

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("**Agreement**") is made and entered into this 4TH day of NOVEMBER, 1998, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the state of Colorado (the "**City**") and the DENVER ZOOLOGICAL FOUNDATION, INC., a Colorado non-profit corporation (the "**Foundation**").

WITNESSETH:

WHEREAS, the Foundation was organized and incorporated, not for pecuniary profit, on November 8, 1950, and has served as the City's agent, under the terms and conditions of a cooperative agreement entered into on July 27, 1956, "to plan, establish, re-establish, manage, operate and develop [the City's] zoological gardens and exhibits and such other allied and related work, research and planning as may be found desirable by both parties" and to undertake such other duties and responsibilities as provided in said July 27, 1956, agreement, as amended in an amendatory agreement dated March 29, 1974; and

WHEREAS, by virtue of Section A4.4-6, Article IV of the Charter of the City and County of Denver, the Manager of the Denver Department of Parks and Recreation (the "**Manager**"), subject to approval by City ordinance, is authorized to conduct negotiations for cooperative agreements with private agencies for the development of park and recreational facilities, programs and activities and for the establishment and maintenance of museums, zoological or other gardens, collections of natural history and observatories, and to delegate the Manager's authority and responsibility with respect thereto; and

WHEREAS, the City and the Foundation wish to replace the July 27, 1956, agreement, as amended, with a new cooperative agreement in order to reorganize, develop and provide for a better and more complete zoological garden and exhibits for the enjoyment and education of the citizens of the City and County of Denver and the general public; and

WHEREAS, by virtue of its purposes and interests, the Foundation is both experienced and suited to administer, plan, manage, and operate a zoological garden and exhibits and to select species of wildlife to be kept and exhibited; and

WHEREAS, the Foundation has assured the City that it will undertake to do so, and within its means to contribute wildlife exhibits, structures and improvements, along with the time and effort in the development and expansion thereof; and

WHEREAS, it is in the best interest of the Foundation, the City and the general public that a cooperative agreement be entered into between the Foundation and the City whereby the Foundation shall continue to maintain, administer, manage, operate and control that portion of City Park presently occupied by and reserved for the use of the Denver Zoological Gardens consisting of approximately 93 acres generally located at East 23rd Avenue and Steele Street.

NOW, THEREFORE, in consideration of the above premises and for the purpose of setting forth the relationship between the Foundation and the City with respect to the Denver Zoological Gardens and any related operations and activities, it is mutually agreed by the City and the Foundation as follows:

1. **ENGAGEMENT & PURPOSE.**

(a) This Agreement shall replace and supersede, in its entirety, the cooperative agreement between the parties dated July 27, 1956, as amended by the amendatory agreement dated March 29, 1974.

(b) The City hereby retains the Foundation, as its agent, to maintain, administer, manage, operate, and control the Denver Zoological Gardens and all buildings, grounds, living collections of fauna and flora, exhibits, programs, operations, and properties located therein or used in connection therewith, for the enjoyment and education of the public, and the Foundation hereby accepts such engagement on the terms and conditions set forth herein. None of the rights herein granted to the Foundation are, nor shall they be construed as, a lease, easement, or other interest in land.

(c) The Foundation shall use its best efforts to encourage reasonable public use and enjoyment of the Denver Zoological Gardens, to increase its membership support base, to perform its obligations under this Agreement in order to achieve the public purpose of this Agreement in accordance with its terms and spirit, and to secure contributions of cash and property to support the purposes of the Foundation. However, the Foundation may, in its discretion, refuse to accept any gift if it determines that such gift would not be in the best interests of the Denver Zoological Gardens and the Foundation.

(d) The public purpose of this Agreement is to provide for the establishment and maintenance of the Denver Zoological Gardens, and any related operations and activities, for the use and benefit of the people of the City and the general public through public/private cooperation between the City and the private, non-profit Foundation in conformance with Section A4.4-6 of the Charter of the City and County of Denver, 1960 compilation.

2. **TERM.** This Agreement shall commence as of the effective date of this Agreement set out herein above and shall terminate on December 31, 2023, unless otherwise terminated or extended as provided herein. Annually on December 31st of each year following the termination date of December 31, 2023, the term shall automatically and without further action be extended for a one (1) year period, unless and until either the Foundation or the City, at its discretion, gives written notice by certified mail, return receipt requested, to the other of its election that this automatic extension shall cease. Such notice shall be signed by the Mayor of the City, or the Deputy Mayor as provided in Article I of the City Charter, or the Chairman of the Board of the Foundation, and shall state the termination date which date shall be December 31st of the then current year or an upcoming year. The Foundation and the City may amend this

Agreement at any time to extend its term for such additional years as may be agreed upon by the parties, provided that any such extension is approved and executed in the same manner as this Agreement.

3. **FACILITIES.**

(a) As used in this Agreement, the term “**Facilities**” shall mean that portion of City Park presently occupied by and reserved for the use of the Denver Zoological Gardens consisting of approximately 93 acres generally located at East 23rd Avenue and Steele Street. Said Facilities shall consist of all fixtures and permanent improvements presently existing, or as may be constructed, expanded, or renovated in the future, on, below or above the ground within the boundaries of the Zoological Gardens as depicted in Exhibit “A”, a copy of which is attached hereto and incorporated herein by reference.

(b) The geographical area of the Facilities may not be expanded, and structures, exhibits, operations, programs, and activities of the Denver Zoological Gardens may not be constructed, presented, conducted, or extended in City Park beyond the current boundaries of the Facilities, except as expressly provided in this Agreement. The Foundation may, from time to time, request additional space within City Park as is necessary or convenient for the operation or expansion of the Foundation’s programs or operations. Following review by the Denver Park and Recreation Advisory Board or any other public process that the Manager may deem appropriate and subject to any terms and conditions imposed, the Foundation may utilize any additional space in City Park the Manager designates and sets asides, as determined, in the Manager’s discretion, as being in the public interest and for the betterment of the Denver Zoological Gardens. If so specified by the Manager, the additional space in City Park shall be included into the definition of “Facilities” under this paragraph 3.

4. **STATUS AND AUTHORITY OF THE FOUNDATION.**

(a) The Foundation and the City acknowledge and agree that the status of the Foundation shall be that of an agent for the City and of a private, nonprofit corporation retained by the City on a contractual basis solely for the purposes set forth in this Agreement.

(b) The scope of authority the Foundation may exercise shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. The Foundation shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City’s police or taxing powers.

(c) The authority delegated under this Agreement shall not be construed to grant the Foundation the right or power to bind, or to impose any liability upon, the City through any contracts or agreements the Foundation may make, unless expressly provided herein or unless the prior, written approval of the Manager is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by the Foundation shall be in its own name and not in the name of the City.

Likewise, the City shall have no authority to bind, or to impose liability upon, the Foundation through any contracts or agreements the City may make, unless the prior, written approval of the Foundation is obtained.

(d) The Foundation shall at all times during the term of this Agreement maintain its status as a tax-exempt nonprofit corporation in good standing under federal and state law and shall engage in no business or other activity that would jeopardize its tax-exempt status.

5. PERSONNEL.

(a) Except as otherwise provided herein, all City employees permanently assigned to work at the Facilities (“**City Employees**”) shall remain City Employees but shall be managed and supervised by the Foundation, subject to the classification and pay plan and the personnel rules and regulations of the Career Service Authority, and subject to review by the Manager to the extent required by law. In order to assure the proper observance and application of Career Service rules and regulations with respect to City Employees, all Foundation personnel responsible for supervising or managing any City Employees shall satisfactorily complete any training that may be required by the Manager or the Career Service Authority.

(b) In order to assure that the Foundation will achieve the proper performance of its duties and responsibilities under this Agreement, the Foundation may offer to employ City Employees holding top-level or critical management and administrative positions. The only City Employee positions eligible for voluntary conversion to Foundation employment are listed in Exhibit “B”, a copy of which is attached hereto and incorporated herein by reference. Upon electing to accept employment with the Foundation, an eligible City Employee shall terminate his or her employment with the City in a manner allowed under the Career Service rules and shall be retained by the Foundation at the level of compensation and types of benefits determined by the Foundation. Any eligible City Employee positions that are or become vacant shall be abolished in accordance with Career Service rules.

(c) All City Employees shall be compensated through payroll payments made by the City. Subject to the provision of paragraph 13 below, the Foundation agrees to pay or reimburse the City, in such a manner as is agreeable to the City’s Manager of Revenue, the costs incurred by the City in providing the services of the City Employees, including costs of wages and overtime and costs for any benefits uniformly provided by the City to all of its employees. The Foundation shall reserve sufficient funds from admission and concession receipts, as described in paragraph 13 below, in order to assure that payroll costs are adequately and timely deposited with the City Treasury.

(d) All employees presently engaged by the Foundation, all eligible City Employees electing to become Foundation employees, and all employees hired by the Foundation to work at the Facilities after the effective date of this Agreement shall be employees of the Foundation (“**Foundation Employees**”). The Foundation shall have the sole authority to

hire, fix the compensation of, supervise, evaluate, discipline and discharge all Foundation Employees, without regard to Career Service classifications and pay plans and personnel rules and regulations, but otherwise in conformance with all laws governing private employers. The Foundation shall maintain a written personnel policy to govern the conduct and rights of Foundation Employees as it may deem necessary and appropriate. Upon request, the Foundation shall provide the Manager a copy of its current personnel rules and regulations and a description of its pay and benefits for the Foundation Employees.

(e) In the event that the City Charter is amended by vote of the Denver electorate such that the employees at the Denver Zoological Gardens are exempted from Career Service, any City Employees then working at the Zoo may voluntarily elect to leave the employment of the City and accept employment with the Foundation. The process for this employment change and the abolition of the vacant positions shall be as prescribed in subparagraph (b) of this paragraph 5. Upon becoming Foundation Employees, the former City Employees shall be subject to the provisions of subparagraph (d) of this paragraph 5.

(f) The Foundation herewith endorses the policy of actively encouraging diversity within members of its work force, at all levels, and it shall continually strive to achieve diversity among said work force throughout the term of this Agreement.

6. **REAL AND PERSONAL PROPERTY.**

(a) The Foundation hereby donates, gives, grants, conveys, and assigns to the City, for the use and benefit of the people of the City, all of its right, title, and interest in and to any fixtures or other permanent improvements to real property that it now owns or may hereafter acquire during the term of this Agreement that are located on or in the Facilities. The Foundation shall not permanently affix anything on or in the Facilities that does not thereby become the property of the City pursuant to this subparagraph.

(b) The Foundation shall have no authority to sell, lease, encumber, hypothecate, or otherwise create or assign a property or financial interest in any real property, fixtures, or other permanent improvements located on or in the Facilities.

(c) Any equipment, supplies, animals, plants, vehicles, or other personal property acquired by the Foundation by gift or with funds shall be held in legal ownership by the Foundation. Acting as the agent for the City but not subject to the City's purchasing and selling requirements, the Foundation may, from time to time (as the Foundation determines to be prudent and warranted), modify, expand, or alter its zoological and botanical collections through sale, purchase, trade, or loan and may replace, by the same means, items of equipment, supplies, animals, plants, vehicles or other personal property. Any equipment or vehicles currently assigned exclusively for use at the Facilities may be replaced as allowed herein, subject to a proper accounting of the disposal and replacement being made to the Manager. The Foundation may cooperate with any City department willing and authorized to participate in the exchange,

sharing, or loan of equipment or vehicles or in the joint purchase of equipment or vehicles, subject to all applicable Charter or ordinance requirements.

7. **RESPONSIBILITY FOR MAINTENANCE AND EXHIBITS.**

(a) The Foundation shall maintain the Facilities in good repair, including, without limitation, buildings and exhibits, parking lots, driveways and walkways, landscape, snow removal, and all public and non-public areas within the Facilities.

(b) The Foundation shall have exclusive control, responsibility, and discretion over the selection, development, arrangement, and naming of all exhibits and collections and the creation, naming, and placement of all acknowledgments, memorials, and works of art located in the Facilities, except as otherwise provided in this Agreement.

(c) The Foundation shall, consistent with the proper maintenance of the Facilities and the safety of the public and the safety of the living collections, conserve utilities and energy use at the Facilities. The Foundation shall submit to the Manager such reports of its energy conservation programs as the Manager may reasonably request.

8. **MASTER PLAN.**

(a) Any master plan for operations, programs, or activities located at the Facilities including permanent improvements or programmatic strategies, developed by the Foundation and any material change to any such master plan shall be submitted to the Manager for review and approval in advance of adoption of such plan or plan change by the Foundation. Any master plan for operations, programs, or activities located outside of the Facilities, including permanent improvements or programmatic strategies, developed by the Foundation and any material change to any such master plan shall be submitted to the Manager for review and comment in advance of adoption of such plan or plan change by the Foundation. In addition, the Foundation shall not operate any other zoological park or similar facility that is open to the public without the prior written consent of the Mayor. The Foundation shall give the Manager notice of the pending development of any such plan or plan change as soon as practicable and shall provide the Manager a reasonable opportunity to participate in the development of the same. The Manager shall promptly, within thirty (30) days following submission of any such plan or plan change, either approve or disapprove of such plan or plan change, either in whole or in part, provided that any disapproval shall be accompanied by a written statement of the specific reason(s) therefor. If the Manager fails to provide any response within said thirty (30) day period, then the proposal shall be deemed approved. The parties acknowledge and agree that the Foundation shall not be obligated to execute any master plan or plan change adopted pursuant to this subparagraph.

(b) It is understood that if the Manager determines that a public process is required as part of this approval process or prior to the implementation of any such plan or any

plan change, then the approval or implementation shall be contingent on the conducting of any public process that the Manager may reasonably require.

(c) Upon the request of the Manager, the Foundation shall develop and provide such sufficiently detailed information as the Manager may reasonably request concerning or relating to the operations, programs, or activities at the Facilities or outside of the Facilities, including, among other things: i) significantly increased traffic levels or parking demands in or around the Facilities or City Park; ii) significantly higher noise, vibration, or lighting levels in or around the Facilities and City Park; or iii) financial or operational impacts to or in the Facilities from the development or maintenance of such operations, programs, or activities in locations outside of the Facilities. An appraisal of all reasonably feasible means for mitigation or elimination of adverse impacts shall be included. However, adverse impacts do not include any changes or modifications to existing exhibits or collections on or in the Facilities.

9. CONSTRUCTION OF PERMANENT IMPROVEMENTS.

(a) Subject to the requirements of this subparagraph, the Foundation shall have the authority to make, or contract for, the following improvements at the Facilities: i) the repair or replacement of any existing improvement to the extent that the work does not require structural engineering or architectural design work of a structural nature; ii) the installation of any fixtures and nonstructural items purchasable through a catalog, including but not limited to fencing, railings, movable sheds, signs, bathroom fixtures, water fountains, and lighting; and iii) the design, construction, reconstruction, expansion, or remodeling of any wildlife exhibits or animal enclosures, including habitats, cages, holding pens, and similar facilities that are intended for the use and occupancy of animals and their keepers and not for the general public. The plans and specifications for any improvements proposed under this subparagraph and costing in excess of \$50,000 for the completed project shall be submitted to the Manager for review and comment at least ten (10) days prior to the initiation of the project, unless emergency conditions necessitate immediate repair or replacement. If any new or significantly modified wildlife exhibit or animal enclosure has not been previously approved as part of a master plan or plan change, the plans and specifications for such improvement must be submitted to the Manager for review and approval at least thirty (30) days prior to the initiation of the project. Failure by the Manager to respond within the specified period shall be deemed a waiver by the City of the Manager's right to review the project. Such waiver shall not be deemed a waiver of the Manager's right to review subsequent projects under this subparagraph. The Foundation shall be solely responsible for assuring that any project initiated under this subparagraph is properly contracted and performed and that the work performed and materials used are in conformance with any applicable laws (local, state, and federal) that govern the performance of such work.

(b) The Foundation may be assigned, as agent for the City, the full responsibility for the design, planning, and construction of buildings, building additions and renovations, and other permanent improvements not identified in subparagraph (a) above, or for the demolition of any buildings, subject to the satisfaction of the following conditions:

(i) Any design and construction delegation is limited to a specific project for which master plan or plan change approval has been obtained from the Manager.

(ii) All costs incident to the work be borne solely by the Foundation, other than the costs incurred through work of City Employees incidental to the project. In addition to Foundation moneys, any funds received from the Scientific and Cultural Facilities District may be used, provided that such expenditure is in conformance with the requirements of the Scientific and Cultural Facilities District Act, C.R.S., §§ 32-13-101 *et seq.*

(iii) The Foundation shall submit the plans and specifications for the proposed project to the Manager of Public Works and the Manager of Parks and Recreation prior to the commencement of work. Both Managers must approve or disapprove, in writing, the plans and specifications, either in whole or in part, stating any reason(s) for any disapproval, within thirty (30) days of submittal. Any deficiencies in said plans and specifications shall be remedied, to the satisfaction of both Managers, by the Foundation prior to the commencement of work. All reviews of plans and specifications by the City shall be conducted at the City's cost.

(iv) The Foundation shall ensure right-of-entry at all reasonable hours to any City inspector or other authorized agent of the City to the work site to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the plans and specifications and in compliance with all laws (local, state, and federal) that govern the performance of such work. If it is determined that the work is not being so performed, the Manager of Public Works or the Manager of Parks and Recreation may order the cessation of all work until there is satisfactory evidence that the work conforms to all legal requirements. All inspections by the City shall be conducted at the City's cost.

(v) The Foundation and its contractors and subcontractors, in the performance of the work, shall observe and comply with the provisions of the Denver Revised Municipal Code pertaining to the payment of prevailing wages, minority and women business enterprise participation, and non-discrimination and equal employment opportunity, as such provisions may be amended or recodified from time to time. In addition, the Foundation and its contractors and subcontractors shall observe and comply with the provisions of the City's Building Code, Fire Code, and other applicable health and safety requirements and shall obtain, and pay for, any licenses and permits required by law. To the extent applicable, the Foundation shall conform with the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

(vi) The Foundation and its contractors and subcontractors shall pay all applicable sales and use taxes levied by the State and the City on any tangible personal property built into or incorporated into the work. Upon request by the City, an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes, and the dates of payment, shall be furnished to the City.

(vii) The Foundation shall obtain a bond or other guarantee acceptable to the City Attorney, conditioned that the Foundation or its contractor shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons furnishing labor or materials or labor and materials used or performed in the prosecution of the work, and shall indemnify the City to the extent of all payments in connection with performing the work.

(viii) The Foundation shall observe and abide by all other requirements of this Agreement applicable to construction projects, including but not limited to the provisions related to audits, indemnification, liens, non-discrimination, and subcontracting.

10. **PUBLIC ACCESS TO AND USE OF FACILITIES; CITY ACCESS.**

(a) The areas within the Facilities, exclusive of administrative, service and quarantine areas, shall be open to the general public on the days and within reasonable hours designated by the Foundation. Such days and hours shall be subject to such reasonable rules and regulations as the Foundation may prescribe, and both the days and hours and the rules and regulations shall be subject to prior review and comment by the Manager.

(b) The number of “free days” at the Facilities and any free day eligibility requirements (such as residency) shall be as established or delegated by ordinance. If no such ordinance is enacted, then the Foundation may designate the number and eligibility for free days, subject to prior review and approval by the Manager. In any case, the Foundation may designate certain select free days, subject to prior review and approval by the Manager.

(c) The public’s right to use the Facilities shall be subject to any rules and regulations promulgated by the Manager governing utilization of City parks. Subject to the prior review and comment of the Manager, the Foundation may impose additional, more restrictive rules and regulations appropriate to the operation of a zoological garden.

(d) The Mayor, members of the City Council, the Manager, and other representatives of appropriate City departments shall, at all reasonable times, have access to the Facilities for the purposes of visitation and inspection.

11. **EDUCATIONAL AND CULTURAL ACTIVITIES.** The Foundation shall make every effort to cooperate with educational institutions in the Denver metropolitan area in the dissemination and research of zoological and allied scientific information and knowledge. The Foundation shall afford access to the Facilities, to the extent its resources may permit and as may be compatible with the proper administration of the Facilities and the interests of the general public, to teachers and students in public or private schools and other institutions of learning who may be authorized by the institutions to bring students to the Facilities where, under the supervision of the Foundation, instruction may be given to such students, at such times and under such rules and regulations as may be determined by the Foundation. The Foundation may also permit the Facilities to be used for the presentation of artistic or cultural displays or

performances not inconsistent with the use and protection of the zoological collections and exhibits. The Foundation may make reasonable charges for educational, cultural and other goods and services it might or will provide under the provisions of this paragraph.

12. **CONCESSIONS.** The Foundation may conduct or provide by agreements between the Foundation and concessionaires for the operation of concessions for selling food, drink, merchandise, rides, and such other related services, products, and events which the Foundation determines to be in character with the operation of a zoological garden. All such agreements shall be subject to prior approval by the Manager and shall contain a provision that they may be canceled by the Manager if it is determined that the concessionaire has (1) failed to comply with applicable health and safety laws (local, state, and federal), (2) failed to pay applicable taxes, fees, fines, or charges (local, state, and federal), or (3) failed to substantially conform with any other applicable policy, standard, rule, regulation, or order implemented or issued by the Parks Department or the City administration. The Manager shall give written notice to the Foundation stating with specificity the reasons for the proposed termination and providing for a ninety (90) calendar day period in which the the violation may be rectified. The Foundation shall inform the concessionaire of the Manager's notice in a timely manner so as to assure that any corrective action on the part of the concessionaire can be completed within the specified ninety (90) calendar day period. Failure to make such correction within the 90-day period may result in cancellation of the concession agreement. All funds received by the Foundation from the concession operations shall be utilized for the purposes specified in subparagraph 13(d) below.

13. **FUNDING.** In order for the Foundation to achieve and continue the public purpose of this Agreement, funding shall be provided or permitted from the following sources to be expended for the purposes stated:

(a) Appropriations made annually at the discretion of the City shall be made available in such amounts as may seem to the City to be necessary or desirable to pay costs and expenses for the management, operation, maintenance, modification, and improvement of the Facilities; provided, however, that the City's annual appropriation shall be applied by the City first to cover those costs at the Facilities incurred by the City under paragraph 14 below, second to cover the wages and benefit expenses for City Employees under paragraph 5 above, and third for any other purpose recognized under this Agreement.

(b) Other appropriations may be authorized from time to time by the City in its discretion, such as capital improvement project funds, and shall be applied by the City in the manner specified in the appropriation.

(c) Fees for admission to and use of the Facilities shall be collected and deposited by the Foundation in its accounts to be applied by the Foundation first to cover the wages and benefit expenses for City Employees under paragraph 5 above and then for any other purpose recognized under this Agreement. Upon submittal by the Foundation of any proposed fee changes to the Manager, said proposal will be submitted, together with the Manager's

recommendation on the proposal, to the City Council for consideration and action. Any fees not subject to ordinance approval may be changed, from time to time, by the Foundation, subject to prior review and approval by the Manager.

(d) Revenues from concessions operated at the Facilities shall be collected and deposited by the Foundation in its accounts and used for the same purposes identified in subparagraph (c) above.

(e) Taxes collected pursuant to the provisions of the Scientific and Cultural Facilities District Act (C.R.S. § 32-13-101 *et seq.*) as revised, renewed or amended, shall, so long as the Foundation remains the agent of the City to maintain, manage, operate, and control the Facilities, be received directly by the Foundation on behalf of the Denver Zoological Gardens.

(f) Gifts of money made to the City for the use and benefit of the Denver Zoological Gardens shall be deposited into the Zoological Foundation Fund (established in the City Treasury) and expended for the purposes provided in subparagraph (g) below.

(g) Gifts, donations, endowments, grants, bequests and devises from private donors and other governmental entities to the Foundation or benefactors of the Foundation, income earned by the Foundation on its investments, and operating net revenues received by the Foundation in the conduct of its programs and activities shall be received by the Foundation and expended for any purpose recognized under this Agreement, or for any purpose which may further the mission and purposes of the Foundation, subject to authorization by the Board of Trustees of the Foundation. The Foundation shall have the sole discretion to accept, reject, retain, liquidate, expend, invest or transfer such assets which the Foundation, in its reasonable judgment, believes will further the mission and purposes of the Foundation, except to the extent that the use of such assets may be restricted by donor.

(h) Bond funds as may be authorized by the people and issued by the City in the amounts and for the purposes stated in the authorization ordinance.

It is understood that neither the City nor the Foundation is hereby obligated to provide any specific level of funding for the purposes set forth in this Agreement, and if any party for any reason reduces any funding previously provided, no other party shall be obligated to increase its funding as a result thereof. Except as expressly provided in this paragraph, the Foundation is under no obligation to cover any deficit resulting from inadequate funds to cover the wages and benefit expenses of City Employees.

14. **UTILITIES, INSURANCE & OTHER SERVICES.** Notwithstanding any provision to the contrary in this Agreement, the Foundation understands and acknowledges that any commitments by the City to spend funds or provide services is contingent upon the necessary funds being appropriated and encumbered and the necessary discretionary actions being taken by the City Council and the Mayor. The following City representations are specifically and especially subject to such contingency:

(a) The City shall provide, without charge to the Foundation, an adequate supply of water to the Facilities to satisfy the reasonable needs of operating the Facilities and all other utilities needed to operate the Facilities, including gas, electricity, sewer, and telephone service; provided, however, that the historically highest annual appropriation from the general fund the City has ever made for the benefit and use of the Denver Zoological Gardens will be the primary measure used by the City in determining its annual budgetary commitment to this purpose.

(b) The City shall provide, without charge to the Foundation, Workers' Compensation insurance for City Employees. The City shall also provide self-insurance coverage or general liability and casualty insurance, including public liability and property damage, covering the Facilities to the extent as determined necessary and appropriate by the City's Director of Risk Management and to the extent of the City's liability exposure under paragraph 18 below.

(c) The City may provide to the Foundation such other services, such as legal, accounting, risk management, and maintenance services supplemental to those of the Foundation, to the extent agreed upon by the parties from time to time.

15. **POLITICAL ACTIVITY.** No City or Scientific and Cultural Facilities District funds shall be used by the Foundation in connection with any activities of a political nature, including, but not limited to, any activity to further the appointment, election, defeat, or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat, or final content of any legislation or ballot proposal. A strict accounting of all other funds used by the Foundation for political activity shall be maintained and available for public review.

16. **FOUNDATION GOVERNANCE.**

(a) The Foundation agrees to modify its articles of incorporation and its corporate bylaws, as necessary, to include the following:

(i) In addition to the thirty-nine (39) voting term members elected by the sitting membership of the Board of Trustees of the Foundation and the current chairman of the Denver Zoo Volunteer Council who sits as an ex-officio, voting member on the Board ("**Foundation Members**"), four (4) voting members shall be appointed by the Mayor to serve staggered three-year terms and shall be replaced only by the Mayor ("**City Members**"); provided, however, that if the number of Foundation Members shall be increased, the number of City Members shall be increased proportionately. The City Members shall be eligible to serve on each standing and special committee, including the executive committee.

(ii) The Manager shall serve as an ex-officio, voting member of the Board of Trustees who shall hold this position continuously until he or she is replaced by a

successor as the Manager of Parks and Recreation for the City; provided, however, that the Manager may appoint a designee to attend any meeting of the Board of Trustees which the Manager is unable to attend, recognizing that this designee shall not have any right to vote and will not be counted for a quorum. The Manager shall be eligible to serve on each standing and special committee, including the executive committee, and shall be provided notice of, and an opportunity to attend, any executive committee meeting.

(iii) All members of the Foundation's Board of Trustees shall be required to conduct themselves in pursuit of the Foundation's corporate affairs in accordance with applicable law and this Agreement, including the fiduciary standards of loyalty and care to the Foundation.

(b) The Mayor and the City Council shall have the right to recommend other persons for election to the Board of Trustees, but the election of such persons shall be in the sole discretion of the Board of Trustees.

(c) In addition to other required reports, the Foundation shall inform the Manager, in writing, of any proposed action by the Board of Trustees to change the articles of incorporation, bylaws, or other material policy documents governing the Foundation.

(d) The Foundation herewith endorses the policy of actively encouraging diversity within members of its Board of Trustees, and it shall continually strive to achieve diversity among said Board of Trustees throughout the term of this Agreement.

17. **COOPERATIVE STATEMENT.** The Foundation and the City acknowledge that the following is an accurate summary of the basis for this Agreement:

Denver Zoological Gardens is established and maintained by the Denver Zoological Foundation, Inc., for the people of the City and County of Denver and for the general public in cooperation with the Denver Parks and Recreation Department.

Accordingly, the Foundation shall include the foregoing statement (or such modification thereof as the Manager shall approve, which approval shall not unreasonably be withheld so long as the essence of the statement is incorporated) in documentation and postings at the Facilities where it is appropriate to acknowledge the nature of the relationship, including letterhead, annual reports, newsletters, guides to the Facilities, signs, and other materials distributed generally by the Foundation to organizations, institutions, the Foundation's membership, and the public. It is understood that the Foundation may, from time to time, be expected or obligated to include other statements of support and cooperation (e.g., by the Scientific and Cultural Facilities District or specific donors) and the Foundation may combine the above statement with such other statements of support and cooperation. For purposes of letterhead and fund-raising materials, it is understood that the following shorter version of the cooperative statement may be used in lieu of that set forth above:

In Cooperation with the City and County of Denver.

Postings shall conform, in graphic design and quality, to uniform standards established by the Foundation. The Manager may, in the Manager's sole discretion, waive all or any of the requirements of this paragraph, subject to such terms or conditions as the Manager may specify.

18. **INDEMNIFICATION & IMMUNITY.** To the extent not otherwise protected under the City's governmental immunity, the Foundation hereby agrees to indemnify and hold harmless the City, its directors, officers, agents, and employees from any all claims, demands, suits, causes of action, liability, judgment for damages, attorney's fees and other costs, or expenses of any kind or nature whatsoever (including Workers' Compensation claims), not arising or occurring by reason of the City's negligence or intentional acts, but rather resulting from or arising out of, directly or indirectly, the intentional or unintentional actions or failure to act by the Foundation, its employees, agents, and contractors, or due to any activities or work performed by or on behalf of the Foundation. Under no circumstance shall this paragraph or any other provision of this Agreement be construed as constituting a waiver of immunity on the part of the City or for any of its facilities under the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101 *et seq.*).

19. **CLAIMS.** In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against the Foundation related in any way to this Agreement or the operation of the Facilities, the Foundation shall give written notice thereof to the City, within five (5) working days after being notified, of such claim, demand, suit, or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by the Foundation. Such written notice shall be submitted to the Manager, as provided in paragraph 33, and the City Attorney, City and County Building, Room 353, Denver, Colorado 80202.

20. **TAXES, DEBTS, LIENS & LICENSES.**

(a) The Foundation shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal), and shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Agreement, and take out and keep current all licenses (local, state, or federal) required for the performance of this Agreement, and shall not permit any of said taxes and excise and license fees to become delinquent.

(b) The Foundation shall not permit any mechanic's or materialman's lien or any other lien to be imposed and remain for more than ninety (90) days upon the property of the City, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for the Foundation, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority.

(c) The Foundation shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its management or administration of the Facilities and shall not permit the same to become delinquent.

(d) The Foundation shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Agreement or its rights to the Facilities.

(e) The Foundation may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity. The Foundation may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing the City's rights until final adjudication.

21. **REPORTS, AUDITS & BUDGETS.** The Foundation shall, on an annual basis, provide to the Mayor, City Council, the City Auditor, and the Manager a comprehensive written report of its activities during the preceding year, including a report of all expenditures of public funds by the Foundation and the receipt and expenditure of all admission fees, concession moneys, and fees or other charges for access to or use of the Facilities. The Foundation agrees that any duly authorized representative of the City (including the City Auditor) shall, at the City's own expense and until three (3) years after termination of this Agreement, have the right to perform whatever audit or check the City may require, including a financial audit and a check for compliance with this Agreement. Upon request, the Foundation shall also provide, or cause its contractors to provide, adequate documentation of expenditures, including invoices and payroll, with respect to any improvement project at the Facilities. The Foundation shall also submit its proposed annual budget (including Foundation, Scientific and Cultural Facilities District, and City components) to the Manager for review and comment prior to its adoption by the Foundation.

22. **SAFETY.** The Foundation shall develop and implement safety policies and programs to help assure the safety of City Employees, Foundation Employees, and the general public and shall, upon request, provide a copy of the policies and programs, and any amendments thereto, to the Manager. The Foundation shall submit to the Manager such incident reports, including safety measures and instances of theft, property damage, and personal injury, as the Manager may reasonably request.

23. **NON-DISCRIMINATION.** The Foundation agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability in connection with membership on the board of trustees of the Foundation, access to any of the Facilities, and participation in any public program at the Facilities. In connection with the performance of work under this Agreement, the Foundation agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of

compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts, subcontracts, or agreements it may enter.

24. **COMPLIANCE WITH THE LAW.** The Foundation and the City acknowledge and agree that this Agreement shall be governed by and construed, to the extent applicable, in accordance with the laws of the state of Colorado and the Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, and that each party shall perform its obligations hereunder in accordance with applicable laws and those rules and regulations promulgated by the Manager governing the utilization of City parks. The Manager agrees to provide the Foundation with reasonable notice of and an opportunity to review and comment on any changes in laws, rules, or regulations applicable to the Facilities proposed by the Manager before such changes are enacted or adopted. It is understood that the Manager will not, in any event, propose any changes in laws, rules, or regulations applicable to the Facilities as a means to depart from the express terms of this Agreement.

25. **ASSIGNMENT AND ENCUMBRANCE OF INTERESTS.** The Foundation shall not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the written consent of the City, and unless the assignee or transferee (1) shall agree to assume, and can reasonably demonstrate the ability to perform, the obligations of the Foundation under this Agreement and (2) shall agree to be bound by the terms, covenants, and conditions contained in this Agreement to be performed or satisfied by the Foundation with the like force and effect as though such assignee or transferee had been originally named hereunder. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the term of this Agreement. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

26. **AMENDMENTS.** This Agreement may be modified, changed, or amended only by the mutual written agreement of the parties or their successors or assigns, approved and executed in the same manner as this Agreement.

27. **SUBCONTRACTING.** Any work or service that is allowed to be subcontracted under this Agreement shall be subject by its terms to each and every provision of this Agreement. Compliance therewith is the responsibility of the Foundation. The Foundation shall, upon request, provide to the Manager a copy of any written contract or agreement for work or services covered by this Agreement.

28. **NO THIRD-PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Foundation, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other

party or third person on such Agreement. It is the express intention of the City and the Foundation that any person other than the parties hereto receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

29. **NON-WAIVER.** A failure by either party to take any action with respect to any default or violation by the other party of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the first party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

30. **ALCOHOL & DRUGS POLICY; SMOKING POLICY.**

(a) The Foundation, its officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring the Foundation from City facilities or participating in City operations. The Foundation, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. Further, the Foundation shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. The Foundation agrees not to use any funds received from the City under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.

(b) The Foundation agrees to adopt and enforce a “no smoking” policy in all areas of the Facilities except for limited, designated areas available for employee smoking. The Foundation’s written smoking policy shall be in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the Manager and generally applicable to specified facilities under the auspices of Parks and Recreation.

31. **FORCE MAJEURE.** If any party to this Agreement is rendered unable, wholly or in part, by an event of force majeure or any other cause not reasonably within its control, to perform or comply with any obligation or condition of this Agreement, such party, upon giving notice and reasonably full particulars to the other party, be relieved of such obligation or condition during the continuance of such inability. The term “force majeure” shall include acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes and any other industrial, civil or public disturbance, inability to obtain materials, supplies, permits or labor, and any laws, orders, rules, regulations, acts, or restraints of any government or governmental body or authority, civil or military. Written notice of any claim of inability to perform or comply due to force majeure must be promptly given as provided in paragraph 33 below.

32. **TERMINATION.** Other than as provided in paragraph 2 above, this Agreement may be terminated only as follows:

(a) In the event that the Foundation shall default, on its part, in the performance or fulfillment of any material term, covenant, or condition herein contained and shall fail to cure such default within ninety (90) days following delivery of written notice, as provided in paragraph 33 below, from the Manager specifying the default(s) and the date on which the City may exercise its right to terminate the Agreement if such default(s) is not cured. Upon written request of the Foundation submitted not less than thirty (30) days prior to termination date, the City shall provide the Foundation with an opportunity to be heard on the matter before the Mayor and the City Council prior to the termination date or any extension date agreed to in accordance with subparagraph (c) below. If, after notice and an opportunity to be heard, the Mayor decides to terminate the Agreement if the default(s) is not cured by the termination date or any extension date, then the Manager shall so notify the Foundation that the provisions of subparagraph (d) below shall be effective on the later of these two dates. As used in this subparagraph, the term "Mayor" shall also mean the Deputy Mayor exercising such authority as provided in Article I of the City Charter.

(b) In the event that the City shall default, on its part, in the performance or fulfillment of any material term, covenant, or condition herein contained and shall fail to cure such default within ninety (90) days following delivery of written notice, as provided in paragraph 33 below, from the Board of the Foundation specifying the default(s) and the date on which the Foundation may exercise its right to terminate the Agreement if such default(s) is not cured. If the default(s) is not cured or some other resolution is not reached at least thirty (30) days prior to the termination date or any extension date agreed to in accordance with subparagraph (c) below, the Foundation shall so notify the Manager that the provisions of subparagraph (d) below shall be effective on the later of these two dates if the default(s) is not cured.

(c) The time to cure any default may be extended to a date certain upon mutual agreement of the parties. If the default is not cured in accordance with said agreement, this Agreement may be terminated by written notice as provided in paragraph 33 below.

(d) Upon termination of this Agreement, including termination or expiration of this Agreement as provided in paragraph 2 above, the Facilities and all fixtures and other permanent improvements contained therein or upon any other City-owned property shall remain the property of the City, and all personal property acquired by public funds, in whole or part, or used for or integral to the maintenance, management, or operation of the Facilities, including all equipment, supplies, animals, plants, collections, and vehicles, shall immediately become the property of the City. The Foundation shall take all reasonable measures to turn over the Facilities and any other City-owned property to the City in a timely manner and in reasonably good operating condition. Any public funds that have not been used by the Foundation under this Agreement and not needed to cover the Foundation's obligations incurred in performing its duties under this Agreement shall be promptly returned to the City. All remaining funds (including, without limitation, funds held by the Foundation as endowment) and other real and personal property held by the Foundation (not otherwise conveyed to the City under this subparagraph) shall be used or distributed by the Foundation consistent with the duties and obligations of the Foundation towards the donors of any such funds or of any real or personal

property and in furtherance of its corporate purposes related to the establishment and maintenance of zoological gardens and the advancement of zoological science and education.

33. **NOTICES.** All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered as provided in this paragraph (unless the means of delivery is otherwise expressly specified in this Agreement). Notices shall be deemed delivered upon receipt, if delivered personally or by facsimile transmission (receipt verified by telephone), or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to the Foundation:

Denver Zoological Foundation, Inc.
Attention: President
2300 Steele Street
Denver, Colorado 80205

cc: Chairman of the Board

If to the City or the Manager:

Manager of Parks and Recreation
City and County of Denver
2300 15th Street, Suite 150
Denver, Colorado 80202

cc: President, City Council

The address for any party set forth above may be changed at any time by written notice in the manner provided herein to all other parties.

34. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

35. **LEGAL AUTHORITY.**

(a) The Foundation warrants that it possesses the legal authority, pursuant to any proper and official motion, resolution or action passed or taken, to enter into this Agreement.

(b) The person(s) signing and executing this Agreement on behalf of the Foundation does hereby warrant and guarantee that the signatory(ies) below has been fully authorized by the Foundation to execute this Agreement on behalf of the Foundation and to validly and legally bind the Foundation to the obligation and performance of all the terms, covenants, and conditions herein set forth.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

"Foundation"

DENVER ZOOLOGICAL FOUNDATION, INC.,
a Colorado nonprofit corporation
Taxpayer (EIN) No. 84-0502539

ATTEST:

Patricia A. Hordesch
Secretary

By: Bruce D. Benson
Bruce D. Benson, Chairman of the Board

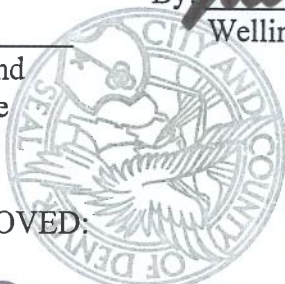
"City"

CITY AND COUNTY OF DENVER,
a municipal corporation

ATTEST:

Rosemary E. Rodriguez
Rosemary E. Rodriguez, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: Wellington E. Webb
Wellington E. Webb, Mayor



RECOMMENDED AND APPROVED:

By: Betty Jean Brooks
Betty Jean "B.J." Brooks,
Manager of Parks and Recreation

APPROVED AS TO FORM:

Daniel E. Muse, City Attorney

By: Patrick A. Wheeler
Patrick A. Wheeler
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: Donald J. Mares
Donald J. Mares, Auditor
Contract Control No. _____

[AGREEMENT INCLUDES EXHIBITS "A" & "B" ATTACHED.]

G:\WHEELER\ZOO\COOP.AG4

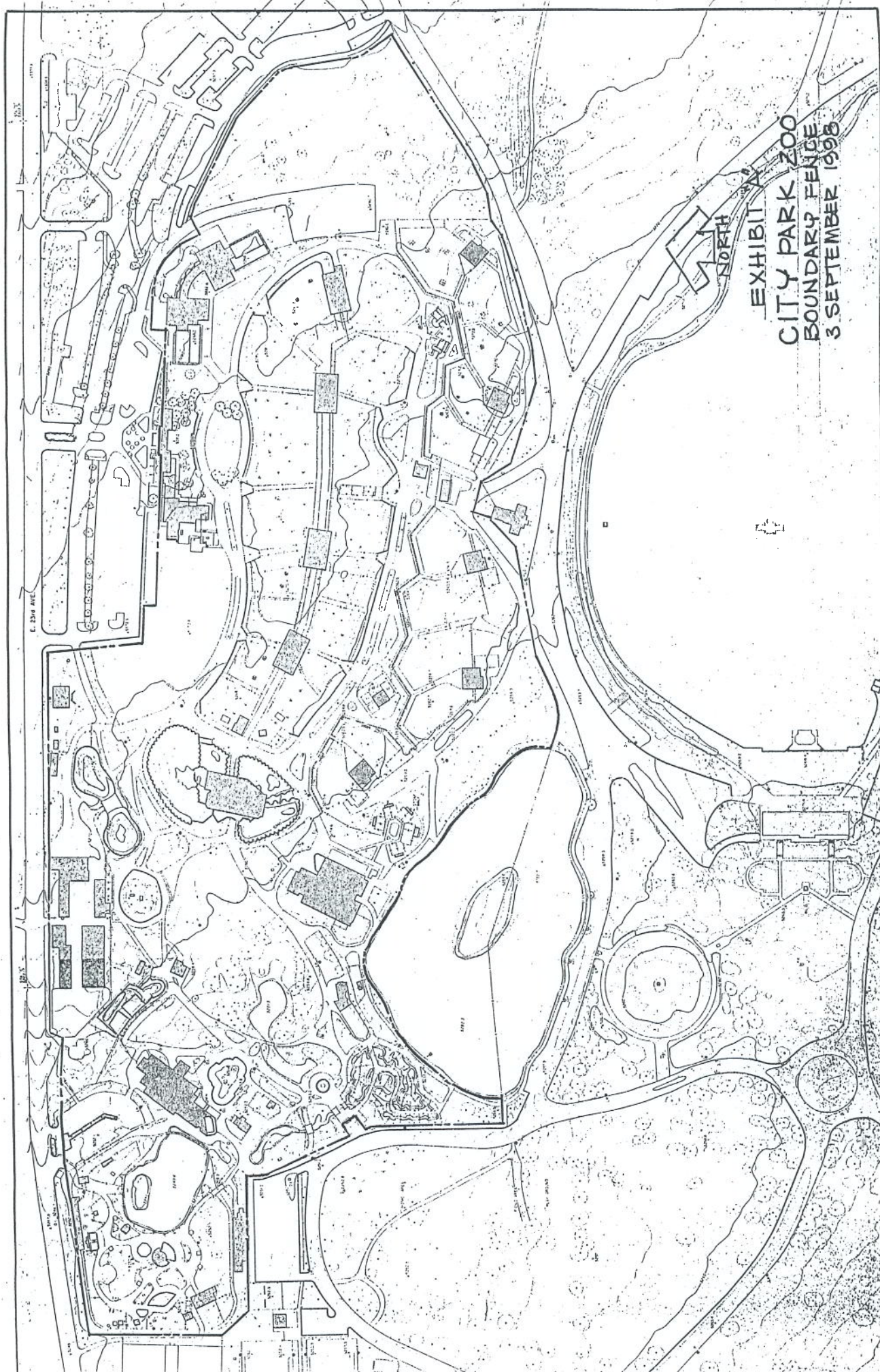


EXHIBIT A
CITY PARK ZOO
BOUNDARY FENCE
3 SEPTEMBER 1998

E. 2348 AVE.

12.35

EXHIBIT B

City CSA Positions to be Converted to DZF

<u>Title</u>	<u>Position #</u>
Zoo Director	12600
Assistant Zoo Director	12616
Administrative Assistant	12635
Zoo Curator	12646
Zoo Veterinarian	23264
Zoo Veterinarian	30021
Associate Zoo Curator	12604
Associate Zoo Curator	12645
Associate Zoo Curator	32288
Zoo Operations Manager	31260
Visitor Services Manager	27105
Horticultural Superintendent	30050
Education Program Coordinator	20725



WELLINGTON E. WEBB
Mayor

CITY AND COUNTY OF DENVER

DEPARTMENT OF PARKS AND RECREATION
Betty "BJ" Brooks, Manager

OFFICE OF THE MANAGER
2300 15TH STREET
DENVER, CO 80202
PHONE: (303) 964-2510
FAX: (303) 964-2559

September 28, 2000

Clayton F. Freiheit, President/CEO
Denver Zoological Foundation
2300 Steele Street
Denver, CO 80205

Dear Dr. Freiheit,

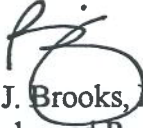
The City Park Master Plan and its supplemental document, the Land Use and Circulation Study, call for a pro-active approach to addressing the parking issues in City Park. Towards that end we have accomplished much in 2000, such as the Zoo Facilities Agreement and the Memorandum of Understanding.

With the approval of the Parks and Recreation Advisory Board to construct an underground parking facility at the main zoo entrance, we are now ready to proceed with necessary reviews of design documents. The letter of assignment from the City and County of Denver to the Zoological Foundation will provide necessary permissions for construction on city property.

It has come to my attention that the Zoo Cooperative Agreement constrains this project in terms of the proposed location, because while it is still in City Park, the project is situated outside the designated boundaries of the Zoo. Therefore, in accordance with the Cooperative Agreement, I hereby designate such additional space as is necessary for the construction and operation of a parking facility (as currently proposed) be included into the geographical area of the Denver Zoological Gardens. It is in the public interest and for the betterment of the Denver Zoological Gardens that this additional space be made available and used for the purposes of a parking facility to serve the Zoo. The boundary map attached to the Cooperative Agreement is to be amended to show that the area that will contain the parking facility has been included into the boundaries of the Denver Zoological Gardens.

The Park and Recreation Advisory Board will continue its involvement with design review and public comments. Additionally, all design approval authority, as set forth in the letter of assignment to be executed, will apply to this construction project. This project, in implementing the City Park Plan recommendation on parking solutions, has been long awaited. Thank you for your support with this major project.

Sincerely,

A handwritten signature in black ink, appearing to read 'B.J. Brooks', written over a circular stamp or mark.

B.J. Brooks, Manager
Parks and Recreation

cc: Tim Celesta, Advisory Board President
Patrick Wheeler, Assistant City Attorney
Andy Weber, Assistant City Attorney
Stephanie Foote, Manager, Public Works

Exhibit "A"
 Denver Zoo Boundary
 September 28, 2000



→ Bird World Expansion & Renovation

→ Waterfowl Aviary & Breeding Complex

→ Sanburu Springs

Duck Lake

→ Asian Grasslands & Temperate Forest

→ Lion Koppie Exhibit

→ Asian Village

→ Asian Tropical Forest

→ Predator Ridge

→ Ituri Forest

→ Asian Highlands

→ 23rd Avenue

→ Interpretive Center

→ New Arrival Plaza & Main Entry

→ Australia & South American Exhibits

→ To Colorado Blvd.

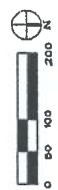
→ To York Street

→ Sanburu Lodge Cafe

→ Colorado Trail

→ Carrousel

→ New Underground Parking Garage



denver zoological foundation



2300 STEELE STREET

DENVER, CO 80205-4899

PHONE: 303-376-4800

FAX: 303-376-4801

TDD: 303-376-4802

October 18, 2000

Ms. Betty Jean "B.J." Brooks, Manager
Denver Parks and Recreation Dept.
2300 15th Street
Denver, Colorado 80202

RE: Adjustment of Denver Zoo boundaries

Dear B.J.:

On behalf of the Denver Zoological Foundation we want to express our continuing appreciation to you for all of the assistance you and your department have provided in helping both the Denver Zoo and the local neighborhoods alleviate the zoo and City Park parking problems.

We understand that the City Attorney's office has determined that the Denver Zoological Foundation cannot proceed to construct and operate a new underground parking structure in front of the zoo without having the current zoo boundaries adjusted to include this parking area. Accordingly, we have enclosed a preliminary map of the area currently outside of the zoo boundary fence that is likely to be used for the new parking structure, and thus would be included within the designated new zoo boundary. Once our contracted design-build team has completed the final design for the new parking structure, we will then be able to define the new zoo boundary more precisely, and can then provide you with a revised map.

We do want to assure you, and our local neighbors, that the Denver Zoological Foundation has absolutely no plans, nor even any desire, to utilize the area being added to the zoo grounds for any purpose whatsoever other than the construction and operation of the new parking facility and improved zoo entryway. In fact, the U. S. Department of Agriculture, which licenses the zoo, as it does all exotic animal holding facilities, requires that we maintain an exterior fence sufficient to contain wild animals that can be easily secured from all exterior areas. It simply would not be feasible to design and operate a parking facility open to the public that could be enclosed within our boundary fence and still meet USDA requirements.

Sincerely,

Bruce D. Benson, Chairman
DZF Board of Trustees

Brian W. Klepinger, Ph.D.
Executive Vice President/COO

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