination of agreements of similar scope. For purposes of this Section, “labor peace agreement” means an agreement with a labor organization that contains, at a minimum, provisions prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with the Zoo’s

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

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

Section 12. Zoo Animals.

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

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

12.3 Animal Collection, Acquisition and Disposition. WPZS shall have the authority to determine the composition of the Zoo Animal collection, including breeding, acquisition, sale or other disposition of Zoo Animals in the course of WPZS’s operation of the Zoo. In implementing such authority to acquire, sell or otherwise dispose of its Zoo Animals, WPZS shall strictly comply

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

Section 13. Naming Rights.

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

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

Section 14. Maintenance.

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

14.2 Contractor Insurance. In addition to the Parties’ insurance requirements set out in Section 18 and Appendix B, WPZS shall ensure that every contractor engaged to perform work on the Premises maintains insurance in amounts, on policies of coverage and offered by companies reasonably satisfactory to WPZS and consistent with standard City requirements for comparable work, including but not limited to Worker’s Compensation Insurance (including Employers’

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

Section 15. WPZS Fiscal Authority.

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

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

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

15.4 Solicitation of Private and Public Funding. WPZS shall (a) use its best efforts to (i) actively solicit private support for WPZS through membership fees and charitable contributions; and (ii) actively solicit federal, state or local grants or other funds to support the operation and purposes of the Zoo; and (b) apply all funds contributed to it as membership fees, charitable donations, public grants or loans, or any other sources to Zoo Purposes, including

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

Section 16. Reporting Obligations and Public Involvement.

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

16.2 Annual Plan to the Superintendent. At least thirty (30) days prior to the beginning of each Fiscal Year for WPZS, WPZS shall, at its sole expense, prepare and submit to the Superintendent an Annual Plan. The Annual Plan shall, at a minimum, include (a) the one-year capital improvement plan for the Zoo; (b) a description of major programmatic changes planned

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

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

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

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

16.5 Books and Records.

16.5.1 Financial Records. WPZS shall establish and maintain books, records and systems of account relating to the Zoo's revenues and expenses in accordance with generally accepted accounting practices for not-for-profit organizations. These records

shall, to the extent necessary to meet requirements for audits under Section 16.6 of this Agreement, be retained by WPZS and made available to the City upon request.

16.5.2 Zoo Animal Records. In order to sustain the health and welfare of Zoo Animals, the WPZS shall maintain the Zoo Animal Records. WPZS shall make Zoo Animal Records reasonably available to the Superintendent upon the Superintendent's request to enable the City to determine that Zoo Animals are receiving proper care and treatment at the Zoo consistent with the requirements of this Agreement. The Superintendent shall make Zoo Animal Records used by the Superintendent or in the Superintendent's possession available for disclosure to the public through routine City records disclosure procedures. If the Superintendent receives a request from a member of the public for identifiable Zoo Animal Records that the Superintendent does not possess, the Superintendent will forward that request to the WPZS, and the WPZS shall promptly make the requested Zoo Animal Records available to the requester. If the WPZS receives a request from a member of the public for identifiable Zoo Animal Records, the WPZS shall promptly make the requested Zoo Animal Records available to the requester.

16.6 City Audit Participation. If requested by the City, WPZS shall make available all information reasonably necessary for the City and the State Auditor to perform audits of the use and application of all revenues, grants, fees and charges and all City funds, except for private fundraising activities and private donor information, received by WPZS during the current and preceding year, including Zoo operations and management.

16.7 Public Involvement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 21. Indemnities.

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

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

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

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

Section 22. Default; Termination of Agreement; Remedies.

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

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

(b) Abandonment or assignment or encumbrance or transfer of this Agreement or of the Premises by WPZS, without the prior written consent of the City; and

(c) The appointment of a receiver to take possession of all or substantially all of the assets of WPZS, or an assignment by WPZS for the benefit of creditors, or any action taken or suffered by WPZS under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

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

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

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

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

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

Section 23. Surrender of Premises; Transition. Within 181 days of the Termination Date or other termination of this Agreement, or such other transition period as the Parties may mutually agree, WPZS shall (a) promptly remit to the City all unexpended revenues generated from Zoo operations, admissions and other charges, but excluding philanthropic donations other than funds necessary to complete any CapEx Projects in progress; and (b) peaceably quit and surrender to the City the Premises, together with all permanent improvements approved by the City and Personal Property reasonably determined necessary for Zoo operations in good order and

condition, normal wear and tear and damage caused by casualty or condemnation excepted. During the period between the Termination Date and surrender of the Premises, WPZS may not dispose of any Zoo Animals without written permission from the Superintendent, notwithstanding rights that might otherwise be available during the Term under Section 12.3. The Premises shall be surrendered free and clear of all liens and encumbrances other than any encumbrances on the Premises created or approved in writing by the City. WPZS shall, immediately before the Termination Date or other termination of this Agreement, remove all of WPZS's Property as provided in this Agreement, and repair any damage resulting from the removal. WPZS's obligations under this Section shall survive the Termination Date or other termination of this Agreement. Any items of WPZS's Personal Property which shall remain in the Premises after the Termination Date of this Agreement may, at the option of the City, be deemed abandoned and in such case may be disposed of by the City in any manner allowed by law.

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

Section 24. Hazardous Materials.

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

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

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

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

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

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

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

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

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

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

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

Section 26. Assignments; Subcontracting. WPZS has been chosen by the City to operate and manage the Zoo in reliance upon WPZS’s stated and unique expertise, skill and experience. WPZS shall not assign, transfer, mortgage or encumber its interest in this Agreement or any other right, privilege or license conferred by this Agreement, either in whole or in part. Any assignment or encumbrance shall be voidable and, at the City’s election, shall constitute a material default under this Agreement. Without limiting the obligations of WPZS under this Agreement, WPZS shall have the right and the authority to enter into contracting arrangements with any other person or entity (including without limitation SPR or other City agency) for the provision of any work or service required or allowed to be performed by WPZS under this Agreement so long as WPZS maintains supervisory or management authority over such work or service.

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

If to the WPZS:

Primary Contact:

Woodland Park Zoological Society

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

Courtesy copy to:

Pacifica Law Group
1191 2nd Avenue, Suite 2000
Seattle, WA 98101-3404
Attn: B. Gerald Johnson
Email: Gerry.Johnson@Pacificalawgroup.com

If to the City of Seattle

Primary Contact:

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

Courtesy copy to:

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

Section 28. Compliance with Laws.

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

28.2 Americans with Disabilities Act. WPZS acknowledges that the Americans with Disabilities Act (the “ADA”) requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to persons with a disability. WPZS further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation, including but not limited to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (“ADA”); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; and the Washington Law Against Discrimination, Wash. Rev. Code Ann. § 49.60. WPZS warrants that it will fulfill that obligation, and that it will not discriminate against persons with a disability in the provision of services, benefits or activities pursuant to this Agreement.

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

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

or affording tax treatment of the Zoo under this Agreement that is consistent with the taxation of other major cultural institutions. WPZS agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that WPZS, if so desiring, may have reasonable opportunity to contest the validity of the same. If WPZS intends to contest or to fail to pay when due any tax or fee referred to in the preceding sentence, WPZS shall provide the City with at least thirty (30) days' notice of that intention before the tax is due, explaining its reasons. The City may choose to pay the tax on behalf of the WPZS, and if it is later determined the tax or some portion of it was validly owing, WPZS shall reimburse the City.

Section 31. Miscellaneous.

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

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

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

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

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

31.5 No Implied Waiver. No failure by either party hereto to insist upon the strict performance of any obligation of the other party under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues (except in cases where this Agreement expressly limits the time for exercising rights or remedies arising out of a breach), shall constitute a waiver of such breach or of that party's right to demand strict compliance such term, covenant or condition or operate as a surrender of this Agreement. No waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of either party hereto given in any instance under the terms of this Agreement shall not relieve the other party of any obligation to secure the consent of the other party in any other or future instance under the terms of this Agreement.

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

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

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

31.9 Relationship of Parties. This Agreement delineates the Parties' respective ownership interests, obligations, and responsibilities concerning Zoo operations and management pursuant to RCW Chapter 35.64. Nothing contained in this Agreement shall be construed to create a legally recognizable partnership, joint venture, or relationship of employment or agency.

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

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

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

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

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

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

31.15 Survival of Indemnities. Termination of this Agreement shall not affect the right of either party to enforce any and all Indemnities and representations and warranties given or made to the other party under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof.

DATED this ____ day of _____, 20____.

CITY OF SEATTLE, WASHINGTON, a
Washington Municipal Corporation

WOODLAND PARK ZOOLOGICAL
SOCIETY, a Washington nonprofit
Corporation

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

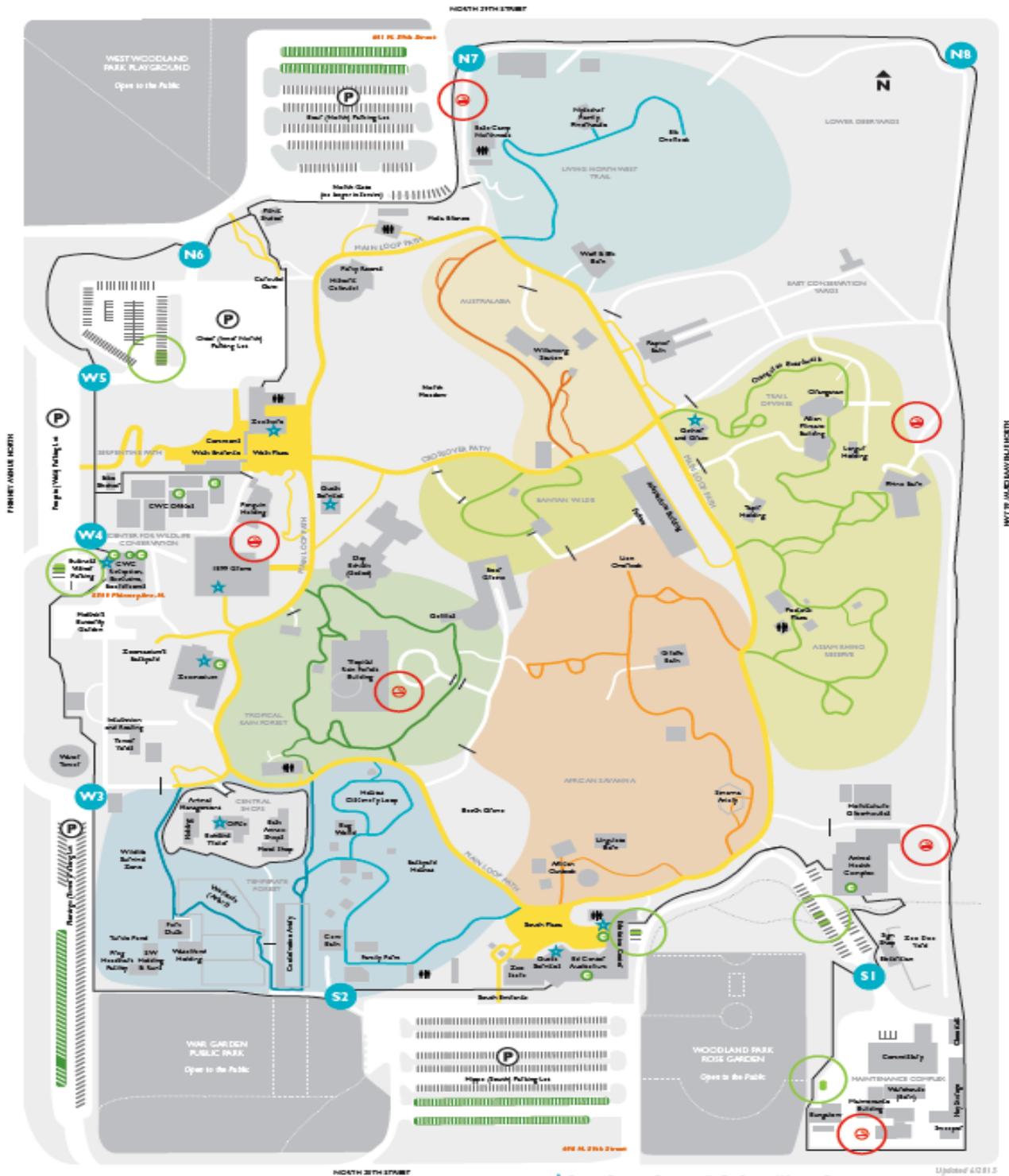
By: Alejandro Grajal
President and CEO

Exhibits:

- 1 (Premises Depiction)
 - 2 (Premises Legal Description)
 - 3 (MOU between SPR and WPZS)
 - 4 Guiding Principles for a New Long-Range
Plan for Woodland Park Zoo
- Appendix A: Public Benefits Requirements
Appendix B: Insurance Provisions



WOODLAND PARK ZOO OPERATIONS AND MANAGEMENT AGREEMENT EXHIBIT 1 (excluding off-site property) PREMISES DEPICTION



NOTE: White paths and roads indicate employee-only access points and areas of the zoo. This map is not intended for distribution or use by the general public.

- ★ Service Recovery Bn
- Security Gate
- Staff Parking
- Conference/Meeting Room
- ⊖ Designated Employee Smoking Areas
- Carpool Parking

Updated 6/2015

WOODLAND PARK ZOO
OPERATIONS AND MANAGEMENT AGREEMENT

EXHIBIT 2
PREMISES LEGAL DESCRIPTION - SEATTLE

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

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

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

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

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

PREMISES LEGAL DESCRIPTION – ENUMCLAW

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

**WOODLAND PARK ZOO
OPERATIONS AND MANAGEMENT AGREEMENT**

EXHIBIT 3

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

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

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

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

Category	Principle/Guideline	Implementation approach
Funding	SPR and the WPZS jointly benefit from implementation of capital projects.	<ul style="list-style-type: none"> • Approach projects as partners. • WPZS funds project costs including reimbursement of an agreed upon level of review/inspection effort for SPR staff costs.
Quality	<p>SPR and WPZS both have interest in identifying how SPR standards will be applied to WPZS projects.</p> <ul style="list-style-type: none"> • SPR needs to preserve long term investment. • WPZS needs flexibility in operation and maintenance decisions. 	<ul style="list-style-type: none"> • WPZS capital projects will meet or exceed SPR standard specifications and details for sewers, storm sewers and subsurface drainage. Deviation from these standards would occur only with SPR approval. Other underground utilities (i.e. power, communications, water and gas) and potential exposure/handling of underground environmental hazards will also be subject to SPR review. • The WPZS may modify other standard specifications and details for use on WPZS projects provided current building codes are met.
Design Reviews	<ul style="list-style-type: none"> • SPR needs timely information and opportunity for input on underground utilities (i.e. sewers, storm sewers, sub-surface drainage, power, communications, water and gas) during design. • WPZS needs timely notification of issues or exceptions SPR takes to the project design of underground utilities. • Maintenance projects may not require full design documents. 	<ul style="list-style-type: none"> • Park Engineer is provided with 5 sets of design documents of the underground elements for review at concept/schematic, 50% CD, and 95% CD stages • Park Engineer provides written comment to WPZS's Project Manager regarding deficiencies, required changes, required additions, or required clarifications regarding the construction documents. • The WPZS responds in writing. • If a project alters underground utilities the Zoo Society will notify the Park Engineer and Facilities Division of their intent, Park Engineer and Facilities provide informal review, Facilities provides field inspection during installation, WPZS provides as-built documentation.

Final Approval	<ul style="list-style-type: none"> • SPR and the WPZS need a record of agreement on design of projects. 	<ul style="list-style-type: none"> • The WPZS will provide completed construction documents of the underground elements with a modified "Bidding Document Requirements" form for approval to proceed with construction. This form also delineates the planned Inspection Plan (including agreed to reimbursable inspections conducted by Parks staff) • The Park Engineer, on behalf of the Superintendent will sign the plans and specifications to indicate that SPR approves the design for Zoo purposes. Note that the Park Engineer signature does not transfer responsibility for or liability from the plans and specifications from WPZS to City.
Construction-phase Accountability	<ul style="list-style-type: none"> • The WPZS is responsible for guaranteeing that the project is constructed as designed. 	<ul style="list-style-type: none"> • Construction changes related to previously approved underground utility design must be approved by the Park Engineer.
Construction management	<ul style="list-style-type: none"> • The WPZS is responsible for management and inspection of WPZS construction projects. 	<ul style="list-style-type: none"> • Designated SPR staff as agreed upon in the inspection plan shall coordinate site visits and inspections of underground utility installation with WPZS Project Manager. • If SPR inspectors have concerns about work completed, underway, or about to commence should direct these concerns to the WPZS's Project Manager in writing.
Misc. Contract Administration	<ul style="list-style-type: none"> • The Management Agreement calls for a review of insurance documents of WPZS contractors by the parties reviewing 	<ul style="list-style-type: none"> • The WPZS Senior Finance Department staff has been trained by the City risk manager to perform normal City reviews. Copies of all documents will be submitted to the City after review.
Preferred Dispute Resolution Process	<ul style="list-style-type: none"> • WPZS Project Manager and SPR staff address and resolve issues as they come up during design and construction of the project. 	<ul style="list-style-type: none"> • Should WPZS Project Manager and SPR Staff fail to resolve a dispute; the matter should be referred to the Society • President/CEO and the Superintendent of SPR, or their designees for resolution.
Record Documents	<ul style="list-style-type: none"> • SPR and the WPZS jointly benefit from documentation of completed capital projects. 	<ul style="list-style-type: none"> • WPZS will provide to SPR one complete set of record drawings on Mylar, one copy of the Project Manual, and one copy of the O&M Manual.

APPROVED:

DEPARTMENT OF PARKS AND RECREATION
Kenneth R. Bounds
Superintendent

WOODLAND PARK ZOOLOGICAL SOCIETY
Deborah B. Jensen, Ph.D.
President and CEO

By:  5/16/23
Signature Date

By:  5/16/23
Signature Date

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

DEPARTMENT OF PARKS AND RECREATION
Jesús Aguirre
Superintendent

WOODLAND PARK ZOOLOGICAL SOCIETY
Alejandro Grajal, Ph.D.
President and CEO


By: Signature Date 07/09/2021


By: Signature Date 07/09/2021

WOODLAND PARK ZOO OPERATIONS AND MANAGEMENT AGREEMENT EXHIBIT 4

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

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

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

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

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

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

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

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

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

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

Appendix A to
WOODLAND PARK ZOO
OPERATIONS AND MANAGEMENT AGREEMENT
PUBLIC BENEFITS REQUIREMENTS

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

WPZS’ Commitment to Public Benefits

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

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

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

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

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

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

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

Service Category	Public Benefit Description	Target Metrics	Value of Services
Public Access (Free Zoo Tickets)	Community Access Program (CAP) tickets were distributed to community-based organizations (such as Seattle Housing Authority, El Centro de la Raza). Average Ticket Price was \$14.60 each in 2019.	100,000 Individuals	\$1,460,000
	A free carousel ride (\$3 value) was included on each CAP ticket	100,000	\$300,000
(Family Discount Days)	Beginning in 2022, WPZS will create a program (working title “Family Discount Days”) that offers a 50% discount over regular admissions for 18 days between October and March. These days will be advertised and will include one weekday and one weekend per month.	90,000 Visitors	\$720,000 (beginning in 2022)
(Seattle Public Library Museum Pass Program)	Beginning in 2022, WPZS will participate in the Seattle Public Library Museum Pass Program. If possible, such passes should be allocated for use by patrons of Library branches located in or near neighborhoods with high percentages of residents living below the poverty line.	Will vary with utilization	Will vary with utilization
(Promotion Commitment)	Beginning in 2022, WPZS will purchase annually up to \$25,000 in promotional advertising targeted at people who might use our free and discounted admission programs.	N/A	\$25,000 (beginning in 2022)
Scholarships	Scholarships to Zoo camps, based on requested assistance applications. Camp scholarships are awarded to applicants based on their level of income.	59 Individuals	\$15,000
Programs	Zoo Admission Ticket and Membership Discount Programs for foster and kinship families (including Tribal welfare agencies) or recipients of Basic food benefit (EBT)/Washington Quest or State Woman, Infants, and Children Nutrition Program (WIC) assistance		
	<ul style="list-style-type: none"> Explorer Pass \$35 membership (avg discount of \$65) 	750 Explorer memberships	\$49,000
	<ul style="list-style-type: none"> Discover Ticket \$5 regular admission tickets (avg \$8.60 discount) 	3,500 Discover tickets	\$30,000

	<ul style="list-style-type: none"> Free School Group Admission for field trips for students from schools with 30% or more students eligible for free or reduced-price meals (avg. \$7 student rate) 	25,000	\$175,000
Community Outreach Events	Discounted Educational Programs: Up CLOSE (WPZS’ ambassador animal outreach program) and programming for community organizations and schools are provided at subsidized rates (avg. discount of \$500)	100 events	\$50,000
Zoo Volunteer Programs	WPZS runs various Zoo Volunteer programs, which record approximately 92,500 hours per year from approximately 800 volunteers	N/A	N/A
Capital Improvements	Privately funded capital improvements to City Facilities 2019 spending on zoo exhibit improvements: the largest projects were remodeling the Northern Trail into the “Living Northwest Trail” and ZooDoo improvements.	Depending on annual projects, ranges between \$500K and \$5 million	\$858,000
Specific Services to City/ Miscellaneous Public Benefits	WPZS offers discounts for seniors, military personnel, guests with disabilities, City of Seattle’s Mayor’s Office Flash and Gold Cards*. Columns to the right include 2019 ticket prices. * <u>Gold Card</u> : - (Healthy Aging Resources for Seattle and King County Residents age 60+) * <u>Flash Card</u> (Fun Leisure Access Savings and Health): - identification card for Seattle and King County adults with disabilities	Senior: 18,925 tickets	\$37,850
		Military: 18,551 tickets	\$74,204
		Disability: 944 tickets	\$1,593
		Gold*: 1,593 tickets	\$24,802
		Flash*: 226 tickets	\$3,428
Total Public Benefit Provided			\$3,823,877

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

A. **Liability Insurance.** WPZS, at no expense to the City, shall obtain and maintain continuously, throughout the Term of this Agreement, policies of insurance as enumerated below, if applicable. Said policy(ies): (i) shall be subject to periodic review and the reasonable approval by the City’s Risk Managers as to company, form and coverage, and be primary to all other insurance the City may secure; and (ii) must protect WPZS from any and all claims and risks in connection with any activity performed by WPZS, or any of its respective officers, employees, agents, contractors or assigns, by virtue of this Agreement or any use and occupancy of the Premises authorized by this Agreement.

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

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

1. A policy of Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01) or equivalent including all the usual coverages known as:
 - a. Premises/Operations Liability
 - b. Products/Completed Operations
 - c. Personal/Advertising Injury
 - d. Contractual Liability
 - e. Owners and Contractors Protective Liability
 - f. Stop Gap or Employers Contingent Liability
 - g. Host Liquor Liability
 - h. Employees as Additional Insured

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

Bodily Injury and Property Damage:

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

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

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

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

Such policy or policies must provide the following minimum limit:

Bodily Injury and Property Damage
\$1,000,000 per accident

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Parks and Recreation	Donnie Grabowski/233-2603	Anna Hurst/733-9317

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to Seattle Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into an agreement with the Woodland Park Zoological Society for operation and management of the Woodland Park Zoo.

Summary and background of the Legislation:

The proposed legislation authorizes the Superintendent of Seattle Parks and Recreation (SPR) to enter into a new 20-year operations and management agreement with the Woodland Park Zoo Society (WPZS). The current agreement expires in February 2022. Under the terms of the agreement, WPZS would continue to operate and manage the Woodland Park Zoo. The proposed agreement includes an option to extend the agreement for another 10 years at the mutual consent of both parties.

Background:

Ordinance 120697, adopted by the City Council on December 17, 2001, approved a 20-year operations and management agreement between SPR and WPZS. The agreement was executed in March 2001 and expires in February 2022. This ordinance authorized SPR to contract with WPZS to exclusively manage and operate the Zoo on the City's approximately ninety-two (92)-acre property, located at 5500 Phinney Ave. N, and at an off-site facility on a 120-acre property in Enumclaw, located at 22327 SE 464th St. The agreement specified conditions for use of the premises and included the City's intention to annually fund 1) operation support payments beginning at \$5 million that were inflated at 70% of the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton area, and 2) a \$500,000 annual City routine maintenance payment, and also provide \$6.4 million in major maintenance payments over the first seven years of the agreement. The original agreement discussed other items including planning for a new parking garage and a contemplated Long-Range Plan.

Ordinance 121620, adopted by City Council on October 11, 2004, amended the Operations and Management Agreement based on delays in WPZS' Long-Range Plan with parking garage alternatives. Some key items included modifying dates to develop a parking garage, committing \$16.2 million in City funds toward the cost of constructing the garage with the City paying 75% and WPZS covering 25% of the debt service; setting a deadline of May 2005 to agree on costs of development, construction, and garage operations, delaying the time in which the City would establish any Restricted Parking Zone for residents in the area within four blocks of the Zoo's boundaries to the date that the garage opened, and delaying the City adoption timeline of the Long-Range Plan to December 2004.

Ordinance 124369, adopted by City Council on December 9, 2013, amended the Operations and Management Agreement for WPZS to repay an outstanding obligation to the City for parking garage predevelopment costs after a Hearing Examiner ruling that the parking garage was not an acceptable land use in a park, and agreed to the City's payment of a portion of costs for WPZS to provide a smaller, 165-space surface parking lot to relieve parking congestion in the neighborhood surrounding the Zoo.

The Metropolitan Park District (Park District), passed by Seattle voters in 2014, included funding for ongoing major maintenance support to WPZS, funding projects such as exhibit renovations, and water, electrical, irrigation, and sewer systems replacements. In 2019, the fund source switched from the Park District to Real Estate Excise Tax (REET). Beginning in 2021, the Park District funded the annual WPZS operations support and routine maintenance support payments.

Attachment A includes several key points in the proposed Operations and Management agreement.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?
No.

Is there financial cost or other impacts of *not* implementing the legislation?

If this legislation is not approved and the current agreement expires without an agreement for continued operation of the Zoo, WPZS would no longer be under contract to operate and maintain the Zoo and would not need to provide public benefits including public access (free or discounted Zoo tickets), scholarships for Zoo camps, programs, community outreach events, or any capital spending above the City's annual contribution. If WPZS stopped operating the Zoo due to lack of contract, the City may incur relocation costs for animals. The City would also be required to maintain the Zoo grounds and buildings if it remained open as a public park, or locate another organization to manage the site for a similar or different purpose.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

Yes. Certain construction and major maintenance work under the contract would require input or oversight from the Department of Finance and Administrative Services (FAS). Depending on the Long-Range Plan (LRP) outcomes, any new, proposed capital investments would likely include input from the City Budget Office, FAS, and the Department of Construction and Inspections.

b. Is a public hearing required for this legislation?

Yes, a public hearing is required per RCW 35.64.010(2). The public hearing is anticipated to be held at the first City Council meeting to discuss this legislation.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

Yes, RCW 35.64.010 (2) states that at least 30 days prior to the hearing, a public notice setting forth the date, time, and place of the hearing and identifying the facilities involved and organization proposed for management and operation under the City contract must be published at least once in a local newspaper of general circulation.

RCW 35.64.010(2): “Before approving each initial and any renewal contract with a nonprofit corporation or other public organization for the overall management and operation of any facilities, the city legislative authority shall hold a public hearing on the proposed management and operation by the nonprofit corporation or other public organization. At least thirty days prior to the hearing, a public notice setting forth the date, time, and place of the hearing must be published at least once in a local newspaper of general circulation. Notice of the hearing shall also be mailed or otherwise delivered to all who would be entitled to notice of a special meeting of the city legislative authority under RCW 42.30.080. The notice shall identify the facilities involved and the nonprofit corporation or other public organization proposed for management and operation under the contract with the city. The terms and conditions under which the city proposes to contract with the nonprofit corporation or other public organization for management and operation shall be available upon request from and after the date of publication of the hearing notice and at the hearing, but after the public hearing the city legislative authority may amend the proposed terms and conditions at open public meetings.”

d. Does this legislation affect a piece of property?

Yes. Section 3.1 includes the premises to be managed and operated at 5500 Phinney Ave. N in Seattle and at 22327 SE 464th St. in Enumclaw and a map and property description are contained in Attachment 1 to the Council Bill/Ordinance.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

This agreement substantially strengthens public benefits provided by WPZS around access, scholarships, programs, community outreach events, capital improvements, and other items. The agreement's Appendix A lists examples of 2019 annual public benefits and their associated values (a total value of approximately \$3.1 million). It is SPR's and WPZS's mutual desire to keep zoo admission pricing affordable for visitors, especially families with children.

Public benefits will be reported annually and evaluated every five years to ensure WPZS is meeting the City's desired equity outcomes.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No. Any capital planning included in the Long-Range Plan (LRP) will address any environmental impacts.

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

No.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?

N/A

List attachments/exhibits below:

Summary Attachment A - Key Points in the Proposed Operations and Management Agreement

Key Points in the Proposed Operations and Management Agreement

<p>Term - Section 2</p>	<p>Authorizes a 20-year term + 10-year option to extend (consistent with current agreement). Effective Date: March 2022</p>
<p>Financial Support Section 5</p>	<p>Annual funding is contingent on City Council approval; the Superintendent will make annual appropriation requests for the following:</p> <p><u>Continue Annual Operations Support (~\$7.3M):</u> Proposal escalates by 100% of CPI (July to June) versus current agreement at 70%. An increase of \$116,845 for 2022. This amount also includes a \$500K annual routine maintenance payment from the current, expiring agreement.</p> <p><u>Continue Annual Major Maintenance Support:</u> In 2015, the Park District began funding major maintenance (\$2M/year + 2.5%/year escalation). New agreement continues payment and escalates at 100% CPI (July to June) regardless of fund source (currently REET due to realignments). An increase of \$61,545 for 2022. If a pre-existing condition is found, WPZS will first apply this support to remediate the item.</p> <p><u>Support County Funding:</u> Superintendent will take reasonable action to advocate for Zoo funding at an amount not less than what is included in the most recent County levy. If County funding declines or becomes unavailable, WPZS may request a reduction of services/operations to a level commensurate with available funding.</p> <p>Fiscal Emergency Language:</p> <p><u>Operations:</u> City funding can be reduced by the amount provided the previous year by up to the percentage decline in expected General Fund or Park District revenue or by 5%, whichever is less. This is consistent with the current agreement.</p> <p><u>Major Maintenance:</u> Can be withheld during a fiscal emergency and resume without obligation to reimburse any missed or reduced payments. (New provision not included in prior agreement.)</p>
<p>Long-Range Plan (LRP) Section 8</p>	<p>Collaboration Process</p> <ul style="list-style-type: none"> • WPZS will collaborate with SPR as LRP planning process proceeds to include periodic updates and inclusion of City representatives selected by the Superintendent to resolve SPR concerns before the LRP is submitted. Goal is a LRP approved by the Superintendent and acceptable to WPZS. <p>Submission</p> <ul style="list-style-type: none"> • WPZS to submit a new LRP to the Superintendent within five years of agreement’s effective date. • The LRP will adhere to guiding principles noted in Exhibit 4 of the Agreement. • The projects in the LRP must comply with all City ordinances, land use requirements, and other regulatory requirements. <p>Review Process</p> <ul style="list-style-type: none"> • Superintendent will review the LRP and provide written feedback. The Superintendent may approve the LRP in part and WPZS may implement the resulting modified LRP. • SPR and WPZS may continue to work together to resolve Superintendent’s concerns for up to two years after submission to achieve a final approved LRP or WPZS may accept the Superintendent’s decision to approve the LRP in part.

	<ul style="list-style-type: none"> • If the Superintendent does not approve the LRP within two years of submission by WPZS, WPZS and SPR will confer about whether to seek agreement on a revised LRP, continue operations without a LRP or take other action. <p>Termination</p> <ul style="list-style-type: none"> • If the Superintendent does not approve the LRP within two years of initial submission, either party may exercise its right to terminate the Agreement provided, however, that neither WPZS nor SPR may exercise its termination right if engaging in good faith negotiation to resolve the Superintendent’s concerns and that the negotiation period shall not extend longer than four years after WPZS submitted the LRP. • Neither WPZS nor SPR can terminate the agreement at least two years after WPZS submits LRP to the City if parties are engaging to resolve the non-approval of the LRP. <p>Funding</p> <ul style="list-style-type: none"> • WPZS and City may agree on project scope and funding which may in City’s sole discretion include an additional City funding commitment. • WPZS agrees to good faith effort to raise the funds needed to construct improvements contemplated in the LRP City approval of the LRP should not be construed as a commitment to fund any items in it. <p>Updating/Amending LRP</p> <ul style="list-style-type: none"> • The LRP may include procedures for updating and amending the LRP when necessary or otherwise appropriate if mutually agreed in writing by WPZS and SPR.
<p>Admissions Section 10</p>	<p>New agreement sets no restrictions for WPZS’s admissions pricing. Parties agree that Zoo should remain affordable, particularly for families with children. Language is in alignment with Aquarium agreement.</p>
<p>Public Benefits, Equity and Inclusion Section 11</p>	<p>Public Benefit listing added in the agreement’s Appendix A (Public Access, Scholarships, Programs, Community Outreach Events, Capital Improvements). WPZS will annually report on Public Benefits. Public Benefits can be reduced if WPZS’s funding is reduced. Public Benefits are subject to reviews every five years.</p>
<p>Workplace Harmony /Social Equity Section 11</p>	<p>WPZS will follow social equity requirements for Zoo CapEx Projects (capital improvement, non-routine maintenance, construction, alteration, repair projects for which independent contractors are retained).</p> <p><u>WMBEs</u> – projects >\$300K and any City funding shall ensure open and fair opportunities to compete for contracts/subcontracts.</p> <p><u>Community Workforce Agreement</u> – Zoo CapEx projects with budget of \$5M+ and City funding shall enter into a master community workforce agreement.</p> <p><u>Apprentices</u> – Zoo CapEx projects with a total construction budget of \$1M+ and City funding shall utilize apprentices.</p>
<p>Reporting Obligations Section 16</p>	<p><u>Annual Report</u> – summary of Zoo operations, audited financial accounting, list of major maintenance projects undertaken and accounting, list of capital investments made, public benefits provided, equity and inclusion programming, self-evaluation of customer service performance.</p> <p><u>Annual Plan</u> – 1-year capital improvement plan, major program changes planned, planned admissions prices, description and estimate of City-funded major maintenance projects.</p>

<p>Indemnification Section 21</p>	<p>The City’s financial obligations under the indemnification will not exceed the appropriation authorized at the time that the City must fulfill its obligations. City’s Environmental Indemnity includes similar language.</p>
<p>Termination Section 22</p>	<p><u>City’s Termination Rights</u> City shall have the right to terminate if 1) WPZS does not comply with Agreement – 60-day cure before default unless the Superintendent grants more time up to 180 days; if 2) WPZS transfers or abandons the agreement or property without City’s consent, or 3) if a court appoints a “receiver” to take WPZS’ assets.</p> <p><u>WPZS’ Termination Rights</u> WPZS will have termination rights if the City fails to pay – 60-day cure date allowed.</p> <p><u>Mutual Termination Rights</u> Mutual termination rights related to the LRP (see Section 8 above).</p>
<p>Insurance Appendix B</p>	<p>Provisions updated -WPZS is recognized as an additional insured on property insurance. City may decide to start charging WPZS its share of property insurance if other cultural organizations (Aquarium, Seattle Asian Art Museum) are also charged. City agrees to consult with WPZS on any claim replacement value, dispute resolution process and claim settlements unless City assigns authority to WPZS.</p>



Legislation Text

File #: Res 32034, Version: 1

CITY OF SEATTLE

RESOLUTION _____

A RESOLUTION relating to Seattle Parks and Recreation; authorizing the Superintendent of Parks and Recreation to act as the authorized representative/agent on behalf of The City of Seattle and to legally bind The City of Seattle with respect to certain projects for which the City seeks grant funding assistance managed through the State Recreation and Conservation Office (RCO).

WHEREAS, state grant assistance is requested by The City of Seattle to aid in financing the cost of the

following projects to be administered by Seattle Parks and Recreation: Be'er Sheva Phase 2, and the Garfield Super Block; and

WHEREAS, on August 18, 2017, the Seattle City Council passed Resolution 31763, adopting The City of Seattle's 2017 Parks and Open Space Plan; and

WHEREAS, the projects are included in The City of Seattle's 2016-2021 Capital Improvement Program and the Seattle Park District Major Maintenance Plan; and

WHEREAS, state grant assistance is requested by Seattle Parks and Recreation to aid in financing the cost of the projects referenced above; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:

Section 1. The City of Seattle (for the purposes of this resolution, "the City" and "we/us/our") has applied for or intends to apply to the State of Washington for funding assistance managed by the State Recreation and Conservation Office (RCO) for two Capital Improvement Program projects ("Proposed CIP Projects" or "Project(s)") in the amount set forth in the "Grant Request" column below:

Proposed CIP Projects	RCO Category / Project #	Grant Request	Match	Total
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Be'er Sheva Phase 2	Land and Water Conservation Fund (LWCF) Legacy Program / 21-1304	\$472,000	\$472,000	\$944,000
Garfield Super Block	LWCF - Legacy Program / 21-1305	\$2,085,000	\$2,085,000	\$4,170,000
Total		\$2,557,000	\$2,557,000	\$5,114,000

Section 2. The Superintendent of Parks and Recreation (“Superintendent”), or the Superintendent’s designee, is authorized to act as the authorized representative/agent for the City, who has or will have by the time any project agreement is executed full authority to bind the City regarding all matters related to the Project(s), including but not limited to full authority to: (1) approve submittal of a grant application to the RCO; (2) enter into a project agreement(s) on behalf of the City; (3) sign any amendments thereto on behalf of the City; (4) make any decisions and submissions required with respect to the Project(s); and (5) designate a project contact (s) to implement the day-to-day management of the grant(s).

Section 3. The City has reviewed the sample project agreement, which is attached to this resolution as Attachment 1. The City understands and acknowledges that, if offered a project agreement to sign in the future, it will contain an indemnification and legal venue stipulation (applicable to any sponsor) and a waiver of sovereign immunity (applicable to tribes) and other terms and conditions substantially in the form contained in the sample project agreement, and that such terms and conditions of any signed project agreement shall be legally binding, to the extent allowed by law, on the City if the Superintendent or the authorized representative/agent enters into a project agreement on our behalf. The City’s obligations under any indemnity provision authorized by this resolution are subject to any limitations imposed by state law. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee’s self-insurance program and in the Judgment/Claims Fund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes. The City understands that the RCO reserves the right to revise the project agreement prior to execution and shall communicate any such revisions with the above-authorized

representative/agent before execution.

Section 4. The City acknowledges and warrants that the Superintendent will have full legal authority to enter on its behalf into a project agreement(s) that include indemnification, waiver of sovereign immunity (as may apply to Tribes), and stipulated legal venue for lawsuits and other terms substantially in the form contained in the sample project agreement to the maximum extent allowed by law or as may be revised prior to execution.

Section 5. Grant assistance is contingent on a signed project agreement. Entering into any project agreement with the RCO is purely voluntary on the part of the City.

Section 6. The City understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the project agreement, the characteristics of the project, and the characteristics of the City.

Section 7. The City further understands that prior to executing the project agreement(s), the RCO may make revisions to its sample project agreement and that such revisions could include the indemnification, the waiver of sovereign immunity, and the legal venue stipulation. The City accepts the legal obligation that prior to execution of the project agreement(s), the Superintendent shall inform the City Council of any revisions to the project agreement from that of the sample project agreement and obtain required authority to enter the agreement on behalf of the City. The City also acknowledges and accepts that the Superintendent will not execute the project agreement(s) without required authorizing legislation and that after execution any such revisions, all terms and conditions of the executed project agreement (including but not limited to the indemnification, the waiver of sovereign immunity, and the legal venue stipulation) may be deemed to be executed with the authorization of the City and apply to the maximum extent allowed by law.

Section 8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the Project(s) referenced above.

Section 9. [Reserved from State template due to City legislative requirements.]

Section 10. If match is required for the grant, we understand the City must certify the availability of

match at least one month before funding approval. In addition, the City understands it is responsible for supporting all non-cash matching share commitments to this project should they not materialize.

Section 11. The City acknowledges that if it receives grant funds managed by the RCO, the RCO will pay us on a reimbursement basis. We understand “reimbursement basis” means that we will only request payment from the RCO after we incur grant-eligible and allowable costs and pay them. The RCO may also determine an amount of retainage and hold that amount until the Project(s) are complete.

Section 12. The City acknowledges that any property owned by the City that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity unless otherwise allowed by grant program policy, or by the RCO in writing and per the project agreement or an amendment thereto. Our organization acknowledges that any property not owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant as required by grant program policies unless otherwise provided for pursuant to the project agreement or an amendment thereto.

Section 13. The City passes this resolution with the understanding that it shall be deemed to be part of the formal grant application to the RCO.

Section 14. By adopting this resolution, the City warrants and certifies that it has full legal authority to commit the City to the warranties, certifications, promises, and obligations set forth in this resolution.

Adopted by the City Council the _____ day of _____, 2021, and signed by me in open session in authentication of its adoption this _____ day of _____, 2021.

President _____ of the City Council

The Mayor concurred the _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment 1 - Sample RCO Project Agreement

Project Sponsor: Seattle Parks & Recreation Department
Project Title: South Park Playground, Spray Park, and Playfield

Project Number: 18-2169D
Approval Date: 09/14/2020

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Grant Agreement (Agreement) is entered into between the State of Washington by and through the Recreation and Conservation Funding Board (RCFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and by and through the Seattle Parks & Recreation Department (Sponsor, and primary Sponsor), 300 Elliott Avenue West Suite 100, Seattle, WA 98119, and shall be binding on the agents and all persons acting by or through the parties.

The Sponsor's Data Universal Numbering System (DUNS) Number is 009483561.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Prior to and during the Period of Performance, per the Applicant Resolution/Authorizations submitted by all sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project, including but not limited to, full authority to: (1) sign a grant application for grant assistance, (2) enter into this project agreement on behalf of the Sponsor(s) including indemnification, as provided therein, (3) enter any amendments thereto on behalf of Sponsor(s), and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all Sponsors, unless otherwise allowed in the AMENDMENTS TO AGREEMENT Section.

- A. During the Period of Performance, in order for a Sponsor to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization the Sponsor must provide the RCO a new Applicant Resolution/Authorization signed by its governing body or a written delegation of authority to sign in lieu of originally authorized Representative/Agency(s). Unless a new Applicant Resolution/Authorization has been provided, the RCO shall proceed on the basis that the person who is listed as the Authorized Representative in the last Resolution/Authorization that RCO has received is the person with authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.
- B. Amendments After the Period of Performance. RCO reserves the right to request and Sponsor has the obligation to provide, authorizations and documents that demonstrate any signatory to an amendment has the authority to legally bind the Sponsor as described in the above Sections.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS Section).

PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the General Fund - Federal and State Building Construction Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

DESCRIPTION OF PROJECT

Seattle Parks and Recreation Department will use grant funds to create a new play area and spray park at the South Park Community Center (SPCC) and add recreation facilities for all ages including an adult fitness zone and synthetic turf playfield. The project will add a loop trail and lighting to the park, improving site accessibility for users. The primary recreational opportunity provided by this project is active play.

PERIOD OF PERFORMANCE

The period of performance begins on October 1, 2020 (project start date) and ends on December 31, 2022 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

The RCO reserves the right to summarily dismiss any request to amend this Agreement if not made at least 60 days before the project end date.

STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Recreation and Conservation Office are hereby incorporated by reference as part of this Agreement.

LONG-TERM OBLIGATIONS

For this development, renovation and restoration project, the sponsor’s on-going obligations shall be in perpetuity and shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as approved by the funding board. It is the intent of the funding board’s conversion policy (see the Long-Term Obligations Of The Project Sponsors section) that all lands acquired and/or facilities and areas developed, renovated, or restored with funding assistance remain in the public domain in perpetuity.

PROJECT FUNDING

The total grant award provided for this project shall not exceed \$1,070,323.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
RCFB - LWCF Legacy Program	9.60%	\$720,323.00	Federal
RCFB - YAF - Large	4.67%	\$350,000.00	State
Project Sponsor	85.73%	\$6,430,015.00	
Total Project Cost	100.00%	\$7,500,338.00	

FEDERAL FUND INFORMATION

If federal funding information is included in this section, this project is funded by, matched by, and/or funded in part by the following federal award, or subaward:

Federal Agency: US Dept of Interior
Catalog of Federal Domestic Assistance Number and Name: 15.916 - Land & Water Conservation Fund
Federal Award Identification Number: P20AP00429
Federal Fiscal Year: 2020
Federal Award Date: 09/14/2020
Total Federal Award: \$720,323
Federal Award Project Description: 53-00734 South Park Playground

Sponsor's Indirect Cost Rate: 0.00% of all costs for this agreement

This funding is not research and development (R&D).

If the Sponsor’s total federal expenditures are \$750,000 or more during the Sponsor’s fiscal-year, the Sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200, Sub Part F–Audit Requirements, Section 500 (2013). The Sponsor must provide a copy of the final audit report to RCO within nine months of the end of the Sponsor’s fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

Sponsor shall comply with the federal “Omni-circular” (2 C.F.R. Part 200).

RCO may suspend all reimbursements if the Sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any and all RCO Agreement(s) with the Sponsor if such noncompliance is not promptly cured.

RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor’s application and the project summary and eligible scope activities under which the Agreement has been approved and/or amended as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with this Agreement, it shall not be used to vary the terms of the Agreement, unless the terms in the Agreement are shown to be subject to an unintended error or omission. This “Agreement” as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of this Agreement will be effective unless set forth in writing signed by all parties. Exception: extensions of the Period of Performance and minor scope adjustments need only be signed by RCO's director or designee and consented to in writing (including email) by the Sponsor's Authorized Representative/Agent or Sponsor's designated point of contact for the implementation of the Agreement (who may be a person other than the Authorized Agent/Representative), unless otherwise provided for in an amendment. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so.

Unless otherwise expressly stated in an amendment, any amendment to this Agreement shall be deemed to include all current federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone. However, any such amendment, unless expressly stated, shall not extend or reduce the long-term obligation term.

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, Exhibits, and any applicable federal program and accounting rules effective as of the date of this Agreement or as of the effective date of an amendment, unless otherwise provided in the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone unless otherwise expressly stated in the amendment.

For the purpose of this Agreement, WAC Title 286, RCFB policies shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Development Projects - Manual 4
- Land and Water Conservation Fund - Manual 15
- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- Youth Athletic Facilities - Manual 17

SPECIAL CONDITIONS

#1: Cultural Resources-Survey Required

Funding for this project is partially derived through the National Park Service's Land and Water Conservation fund; therefore it is subject to review under Section 106 of the National Historic Preservation Act. The lead agency has completed the initial consultation for this project and a cultural resources survey is required. The survey must include archaeological testing and an evaluation of the eligibility of the community center for National Register inclusion (including completing of required Historic Property Inventory forms). The Sponsor must submit to RCO the completed cultural resources survey, meeting federal standards, and receive from RCO a Notice to Proceed before any ground disturbing activities can begin. Please insure that your project milestones provide ample time for the Agencies to coordinate review with the consulting parties. Construction started without a Notice to Proceed will be considered a breach of contract. In the event that archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in this agreement. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation and Section 106 of the National Historic Preservation Act.

#2: Final Boundary Map

Prior to award close-out and finalization of the LWCF protected boundary map, the Sponsor shall submit a Proposal for a Public Facility in a Section 6(f) Area for the South Park Community Center, so the NPS can make a determination about whether it should be included or excluded from the new boundary.

#3: The following language replaces the Indemnification section within the Standard Terms and Conditions of the Recreation and Conservation Office:

INDEMNIFICATION

To the maximum extent allowed by State law, the Sponsor shall defend, indemnify, and hold the State and its officers and RCO: 18-2169

Revision Date: 7/1/2020

Page 3 of 39

employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or the negligence of the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

This provision shall be included in any agreement between Sponsor and any contractors, subcontractor and vendor, of any tier and such terms and conditions shall be legally binding to the extent allowed by law.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to either or both the mail address and/or the email address listed below:

Sponsor Project Contact

Robert Warner
Grants and Contracts Coordinat
CASO 300 Elliott Avenue West, Suite 100
Seattle, WA 98119
robert.warner@seattle.gov

RCO Contact

Allison Dellwo
Natural Resources Building
PO Box 40917
Olympia, WA 98504-0917
allison.dellwo@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Unless otherwise provided for in this Agreement, decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

ENTIRE AGREEMENT

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

EFFECTIVE DATE

Unless otherwise provided for in this Agreement, this Agreement, for project 18-2169, shall not be effective and binding until the date signed by both the sponsor and the RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RCO GRANT AGREEMENT. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

Seattle Parks & Recreation Department

By: 
Jesus Aguirre Dec 14, 2020 09:19 PST

Date: Dec 14, 2020

Name (printed): Jesus Aguirre

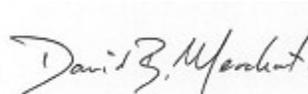
Title: Superintendent

**State of Washington Recreation and Conservation Office
On behalf of the Recreation and Conservation Funding Board (RCFB or funding board)**

By: 
For Kaleen Cottingham
Director
Recreation and Conservation Office

Date: Dec 14, 2020

Pre-approved as to form:

By: 
Assistant Attorney General

Date: 07/01/2020

Project Sponsor: Seattle Parks & Recreation Department
Project Title: South Park Playground, Spray Park, and Playfield

Project Number: 18-2169D
Approval Date: 09/14/2020

Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Development Metrics

Worksite #1, South Park Community Center

Athletic Fields

Multi-purpose field development

Number of multi-purpose fields: 0 new, 0 renovated
Number of multi-purpose fields with lighting: 0 new, 1 renovated

General Site Improvements

Develop circulation paths or access routes

Enter length of circulation paths and routes by surface type:
Concrete 2624
Lighting provided (yes/no): Yes
We will be installing pedestrian lighting.

Landscaping improvements

Acres of landscaped area : 1.20
Select the landscape features: Drainage, Grass/turf, Groundcover, Irrigation, Native vegetation, Planters, Trees/shrubs

Play Areas

Playground development

Number of play areas: 1 new, 0 renovated
We will remove the existing underutilized play area and constructing a new play area in a different area on the site with age-appropriate and accessible play elements, designed for 2-5 year olds and 5-12 year olds.
Number of climbing walls/rocks: 0 new, 0 renovated
Select the play area surface material type: Engineered wood fiber

Site Preparation

General site preparation

Sports Facilities

Install fitness course

Number of fitness courses: 1 new, 0 renovated
This is a new outdoor Fitness Zone, with fitness stations and exercise equipment located adjacent to the new play area. All the stations/equipment are located in one area and not on a course or trail.
Fitness course type and size:
Fitness center (acres) 0.3
Number of fitness/workout stations: 8 new, 0 renovated

Swimming Facilities

Spray park development

Number of sprayparks/water play areas: 1 new, 0 renovated

We are removing an old wading pool in on the NW side of the park, and replacing it with a new spray park adjacent to the new play area on the east side of the park.

Utilities

Install power utilities

Select the power utilities:

General service connection, Power line

Cultural Resources

Cultural resources

Permits

Obtain permits

Architectural & Engineering

Architectural & Engineering (A&E)

Project Sponsor: Seattle Parks & Recreation Department

Project Number: 18-2169D

Project Title: South Park Playground, Spray Park, and Playfield

Approval Date: 09/14/2020

Project Milestones

PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Design Initiated	10/01/2020	Eligible pre-agreement costs on or after January 9, 2017 shall be entitled to reimbursement or use as match
X	Project Start	10/01/2020	
	Progress Report Due	12/01/2020	Report due for period ending September 30, 2020 to capture pre-award activities/costs
	60% Plans to RCO	12/15/2020	
	SEPA/NEPA Completed	01/31/2021	Categorical exclusion recommended - need Federal confirmation
	Applied for Permits	02/15/2021	
	Cultural Resources Complete	02/28/2021	Survey required, See special condition #1
	All Bid Docs/Plans to RCO	03/31/2021	
	Bid Awarded/Contractor Hired	04/30/2021	
	Construction Started	05/31/2021	Recieve notice to proceed from RCO before breaking ground
	Progress Report Due	06/30/2021	
	Annual Project Billing Due	07/31/2021	
	Progress Report Due	10/31/2021	Report due for period ending September 30, 2021
	50% Construction Complete	12/01/2021	
	Special Conditions Met	12/31/2021	See special condition #2
	RCO Interim Inspection	03/31/2022	
	90% Construction Complete	06/30/2022	
	Progress Report Due	06/30/2022	
	Annual Project Billing Due	07/31/2022	
	Construction Complete	08/31/2022	
	Funding Acknowl Sign Posted	09/01/2022	
	Final Billing Due	10/15/2022	
	RCO Final Inspection	10/15/2022	
	Final Report Due	10/31/2022	
	Agreement End Date	12/31/2022	

Project Sponsor: Seattle Parks & Recreation Department
Project Title: South Park Playground, Spray Park, and Playfield

Project Number: 18-2169D
Approval Date: 09/14/2020

Land and Water Conservation Fund General Provisions

EFFECTIVE DATE

NPS Approved October 1, 2020

ARTICLE XIII – PRIOR APPROVAL

The Recipient shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

ARTICLE XIV - INSURANCE AND LIABILITY

- A. Insurance. The Recipient is expected to have sufficient financial resources to cover claims brought by third parties for death, bodily injury, property damage, or other loss resulting from one or more identified activities carried out in connection with this financial assistance agreement.
- B. Indemnification. The Recipient hereby agrees to: Indemnify the Federal government, and the NPS, from any act or omission of the Recipient, its officers, employees, or (members, participants, agents, representatives, agents as appropriate), (1) against third party claims for damages arising from one or more identified activities carried out in connection with this financial assistance agreement and (2) for damage or loss to government property resulting from such an activity. This obligation shall survive the termination of this Agreement.

Provide workers' compensation protection to its officers, employees, and representatives.

Cooperate with the NPS in the investigation and defense of any claims that may be filed with the NPS arising out of the activities of the Recipient, its agents, and employees.

- C. Flow-down: For the purposes of this clause, "recipient" includes such sub-recipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.
- D. Identified activities: renovate existing public outdoor recreation facilities.

ARTICLE XVII – MODIFICATION, REMEDIES FOR NONCOMPLIANCE, TERMINATION

- A. This Agreement may be modified at any time, prior to the expiration date, only by a written instrument executed by both parties. Modifications will be in writing and approved by the AO and the authorized representative of the Recipient.
- B. Additional conditions may be imposed by NPS if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.338 and in Attachment A and B.
- C. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.339 through 200.342 and in Attachment A and B.

ARTICLE XVIII – GENERAL AND SPECIAL PROVISIONS

A. General Provisions

- 1) OMB Circulars and Other Regulations. The following Federal regulations are incorporated by reference into this Agreement (full text can be found at <http://www.ecfr.gov>):

- a) **Administrative Requirements:**

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in its entirety;

b) **Determination of Allowable Costs:**

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E; and

c) **Audit Requirements:**

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F.

d) **Code of Federal Regulations/Regulatory Requirements:**

2 CFR Part 182 & 1401, "Government-wide Requirements for a Drug-Free Workplace";

2 CFR 180 & 1400, "Non-Procurement Debarment and Suspension", previously located at 43 CFR Part 42, "Governmentwide Debarment and Suspension (NonProcurement)";

43 CFR 18, "New Restrictions on Lobbying";

2 CFR Part 175, "Trafficking Victims Protection Act of 2000";

FAR Clause 52.203-12, Paragraphs (a) and (b), Limitation on Payments to Influence Certain Federal Transactions;

2 CFR Part 25, System for Award Management (www.SAM.gov) and Data Universal Numbering System (DUNS); and

2 CFR Part 170, "Reporting Subawards and Executive Compensation".

- 2) **Non-Discrimination.** All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- 3) **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
- 4) **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
- 5) **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
- 6) **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
- 7) **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
- 8) **Agency.** The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent itself as such to third parties. NPS employees are not agents of the Recipient and will not act on behalf of the Recipient.
- 9) **Non-Exclusive Agreement.** This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
- 10) **Survival.** Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen

during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.

- 11) **Partial Invalidity.** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 12) **Captions and Headings.** The captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Agreement nor in any way affecting this Agreement.
- 13) **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.
- 14) **No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
- 15) **Foreign Travel.** The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. 40118). The implementing regulations of the Fly America Act are found at 41 CFR 301-10.131 through 301-10.143.
- 16) **Program Income.** If the Recipient earns program income, as defined in 2 CFR §200.80, during the period of performance of this agreement, to the extent available the Recipient must disburse funds available from program income, and interest earned on such funds, before requesting additional cash payments (2 CFR §200.305(5)). As allowed under 2 CFR §200.307 and the LWCF Manual, program income may be added to the Federal award by agreement of the NPS and the Recipient. The program income must be used for the purposes, and under the conditions of, the Federal award. Disposition of program income remaining after the end of the period of performance shall be negotiated as part of the agreement closeout process.

B. Special Provisions

1) Public Information and Endorsements

- a) Recipient shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies governmental, Departmental, bureau, or government employee endorsement of a business, product, service, or position which the Recipient represents. No release of information relating to this award may state or imply that the Government approves of the Recipient's work products, or considers the Recipient's work product to be superior to other products or services.
- b) All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer.
- c) The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.
- d) Recipient must obtain prior Government approval for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval.
- e) Recipient further agrees to include this provision in a subaward to a subrecipient, except for a subaward to a State government, a local government, or to a federally recognized Indian tribal government.

- 2) **Publications of Results of Studies.** No party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publications of previously published technical matter. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties' contribution to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the other. In such instances, the party publishing the data will give due credit to the cooperation but assume full

responsibility for any statements on which there is a difference of opinion.

- 3) **Rights in Data.** The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.
- 4) **Retention and Access Requirements for Records.** All Recipient financial and programmatic records, supporting documents, statistical records, and other grants-related records shall be maintained and available for access in accordance with 2 CFR Part 200.333-200.337.
- 5) **Audit Requirements**
 - a) Non-Federal entities that expend \$750,000 or more during a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and 2 CFR Part 200, Subpart F, which is available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=fd6463a517ceea3fa13e665e525051f4&node=sp2.1.200.f&rgn=div6>
 - b) Non-Federal entities that expend less than \$750,000 for a fiscal year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
 - c) Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 2 CFR Part 200, Subpart F, as applicable. Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.
- 6) **Procurement Procedures.** A full description of procurement standards can be found in 2 CFR §200.317-§200.326.
- 7) **Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government while Driving.** Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1, 2009. This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or -rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.
- 8) **Seat Belt Provision.** The Recipient is encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.
- 9) **Trafficking in Persons.** This term of award is pursuant to paragraph (g) of Section 106 of the Trafficking Victims Protections Act of 2000, as amended (2 CFR §175.15).
- 10) **Recipient Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights**
 - a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).
 - b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712.
 - c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold, 42 CFR § 52.203-17 (as referenced in 42 CFR § 3.908-9).
- 11) **Reporting Subawards And Executive Compensation**

Recipients must report all subaward and executive compensation data pursuant to the Federal Funding Accountability and Transparency Act (FFATA) of 2006 and associate amendments (P.L. 109-282, as amended by section 6202(a) of P.L. 110-252 (see 31 U.S.C. 6101 note)). Refer to <https://www.fsrc.gov/> for more information.

12) Conflict of Interest

a) Applicability

1. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
2. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

b) Requirements.

1. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
2. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
3. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

c) Notification.

1. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.

d) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

e) Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

f) Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

13) Minimum Wages Under Executive Order 13658 (January 2015)

a) Definitions. As used in this clause—

“United States” means the 50 states and the District of Columbia.

“Worker”—

1. Means any person engaged in performing work on, or in connection with, an agreement covered by Executive Order 13658, and
 - i. Whose wages under such agreements are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),
 - ii. Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 C.F.R. § 541,
 - iii. Regardless of the contractual relationship alleged to exist between the individual and the employer.
 2. Includes workers performing on, or in connection with, the agreement whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(c).
 3. Also includes any person working on, or in connection with, the agreement and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.
- b) Executive Order Minimum Wage rate.
1. The non-Federal entity shall pay to workers, while performing in the United States, and performing on, or in connection with, this agreement, a minimum hourly wage rate determined by the Secretary of the Department of Labor on an annual basis (currently \$10.20 per hour as of January 1, 2017).
 2. The non-Federal entity shall adjust the minimum wage paid, if necessary, annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor Web site) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this agreement.
 3.
 - i. The non-Federal entity may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and for associated labor costs and relevant subaward costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.
 - ii. Subrecipients may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Non-Federal entities shall consider any Subrecipient requests for such price adjustment.
 - iii. The Financial Assistance Awarding Officer will not adjust the agreement price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.
 4. The non-Federal entity warrants that the prices in this agreement do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
 5. The non-Federal entity shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The non-Federal entity may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 C.F.R. § 10.23, Deductions.

6. The non-Federal entity shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.
7. Nothing in this clause shall excuse the non-Federal entity from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.
8. The non-Federal entity shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.
9. The non-Federal entity shall follow the policies and procedures in 29 C.F.R. § 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

c)

1. This clause applies to workers as defined in paragraph (a). As provided in that definition—
 - i. Workers are covered regardless of the contractual relationship alleged to exist between the non-Federal entity or subrecipient and the worker;
 - ii. Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(c) are covered; and
 - iii. Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.
2. This clause does not apply to—
 - i. Fair Labor Standards Act (FLSA) – covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the agreement, but who are not directly engaged in performing the specific work called for by the agreement, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such agreements;
 - ii. Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. § 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—
 - a. Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(a).
 - b. Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(b).
 - c. Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. § 213(a)(1) and 29 C.F.R. § part 541).
- d) *Notice.* The non-Federal entity shall notify all workers performing work on, or in connection with, this agreement of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the non-Federal entity shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Non-Federal entities that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the non-Federal entity, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

e) Payroll Records.

1. The non-Federal entity shall make and maintain records, for three years after completion of the work, containing the following information for each worker:
 - i. Name, address, and social security number;
 - ii. The worker's occupation(s) or classification(s);
 - iii. The rate or rates of wages paid;
 - iv. The number of daily and weekly hours worked by each worker;
 - v. Any deductions made; and
 - vi. Total wages paid.
2. The non-Federal entity shall make records pursuant to paragraph (e) (1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The non-Federal entity shall also make such records available upon request of the Contracting Officer.
3. The non-Federal entity shall make a copy of the agreement available, as applicable, for inspection or transcription by authorized representatives of the Administrator.
4. Failure to comply with this paragraph (e) shall be a violation of 29 C.F.R. § 10.26 and this agreement. Upon direction of the Administrator or upon the Financial Assistance Awarding Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.
5. Nothing in this clause limits or otherwise modifies the non-Federal entity's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

- f) *Access.* The non-Federal entity shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.
- g) *Withholding.* The Financial Assistance Awarding Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the non-Federal entity under this or any other Federal agreement with the same non-Federal entity, sufficient to pay workers the full amount of wages required by this clause.
- h) *Disputes.* Department of Labor has set forth in 29 C.F.R. § 10.51, Disputes concerning non-Federal entity compliance, the procedures for resolving disputes concerning a non-Federal entity's compliance with Department of Labor regulations at 29 C.F.R. § 10. Such disputes shall be resolved in accordance with those. This includes disputes between the non-Federal entity (or any of its Subrecipients) and the contracting agency, the Department of Labor, or the workers or their representatives.
- i) *Antiretaliation.* The non-Federal entity shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.
- j) *Subcontractor compliance.* The non-Federal entity is responsible for Subrecipient compliance with the requirements of this clause and may be held liable for unpaid wages due Subrecipient workers.
- k) *Subawards.* The non-Federal entity shall include the substance of this clause, including this paragraph (k) in all subawards, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

- 14) **Prohibition on Issuing Financial Assistance Awards to Entities that Require Certain Internal Confidentiality Agreements:** Section 743 of Division E, Title VII of the Consolidated and Further Continuing Resolution Appropriations Act of 2015 (Pub. L. 113-235) prohibits the use of funds appropriated or otherwise made available under that or any other Act for grants or cooperative agreements to an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors

from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

Recipients must not require their employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

Recipients must notify their employees or contractors that existing internal confidentiality agreements covered by this condition are no longer in effect.

15) Data Availability:

- a) **Applicability.** The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- b) **Use of Data.** The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- c) **Availability of Data.** The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
 - i. The scientific data relied upon;
 - ii. The analysis relied upon; and
 - iii. The methodology, including models, used to gather and analyze data

ARTICLE XIX – ATTACHMENTS

The following completed documents made a part of this Agreement:

- A. LWCF General Provisions
- B. LWCF Federal Financial Assistance Manual (v. 69, October 1, 2008)
- C. Project Application and Attachments
- D. 36 C.F.R. Part 59

ATTACHMENT A – LWCF GENERAL PROVISIONS - PART I

Definitions

- A. The term "NPS" or "Service" as used herein means the National Park Service, United States Department of the Interior.
- B. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.
- C. The term "Manual" as used herein means the Land and Water Conservation Fund State Assistance Program Manual, Volume 69 (October 1, 2008).
- D. The term "project" as used herein means a Land and Water Conservation Fund grant, which is subject to the project agreement and/or its subsequent amendments.
- E. The term "State" as used herein means the State or Territory that is a party to the project agreement, and, where applicable, the political subdivision or public agency to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State. For purposes of these provisions, the terms "State," "grantee," and "recipient" are deemed synonymous.

- F. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

ATTACHMENT A – LWCF GENERAL PROVISIONS - PART II

Continuing Assurances

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund project creates an obligation to maintain the property described in the project agreement and supporting application documentation consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of assistance will use monies granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation.

It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

- A. The State agrees, as recipient of this assistance, that it will meet the general, special, and LWCF provisions outlined in this award agreement and that it will further impose these provisions, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.
- B. The State agrees that the property described in the project agreement and the signed and dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance, or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if it is found to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location pursuant to Title 36 Part 59.3 of the Code of Federal Regulations. This replacement land then becomes subject to LWCF protection. The approval of a conversion shall be at the sole discretion of the Secretary, or his/her designee.

Prior to the completion of this project, the State and the Director may mutually alter the area described and shown in the project agreement and the signed and dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded LWCF protection as Fund reimbursement is provided.

In the event the NPS provides Land and Water Conservation Fund assistance for the acquisition and/or development of property with full knowledge that the project is subject to reversionary rights and outstanding interests, conversion of said property to other than public outdoor recreation uses as a result of such right or interest being exercised will occur. In receipt of this approval, the State agrees to notify the Service of the potential conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions and program regulations. The provisions of this paragraph are also applicable to: leased properties developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Service; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the Service.

- C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement.

The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement or the submission and approval of a conversion-of-use request as described in Part II.B above.

- D. The State agrees to comply with the policies and procedures set forth in the Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.
- E. The State agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements and published post-completion compliance regulations (Title 36 Part 59 of the *Code of Federal Regulations*).

F. The State agrees that a notice of the grant agreement shall be recorded in the public property records (e.g., registry of deeds or similar) of the jurisdiction in which the property is located, to the effect that the property described and shown in the scope of the project agreement and the signed and dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.

G. Nondiscrimination

- 1) By signing the LWCF agreement, the State certifies that it will comply with all Federal laws relating to nondiscrimination as outlined in the Civil Rights Assurance appearing at Article XVII.A.2 of the Grant Agreement to which these terms are attached.
- 2) The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the Manual.

ATTACHMENT A – LWCF GENERAL PROVISIONS - PART III

Project Assurances

A. Project Application

- 1) The Application for Federal Assistance bearing the same project number as the Grant Agreement and associated documents is by this reference made a part of the agreement.
- 2) The State possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.
- 3) The State has the capability to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

B. Project Execution

- 1) The State shall transfer to the project sponsor identified in the Application for Federal Assistance all funds granted hereunder except those reimbursed to the State to cover eligible expenses derived from a current approved negotiated indirect cost rate agreement.
- 2) The State will cause work on the project to start within a reasonable time after receipt of notification that funds have been approved and assure that the project will be implemented to completion with reasonable diligence.
- 3) The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480) and DOI Section 504 Regulations (43 CFR Part 17). The State will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
- 4) The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
- 5) In the event the project covered by the project agreement, cannot be completed in accordance with the plans and specifications for the project, the State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or his designee in accord with Section C below.
- 6) The State will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.
- 7) The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.
- 8) The State will comply with the provisions of: Executive Order (EO) 11988, relating to evaluation of flood hazards; EO 11288, relating to the prevention, control, and abatement of water pollution, and EO 11990

relating to the protection of wetlands.

- 9) The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
- 10) The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

C. Project Termination

- 1) The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the Service.
- 2) The State may unilaterally terminate the project at any time prior to the first payment on the project. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement.
- 3) The Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
- 4) The Director or State may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the Federal share of the non-cancelable obligations, properly incurred by the grantee prior to termination.
- 5) Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State and the Director or that all funds provided by the National Park Service be returned.

D. Project Closeout

- 1) The State will determine that all applicable administrative actions, including financial, and all required work as described in the project agreement has been completed by the end of the project's period of performance.
- 2) Within 90 calendar days after completing the project or following the Expiration Date of the period of performance, whichever comes first, the State will submit all required documentation as outlined in the Manual and the Federal Financial Report (SF-425) as outlined in Article XIV of this Agreement for approval by the Service prior to requesting final reimbursement.
- 3) After review, including any adjustments, and approval from the NPS, the State will request through ASAP the final allowable reimbursable costs. Upon completion of an electronic payment, the State will submit a completed "LWCF Record of Electronic Payment" form to the NPS.
- 4) The NPS retains the right to disallow costs and recover funds on the basis of later audit or other review within the record retention period.

Project Sponsor: Seattle Parks & Recreation Department
Project Title: South Park Playground, Spray Park, and Playfield

Project Number: 18-2169D
Approval Date: 09/14/2020

Standard Terms and Conditions of the Recreation and Conservation Office

Table of Contents

STANDARD TERMS AND CONDITIONS EFFECTIVE DATE	22
CITATIONS, HEADINGS AND DEFINITIONS	22
PERFORMANCE BY THE SPONSOR	25
ASSIGNMENT	25
RESPONSIBILITY FOR PROJECT	25
INDEMNIFICATION	25
INDEPENDENT CAPACITY OF THE SPONSOR	26
CONFLICT OF INTEREST	26
COMPLIANCE WITH APPLICABLE LAW	26
ARCHAEOLOGICAL AND CULTURAL RESOURCES	27
RECORDS	28
PROJECT FUNDING	28
PROJECT REIMBURSEMENTS	29
RECOVERY OF PAYMENTS	30
COVENANT AGAINST CONTINGENT FEES	30
INCOME (AND FEES) AND USE OF INCOME	30
PROCUREMENT REQUIREMENTS	31
TREATMENT OF EQUIPMENT AND ASSETS	31
RIGHT OF INSPECTION	32
STEWARDSHIP AND MONITORING	32
PREFERENCES FOR RESIDENTS	32
ACKNOWLEDGMENT AND SIGNS	32
PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS	33
LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS	33
CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS	34
RECORDED NOTICE OF GRANT	34
PROVISIONS FOR FEDERAL SUBAWARDS	34
PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS	36
ORDER OF PRECEDENCE	36
LIMITATION OF AUTHORITY	37
WAIVER OF DEFAULT	37
APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH	37
SPECIFIC PERFORMANCE	37
TERMINATION AND SUSPENSION	37
DISPUTE HEARING	38
ATTORNEYS’ FEES	39
GOVERNING LAW/VENUE	39
SEVERABILITY	39
END OF AGREEMENT	39

STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This agreement reflects Standard Terms and Conditions of the Recreation and Conservation Office as of 10/15/2020.

CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

Agreement, terms of the Agreement, or project agreement – The document entitled “RCO GRANT AGREEMENT” accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the RCO Grant Agreement, all exhibits, attachments, addendums, amendments, and applicable manuals, and any intergovernmental agreements, and/or other documents that are incorporated into the Agreement subject to any limitations on their effect under this Agreement.

applicable manual(s), manual – A manual designated in this Agreement to apply as terms of this Agreement, subject (if applicable) to substitution of the “RCO director” for the term “board” in those manuals where the project is not approved by or funded by the referenced board, or a predecessor to the board.

applicable WAC(s) – Designated chapters or provisions of the Washington Administrative Code that apply by their terms to the type of grant in question or are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the “RCO director” for the term “board” or “agency” in those cases where the RCO has contracted to or been delegated to administer the grant program in question.

applicant – Any party, prior to becoming a Sponsor, who meets the qualifying standards/eligibility requirements for the grant application or request for funds in question.

application – The documents and other materials that an applicant submits to the RCO to support the applicant’s request for grant funds; this includes materials required for the “Application” in the RCO’s automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

Authorized Representative/Agent – A Sponsor’s agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor’s signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

C.F.R. – Code of Federal Regulations

completed project or project completion – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been paid by RCO.
- Property rights (including RCO’s as may apply) and any applicable notice of grant, have been recorded (as may apply).

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

development project – A project that results in the construction of, or work resulting in, new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources. A development project

may also involve activities that redevelop or renovate an existing facility, and these may occur exclusively in the project or in combination with new construction. For projects in the Boating Facilities Program, the term “development project” includes all of the above and may also include those activities that are defined as maintenance in 50 C.F.R. 86.

director – The chief executive officer of the Recreation and Conservation Office or that person’s designee.

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. § 200.33 (2013)).

funding board or board – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board. Or both as may apply.

Funding Entity – the entity that approves the project that is the subject to this Agreement.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

long-term compliance period – The term of years, beginning on the end date of the agreement, when long-term obligations exist for the Sponsor. The start date and end date of the compliance period may also be prescribed by RCO per the Agreement.

long-term obligations – Sponsor’s obligations after the project end date, as specified in the Agreement and manuals and other exhibits as may apply.

landowner agreement – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

match or matching share – The portion of the total project cost provided by the Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

Office – Means the Recreation and Conservation Office or RCO.

notice of grant – As required by RCO or another authority, a document that has been legally recorded on the property title of the project area(s) in the county or counties where the project property is located, or with the United States Government, that describes the project area on the property, the funding sources, and agencies responsible for awarding the grant.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

pre-agreement cost – A project cost incurred before the period of performance.

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. Administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – The undertaking that is funded by this Agreement either in whole or in part with funds administered by RCO.

project area - A geographic area that delineates a grant assisted site which is subject to project agreement requirements.

project completion or completed project – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.

- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been paid by RCO.
- Property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. § 200.83 (2013) for federally funded projects).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

RCFB – Recreation and Conservation Funding Board

RCO – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

RCW – Revised Code of Washington

reimbursement – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

secondary Sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

tribal consultation – Outreach, and consultation with one or more federally recognized tribes (or a partnership or coalition or consortium of such tribes, or a private tribal enterprise) whose rights will or may be significantly affected by the proposed project. This includes sharing with potentially-affected tribes the scope of work in the grant and potential impacts to natural areas, natural resources, and the built environment by the project. It also includes responding to any tribal request from such tribes and considering tribal recommendations for project implementation which may include not proceeding with parts of the project, altering the project concept and design, or relocating the project or not implementing the project, all of which RCO shall have the final approval of.

useful service life – Period during which a built asset, equipment, or fixture is expected to be useable for the purpose it was acquired, installed, developed, and/or renovated, or restored per this Agreement.

WAC – Washington Administrative Code.

PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO (to include any RCO approved changes or amendments thereto). All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written approval of the RCO.

RESPONSIBILITY FOR PROJECT

While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project has more than one Sponsor, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO, its employees, assigns, consultants and contractors, and members of any funding board or advisory committee or other RCO grant review individual or body, have no responsibility for reviewing, approving, overseeing or supervising design, construction, or safety of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO, its employees, assigns, consultants and contractors, and any funding board or advisory committee or other RCO grant review individual or body will act only to confirm at a general, lay person, and nontechnical level, solely for the purpose of project eligibility and payment and not for safety or suitability, that the project apparently is proceeding or has been completed as per the Agreement.

INDEMNIFICATION

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents or employees, and (b) the State, or its employees or agents the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or its agents, or employees.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51. Sponsor's waiver of immunity under this provision extends only to claims against Sponsor by Indemnitee RCO, and does not include, or extend to, any claims by Sponsor's employees directly against Sponsor.

Sponsor shall ensure that any agreement relating to this project involving any contractors, subcontractors and/or vendors of any tier shall require that the contracting entity indemnify, defend, waive RCW 51 immunity, and otherwise protect the State as provided herein as if it were the Sponsor. This shall not apply to a contractor or subcontractor is solely donating its services to the project without compensation or other substantial consideration.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not

apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Employment Act (if applicable). In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
 - 1) Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or subcontractor intends to pay other than prevailing wages, it must provide the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the Sponsor is not required to investigate a statement regarding prevailing wage provided by a contractor or subcontractor.
 - 2) Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130). If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community

service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.

- D. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.
- E. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

ARCHAEOLOGICAL AND CULTURAL RESOURCES

- A. **Project Review.** RCO facilitates the review of projects for potential impacts to archaeology and cultural resources, except as those listed below. The Sponsor shall follow RCO guidance and directives to assist it with such review as may apply.
 - 1) **Projects occurring on State/Federal Lands:** Archaeological and cultural resources compliance for projects occurring on State or Federal Agency owned or managed lands, will be the responsibility of the respective agency, regardless of sponsoring entity type. Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, the Sponsor must provide RCO all documentation acknowledging and demonstrating that the applicable archaeological and cultural resources responsibilities of such state or federal landowner or manager has been conducted.
- B. **Termination.** RCO retains the right to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.
- C. **Notice To Proceed.** No work shall commence in the project area until RCO has provided a notice of cultural resources completion. RCO may require on-site monitoring for impacts to archaeology and cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns. Non ground disturbing projects (such as acquisition or planning project) all cultural resources requirements must be met prior to final reimbursement.
- D. **Compliance and Indemnification.** At all times, the Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources in the project area, and comply with any RCO direction for such minimization and mitigation. All federal or state cultural resources requirements under Governor's Executive Order 05-05 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. The Sponsor must agree to indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement. Sponsor shall comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.
- E. **Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this agreement. Costs that exceed the budget grant amount shall be the responsibility of the Sponsor Inadvertent Discovery Plan. The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan, and:**
 - 1) Keep the IDP at the project site.
 - 2) Make the IDP readily available to anyone working at the project site.
 - 3) Discuss the IDP with staff and contractors working at the project site.
 - 4) Implement the IDP when cultural resources or human remains are found at the project site.

F. Discovery

- 1) If any archaeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.
- 2) If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the State provides a new notice to proceed.
 - a) Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP).
 - b) The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

RECORDS

- A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance and Retention.** The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.
- C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a

waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

- D. **Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in the FEDERAL FUND INFORMATION Section are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- E. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. **Conditions for Payment of Retainage.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the following has occurred:
 - 1) RCO has accepted the project as a completed project, which acceptance shall not be unreasonably withheld.
 - 2) On-site signs are in place (if applicable); Any other required documents and media are complete and submitted to RCO; Grant related fiscal transactions are complete, and
 - 3) RCO has accepted a final boundary map of the project area for which the Agreement terms will apply in the future.
 - 4) A Notice of Grant for any property rights acquired or donated (if applicable) have been filed with the county lands records office (or United State Government) and a stamped copy received by RCO, and any property rights owned to RCO have been likewise recorded.
- E. **Requirements for Federal Subawards: Match.** The Sponsor's matching share must comply with 2 C.F.R. § 200.306 (2013). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, can be accepted as part of the Sponsor's matching share when such contributions meet all of the following criteria:
 - 1) Are verifiable from the non-Federal entity's (Sponsor's) records;
 - 2) Are not included as contributions for any other Federal award;
 - 3) Are necessary and reasonable for accomplishment of project or program objectives;
 - 4) Are allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles (2013) as updated and amended;
 - 5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
 - 6) Are provided for in the approved budget when required by the Federal awarding agency identified in the FEDERAL FUND INFORMATION Section of this Agreement; and
 - 7) Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.

F. **Requirements for Federal Subawards:** Close out. Per 2 C.F.R § 200.343 (2013), the non-Federal entity (Sponsor) must:

- 1) Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.
- 2) Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
- 3) Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.
- 4) Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property rust relationship and 200.329 Reporting on real property (2013).

RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- B. **Return of Overpayments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that the Sponsor receives the overpayment from the RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.
- C. **Requirements for Federal Subawards.** RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

INCOME (AND FEES) AND USE OF INCOME

See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

- A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- B. **Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
 - 1) The Sponsor's matching resources;
 - 2) The project's total cost;
 - 3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;
 - 4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;

- 5) Capital expenses for similar acquisition and/or development and renovation; and/or
 - 6) Other purposes explicitly approved by RCO.
- C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:
- 1) Grant program laws, rules, and applicable manuals;
 - 2) Value of any service(s) furnished;
 - 3) Value of any opportunities furnished; and
 - 4) Prevailing range of public fees in the state for the activity involved.
- D. **Requirements for Federal Subawards.** Requirements for Federal Subawards. Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013) as updated and amended.

PROCUREMENT REQUIREMENTS

- A. **Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, the Sponsor must follow these minimum procedures:
- 1) Publish a notice to the public requesting bids/proposals for the project;
 - 2) Specify in the notice the date for submittal of bids/proposals;
 - 3) Specify in the notice the general procedure and criteria for selection; and
 - 4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
 - 5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

B. Requirements for Federal Subawards.

- 1) For all Federal subawards, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).

TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.

- A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.
- B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.
- C. **Requirements for Federal Subawards.** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013) as updated and amended):
- 1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and

condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

- 2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- 3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
- 4) Adequate maintenance procedures must be developed to keep the property in good condition.
- 5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure limits access to the project area, it must include (or be amended to include) the RCO's right to inspect and access lands acquired or developed with this funding assistance.

STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

ACKNOWLEDGMENT AND SIGNS

- A. **Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. **Signs.**
 - 1) During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and
 - 2) During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.
- C. **Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies and in all advertisements and mailings thereof, and any and all of its related digital media publications.
- D. **Federally Funded Projects.** When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:
 - 1) The fund source;
 - 2) The percentage of the total costs of the project that is financed with federal money;

- 3) The dollar amount of federal funds for the project; and
- 4) The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force:

- A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
- B. **Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.
 - 1) Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.
- C. **Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure and term (such as long-term lease, perpetual or long-term easement, or perpetual or long-term fee simple ownership, or landowner agreement or interagency agreement for the land proposed for construction, renovation, or restoration. The documentation must meet current RCO requirements identified in this Agreement as of the effective date of this Agreement unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.
- D. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009", "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.
- E. At no time shall the Sponsor design, construct, or operate this grant funded project in a way that unreasonably puts the public, itself, or others at risk of injury or property damage. The Sponsor agrees and acknowledges that the Sponsor is solely responsible for safety and risk associated with the project, that RCO does not have expertise, capacity, or a mission to review, monitor, or inspect for safety and risk, that no expectation exists that RCO will do so, and that RCO is in no way responsible for any risks associated with the project.

LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. **Long-Term Obligations.** This section applies to completed projects only.
- B. **Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. The RCO requires that the project area continue to function for the purposes for which these grant funds were approved, in perpetuity.
- C. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, renovated, and/ or restored pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property (or a portion of it) to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired, developed, renovated, and/or restored with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policies or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of

whether a conversion has occurred shall be based upon all terms of the Agreement, and all applicable state of federal laws or regulation.

- 1) When a conversion has been determined to have occurred, the Sponsor shall remedy the conversion as set forth in this Agreement (with incorporated documents) and as required by all applicable policies, manuals, WACs and laws that exist at the time the remedy is implemented or the right to the remedy is established by a court or other decision-making body, and the RCO may pursue all remedies as allowed by the Agreement or law.

CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:
 - 1) According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
 - 2) In a reasonably safe condition for the project's intended use;
 - 3) Throughout its estimated useful service life so as to prevent undue deterioration;
 - 4) In compliance with all federal and state nondiscrimination laws, regulations and policies.
- B. **Open to the public.** Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:
 - 1) Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
 - 2) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
 - 3) Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals or, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

RECORDED NOTICE OF GRANT

At the request of RCO, another state agency, or a federal agency, Sponsor shall record a notice of grant on property subject to this Agreement and shall submit to the RCO a recorded and registry stamped copy of such notice. The purpose of the notice of grant is to provide constructive notice of the grant and project and to ensure that the present and future use of the project area is and shall remain subject to the terms and conditions described in this Agreement. The notice of grant shall be in a format specified by RCO.

PROVISIONS FOR FEDERAL SUBAWARDS

The following provisions shall be in force for this agreement:

- A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. **Binding Official.** Per 2 CFR 200.415, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."
- C. **Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause

provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, paragraph C.

- 1) **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- 2) **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

- D. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in the Federal Fund Information Section.

The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: Federal Fund Information.

- E. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).

- H. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- I. **Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- J. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- K. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- L. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS

This project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), therefore the "Land and Water Conservation Fund General Provisions" are made part of this Agreement and incorporated herein. The Sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the Sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State Constitution, RCW, and WAC;
- F. Agreement Terms and Conditions and Applicable Manuals;

- G. Applicable deed restrictions, and/or governing documents.

LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate authorized in writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Entity (if different from RCO) and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SPECIFIC PERFORMANCE

RCO may enforce this Agreement by the remedy of specific performance, which means Sponsors' completion of the project and/or its completion of long-term obligations as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

TERMINATION AND SUSPENSION

The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

A. For Cause.

- 1) The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
 - a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
 - b) If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
 - c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
- 2) Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
- 3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

- B. For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

- 1) The Sponsor was not in default; or
- 2) Failure to perform was outside Sponsor's control, fault or negligence.

C. Rights of Remedies of the RCO.

- 1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 2) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. Non Availability of Funds. The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

- 1) **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.
- 2) **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the RCO, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

END OF AGREEMENT

This is the end of the agreement.

18-2169 Seattle Parks & Recreation, South Park Playground, Spray Park - Agreement

Final Audit Report

2020-12-14

Created:	2020-12-03
By:	Lanlalit Nicolai (lanlalit.nicolai@rco.wa.gov)
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 Document e-signed by Marguerite Austin (marguerite.austin@rco.wa.gov)

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 Agreement completed.

2020-12-14 - 6:19:18 PM GMT

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Parks and Recreation	Bob Warner/684-8003	Justin Hellier

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: A RESOLUTION relating to Seattle Parks and Recreation; authorizing the Superintendent of Parks and Recreation to act as the authorized representative/agent on behalf of The City of Seattle and to legally bind The City of Seattle with respect to certain projects for which the City seeks grant funding assistance managed through the State Recreation and Conservation Office (RCO).

Summary and background of the Legislation: This proposed legislation authorizes Seattle Parks and Recreation (SPR) to submit grant applications to the State of Washington Recreation and Conservation Office (RCO) for state funding assistance for the projects and amounts listed in the table below. This resolution is required as part of the formal RCO grant application process.

Improvements potentially funded by the RCO grant and City or other match sources are listed in the table below.

Project Name / Brief Description	RCO Category / Project #	RCO Grant Request	Match Source (confirmed or pending)	Total
Be'er Sheva Phase 2: Seattle Parks and Recreation's (SPR's) Be'er Sheva project is a development project located along the shoreline of Lake Washington in the Rainier Beach community of Southeast Seattle. This park improvement project will enhance a 2.4-acre waterfront park. Improvements will include .4 acres of upland area and 2 acres of shallow underwater lake shoreline. Upland improvements include: installing a fitness zone, with a lit walking loop pathway, exercise equipment, resilient surfacing and landscaping. Additional Park improvements include installing	Land and Water Conservation Fund (LWCF) Legacy Program / 21-1304	\$472,000	King Co. Conservation Water Management Grant \$327,000 (confirmed-Seattle Parks Foundation Match) City of Seattle – REET \$100,000 (pending)	\$944,000

Project Name / Brief Description	RCO Category / Project #	RCO Grant Request	Match Source (confirmed or pending)	Total
<p>new picnic tables, barbecues, and bike racks. In-water, salmon restoration elements include aquatic vegetation mounds and large logs for habitat and sediment control.</p>			<p>SPR Donated Services/Labor \$45,000 (confirmed) = \$472,000</p>	
<p>Garfield Super Block: SPR's Garfield Super Block (GSB) project is a development project located in the Central District in Seattle. This community-led full renovation project will use LWCF funds to install new site furnishings, improved ADA access, play equipment and nature play, restroom facility with attached community space and covered picnic area, a circular pathway with lighting, a Parkour element, a bouldering climbing wall, multi-court reconfiguration and resurfacing and landscaping improvements throughout.</p>	<p>LWCF - Legacy Program / 21-1305</p>	<p>\$2,085,000</p>	<p>Seattle Park District Major Maintenance Funds \$1,000,000 (confirmed) City of Seattle – REET appropriated in 2021 mid-year supplemental \$500,000 (confirmed) City of Seattle, Equitable Development Initiative Grant \$50,000 (confirmed-Seattle Parks Foundation Match)</p>	<p>\$4,170,000</p>

Project Name / Brief Description	RCO Category / Project #	RCO Grant Request	Match Source (confirmed or pending)	Total
			City of Seattle, Office of Economic Development Grant \$25,000 (confirmed-Seattle Parks Foundation Match) King County, 4Culture Grant \$10,000 (confirmed-Seattle Parks Foundation Match) Seattle Public Schools, Public Levy \$500,000 (pending) = \$2,085,000	
	Total	\$2,557,000	\$2,557,000	\$5,114,000

SPR applies for RCO grants bi-annually and has garnered a strong success rate in securing additional funding for planned capital projects. In 2020, SPR completed 11 RCO applications for a total of \$6,120,860 in the following RCO grant categories:

RCO Grant Category	Amount
Aquatic Lands Enhancement Act (ALEA)	\$500,000
Land and Water Conservation Fund (LWCF)	\$1,000,000
Land and Water Conservation Fund (LWCF) Legacy	\$1,920,860

RCO Grant Category	Amount
Washington Wildlife and Recreation Program (WWRP)	\$2,000,000
Youth Athletic Facilities (YAF)	\$700,000
Total:	\$6,120,860

The RCO grants require a local match and will only fund projects that are included in an adopted plan. The recommended projects meet both criteria, as they are either included in the 2017 Parks and Open Space Plan, the 2016-2021 Capital Improvement Program and/or the Seattle Park District Major Maintenance Plan. SPR’s required matching funds for the projects are appropriated in SPR’s 2016-2021 Capital Improvement Program.

RCO will announce the grant award recommendations in Q1 2022, but the actual grant awards will not be contracted until Q4 2022. RCO funding will support currently unfunded project elements.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

4. OTHER IMPLICATIONS

- a. Does this legislation affect any departments besides the originating department?
 No other departments are affected by this legislation.
- b. Is a public hearing required for this legislation?
 No.
- c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?
 No.
- d. Does this legislation affect a piece of property?
 Yes. Maps are attached as Summary Attachment A.
- e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?
 Both of these projects (Be'er Sheva Phase 2 and Garfield Super Block) are in ethnically diverse and underserved communities. Both projects serve communities beyond their immediate vicinity and completion of these projects will ensure that the parks are open and accessible to all.

Both Be'er Sheva Phase 2 and Garfield Super Block projects support the City's Race and Social Justice Initiative (RSJI) and Be'er Sheva in particular fulfills the Language Access Plan goals.

From 2017 through July 2021, the Be'er Sheva project engaged in a thorough public outreach process, attended by approx. 450 participants, 83% people of color with 14 languages spoken, with language interpretation in Somali, Amharic, Mandarin and Vietnamese.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

Any carbon emissions from material production will be minimal, and no additional emissions are predicted. Additions of bike racks and landscaping may actually reduce carbon emissions over time.

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

Resilient pavement, landscaping, and in- and near-shore habitat improvements will increase resiliency at these parks.

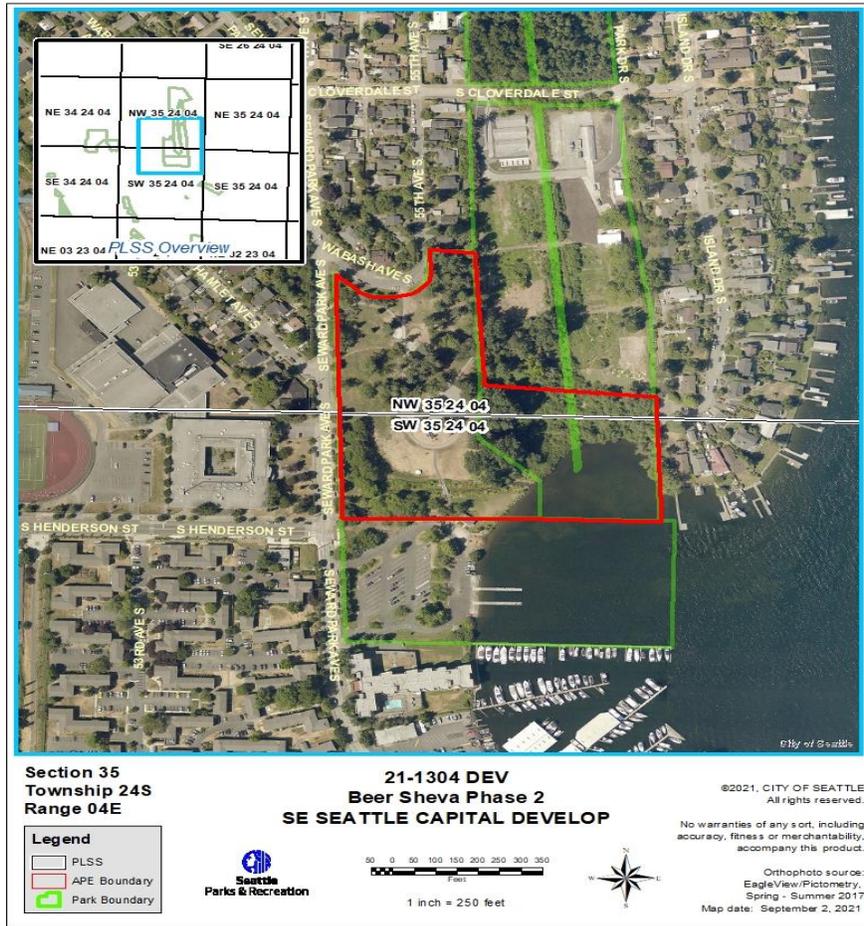
g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?

N/A

List attachments/exhibits below:

Summary Attachment A - Project Maps

Be'er Sheva Phase 2
8702 Seward Park Ave So., Seattle WA 98118



This map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.

GARFIELD SUPER BLOCK 2323 E Cherry St., Seattle WA 98122



This map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.



Legislation Text

File #: CB 120188, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE creating an Indigenous Advisory Council for tribal and urban Indian engagement; adding a new Chapter 3.75 to the Seattle Municipal Code; and amending Section 3.35.050 of the Seattle Municipal Code.

WHEREAS, Indigenous people of the lands now known as the Americas have cultivated and stewarded these lands since time immemorial; and

WHEREAS, since time immemorial, the Coast Salish peoples, including Chief Sealth (Seattle) governed the Salish Sea (Puget Sound) region; and

WHEREAS, The City of Seattle, chartered 150 years ago, is built on the homelands of the Indigenous and first peoples of this region; and

WHEREAS, in 1865, The City of Seattle passed an exclusionary ordinance banning American Indian and Alaska Native people within city limits that was in effect until 1869; and

WHEREAS, Indigenous communities have sustained an organized resistance to settler colonialization of these lands and resources for centuries; and

WHEREAS, the United Nations Declaration on the Rights of Indigenous Peoples recognizes that “Indigenous peoples have suffered from historic injustices as a result of... their colonization and dispossession of their lands, territories and resources”; and

WHEREAS, due to this history, in addition to settler colonialism, systemic oppression, and institutional racism, Indigenous people in the United States are subject to disproportionately high rates of structural violence, homelessness, poverty, income inequality, death, and poor health and education outcomes, associated

with barriers to access to employment, education, housing, health and mental health treatment, social services, and criminal justice; and

WHEREAS, federal policies of relocation, termination, and forced assimilation have resulted in the relocation of Indigenous people from their traditional lands into urban areas, resulting in separation from family, clan, community, cultural institutions, and sacred sites; and

WHEREAS, a lack of recognition and awareness of these issues, through the perpetuation of settler colonialism, has led to historical and intergenerational trauma that continues to adversely affect Indigenous individuals, families, and communities; and

WHEREAS, 76 percent of American Indians and Alaska Natives live in urban settings; and

WHEREAS, urban Indians are tribal people currently living off federally-defined tribal lands in urban areas; and

WHEREAS, despite the historical traumas that continue to manifest into intergenerational and collective trauma, Indigenous communities including American Indian, Alaska Native, and Native Hawaiian people continue to remain resilient in the wake of further challenges of modern-day world threats, such as institutionalized racism, climate change, the Missing and Murdered Indigenous Women and Girls epidemic, and the COVID-19 pandemic; and

WHEREAS, other cities, such as Portland and San Francisco, have successfully created a position or similar entity like the Indigenous Advisory Council proposed in this ordinance; and

WHEREAS, The City of Seattle has an opportunity to rely on an entity of subject matter experts from tribes, tribal organizations, urban Indian organizations, and the broader Native community to shape policy priorities impacting Native communities through the Mayor's Office, City Council, and City departments; and

WHEREAS, the City requires an official, staffed Indigenous Advisory Council to build and strengthen Indigenous representation and Indigenous knowledge in The City of Seattle's public policy making

processes, as well as promote and advance priorities and solutions identified by Native communities for Native communities in Seattle; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 3.35.030 of the Seattle Municipal Code, last amended by Ordinance 125492, is amended as follows:

3.35.030 Director-Functions

The Director of the Department of Neighborhoods shall manage the department and shall:

- A. Serve as liaison with residents, neighborhood groups, and other community organizations;
- B. Provide staff for the Community Involvement Commission, the Seattle Youth Commission, ~~((and))~~

the Seattle Renters' Commission, and the Indigenous Advisory Council;

* * *

Section 2. A new Chapter 3.75 is added to the Seattle Municipal Code, as follows:

CHAPTER 3.75 INDIGENOUS ADVISORY COUNCIL

3.75.010 Establishment

There is established an Indigenous Advisory Council (IAC) that shall advise the Mayor, City Council, and City departments on policies of importance to the City, including but not limited to policies directly affecting Indigenous populations including American Indian, Alaska Native, and Native Hawaiian people.

The overall goal of the IAC is to further define and strengthen the City's ongoing and unique relationship with the Coast Salish communities that are the original stewards of the land Seattle was founded upon and work to fulfill trust and treaty obligations to the American Indian, Alaska Native, and Native Hawaiian people that reside in Seattle. IAC membership will be empowered to redefine the cultural fabric of Seattle as a City and foster the overall health and well-being of Indigenous residents by:

- A. Collaborating and advising the Mayor, City Council, and City Department leaders regarding issues, policies, budgets, and potential projects;

B. Providing opportunities to educate and practice Native cultures and lifeways within the urban landscape and City institutions; and

C. Developing best practices to engage with Indigenous peoples in the area.

3.75.020 Membership

The IAC shall consist of nine members representing the urban Native Community including but not limited to American Indian, Alaska Native, and Native Hawaiian peoples. All members shall demonstrate a commitment to advancing Indigenous knowledge, values, and priorities within the City landscape with the goal to improve access to City services by Indigenous people, as well as to advance City services themselves to better serve Indigenous people in an equitable way. All members appointed by the Mayor shall be confirmed by the City Council. Positions shall be numbered 1 through 9.

A. Positions 1-3 shall be filled by a member of an Indigenous Tribe and shall be nominated by the respective Tribal Council as their official delegate. Positions 1 and 2 shall be appointed by the City Council from nominations made by Tribes located in Washington State. Position 3 shall be appointed by the Mayor from Tribal Council nominations.

B. Position 4 shall be designated for an Indigenous Youth aged 18-29. Position 5 shall be designated for an Indigenous Elder age 50 or older. Position 4 shall be appointed by the Mayor. Position 5 shall be appointed by the City Council.

C. Positions 6-9 shall be designated for representatives from urban Indian organizations (commonly referred to as UIOs) as defined by 25 U.S.C. 1603, serving urban Native people in The City of Seattle and shall be nominated by the Board of Directors of the respective urban Indian organization. Positions 6 and 7 shall be appointed by the City Council from nominations made by the urban Indian organizations. Position 8 and 9 shall be appointed by the Mayor from nominations made by the urban Indian organizations.

3.75.030 Term

Terms for all positions shall be two years, except that the initial term for positions 1, 4, 6, and 8 shall be one

year. Members may not be reappointed to a fifth consecutive term unless the Department of Neighborhoods, after due diligence, has found no interested and qualified person to recommend to the appoint authority for that position. Any vacancy in an unexpired term shall be filled in the same manner as the original appointment. If a person is appointed to fill the duration of an unexpired term, then the term shall count as one of the consecutive terms only if the portion of the unexpired term actually served is at least one year. A member whose term is ending may continue on an interim basis as a member with voting rights until such time as a successor for that position has been appointed by the City Council or confirmed by the City Council.

3.75.040 Compensation

The Director of the Department of Neighborhoods is authorized to expend funds to compensate IAC members for expertise and participation on the IAC and funding to cover member travel reimbursements and meeting supplies. The compensation strategy should consider the need to reduce barriers for participation for communities impacted by historic and on-going systemic oppression and the value provided by culturally specific and community oriented subject matter expertise of the IAC members. The compensation shall be based on compensation rates commensurate with other City reimbursement processes.

3.75.050 Duties

The IAC shall act in an advisory capacity and have the following purposes and duties:

A. Provide information, advice, and counsel to the Mayor, City Council and Council committees, and other City departments and offices on ways to enhance and improve access to City services and resources for American Indian, Alaska Native, and Native Hawaiian people and communities, as well as strengthen opportunities to participate in the civic life of the city.

B. Advise on the development and implementation of a tribal consultation policy for all City departments and offices o to establish a government-to-government framework for engaging local tribal nations.

C. Advise on the development and implementation of a policy for all City departments and offices to

confer with urban Indian organizations to establish a framework for fulfilling fiduciary and other obligations to urban American Indian and Alaska Native people.

D. Create and execute annual programming to encourage understanding between and among the diverse American Indian and Alaska Native communities and the larger Seattle community. As part of its annual budget process, The City of Seattle shall provide funding to support programming that support actions to bring community together, such as for meetings, events, annual gatherings, and cultural events.

E. Develop an annual work plan for the coming year and an annual report on the previous year's work. The annual report will include a summary of IAC accomplishments and challenges, as well as recommendations on how The City of Seattle can continue to facilitate access to City services and programs. The annual work plan, as an example, may include priorities that would:

1. Promote partnership opportunities for Tribes, tribal organizations, Native Hawaiian organizations, and urban Indian organizations with The City of Seattle, such as with the Office of the Mayor, the Office of Intergovernmental Relations, and the City Council; and
2. Highlight policy recommendations by the IAC for the Mayor and the City Council.

F. Brief the Mayor's Office and the full City Council on the annual work plan and Annual Report.

3.75.060 Holding contributions in perpetuity

The City of Seattle recognizes the rights of the IAC members and their communities to their cultural property. Members of the IAC reserve the right to maintain joint or individual ownership over recommendations, Indigenous informed wisdoms, culturally significant objects, and other intangible property (i.e., cultural symbols) provided that The City of Seattle shall have a perpetual license to use them for its purposes. The IAC may adopt rules to identify how it and its members will hold control over Indigenous cultural property.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by

Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by
me in open session in authentication of its passage this _____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Legislative	Lish Whitson/206-615-1674	

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title:

AN ORDINANCE creating an Indigenous Advisory Council for tribal and urban Indian engagement; adding a new Chapter 3.75 to the Seattle Municipal Code; and amending Section 3.35.050 of the Seattle Municipal Code.

Summary and background of the Legislation:

The proposed bill would create a new Indigenous Advisory Council (IAC) to provide input and advice to the City of Seattle shall advise the Mayor, City Council, and City departments on policies of importance to the City, including but not limited to policies directly affecting Indigenous populations including American Indian, Alaska Native, and Native Hawaiian people. A majority of the IAC’s members would be chosen from recommendations made by Tribes and urban Indian organizations. Others would represent youth and elders. Members would serve up to four consecutive two-year terms. The Department of Neighborhoods would be charged with supporting the IAC.

Among the purposes and duties of the IAC would be to:

1. Provide information, advice and counsel to the City on ways to improve access to City services and strengthen participation by Indigenous communities in the civic life of the city;
2. Advise on the development of policies related to consultation with Tribes and urban Indian organizations; and
3. Create programming to increase understanding between and among Indigenous communities and the larger Seattle community.

The IAC would be empowered to promulgate rules to protect their rights to their cultural knowledge.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Yes, the bill would provide authorization to the Department of Neighborhoods to compensate members of the IAC for their time. It would also require the City to fund programming. Funding and position authority to support the Commission was provided in the 2021 budget.

Is there financial cost or other impacts of *not* implementing the legislation?

None

3.a. Appropriations

___ This legislation adds, changes, or deletes appropriations.

3.b. Revenues/Reimbursements

___ This legislation adds, changes, or deletes revenues or reimbursements.

3.c. Positions

___ This legislation adds, changes, or deletes positions.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

Yes, the Department of Neighborhoods is charged with supporting the activities of the IAC.

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

No.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

The United States' Indigenous people have experienced settler colonialism, systemic oppression and institutional racism, and are subject to disproportionately high rates of structural violence, homelessness, poverty, income inequality, death and poor health and education outcomes. Policy decisions affecting urban Natives and Tribes are often made without their input. The IAC would provide them with a stronger voice in City government.

f. Climate Change Implications

1. **Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?**

No

2. **Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**

No

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s).**

The goal of the Indigenous Advisory Council is to build and strengthen Indigenous representation and Indigenous knowledge in the City of Seattle's public policy processes and to promote and advance priorities and solutions identified by Native communities for Native communities in Seattle. Success will be measured by the adoption of new policies and regulations recommended by the IAC.

List attachments/exhibits below: