

OPERATING AGREEMENT: RACINE ZOOLOGICAL GARDENS

This Agreement is made this ____ day of _____, 2005 by and between the CITY OF RACINE, a municipal corporation of the State of Wisconsin (the "City") and the RACINE ZOOLOGICAL SOCIETY, INC., a non-profit corporation (as described in Title 26 Sec. 501(c)(3) U.S. Code) (the "Society").

In consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the City and the Society agree as follows:

SECTION 1 - GENERAL STATEMENT OF AGREEMENT

1.01 **Intent.** In order to comply with the request of the AZA (Association of Zoos & Aquariums), extend by two years the time period for the agreement: "Both parties wish to have the Society continue to operate the Zoo for a seven-year term to begin on January 1, 2006.

1.02 **Understandings of the Parties.** The parties to this agreement are the City and the Society. The City owns the Zoo properties, including its animal collection. The Society manages the operations of the property, the care of the animal collection, and oversees other events that are held on the grounds of the Zoo. The Society provides substantial capital contributions to the improvement of the Zoo's physical assets and its animal collection—capital improvements that the City comes to own. The Society annually provides substantial operating funds necessary to make the Zoo an exemplary, accredited facility. The City is the clear, and continuing, beneficiary of these efforts of the Society. The Society appreciates the constructive history of its relationship with the City—one that dates to 1924. Both parties enter into this Agreement with the intent to make this relationship a continuing hallmark of public-private endeavors.

SECTION 2 - OPERATING CONTROL

2.01 **General Operating Control.** General operating control of the Zoo is hereby granted to the Society for the term of this Agreement. For purposes of this Agreement, the expression "general operating control" means the full power and authority to administer, control and manage the Zoo in all respects and in such a

manner as will beneficially serve the interests of the Zoo as determined by the Society. Authority retained by the City under this Agreement shall be exercised by its Common Council and Board of Parks, Recreation and Cultural Services Commissioners or their successors.

2.02 **Society Powers.** The powers and responsibilities granted to the Society under this Agreement include, without limitation, the following:

- (a) The management, administration, and control of Zoo exhibitions.
- (b) The conduct of education programs and other public programs and functions relating to Zoo exhibitions.
- (c) The right to subcontract for the provision of services and to negotiate and enter into lease agreements, subject to such contractors and lessees maintaining reasonable insurance coverage relating to the contracted service.
- (d) The authority to schedule Zoo events by individuals, community groups, and other entities. The City reserves the right to continue existing City sponsored special events, which shall be scheduled in cooperation with the Society in such a way as not to interfere with the operation of the Zoo. This reservation of rights includes Municipal Band Concerts and summer playground activities.
- (e) The power and authority to designate the uses to which the Zoo grounds and facilities may be put, subject to reserved City uses as set forth under Section 2.02(d).
- (f) The employment of a Zoo staff. These personnel shall be deemed employees of the Society, which shall establish employee compensation, benefits, and shall determine other conditions of employment. Zoo personnel shall be trained to discharge duties relating to animal care and general Zoo operation and maintenance and shall be trained to deal with the public in a courteous and helpful manner in a recreational setting.
- (g) The performance of *regular maintenance* on Zoo structures and equipment owned by the City will be the sole responsibility of the Society. ("Regular maintenance" shall mean the set of activities that a reasonable custodian of an asset would undertake to make certain that a structure, an animal, or a piece of equipment, remains a functional capital component of Zoo operations. Examples would be these: painting of exposed wood surfaces, replacement of worn-

out tires on vehicles, and regular medical care for the animal collection.) The annual funding of such maintenance activities will be shared between the Society and the City as follows: (i) the City will bear the full cost of regular maintenance up to the level of \$32,000 annually; (ii) *additional* costs for such activities will be borne by the Society. The Society will not, later than July 15 and January 15 of each contract year, provide the City a description of the regular maintenance expenditures it has made in the prior six-month period. To the extent that such expenditures obligate City payment, it will make such payment within thirty days of receipt of the Society's notification. The Society will request assistance with regular maintenance from the Department of Parks, Recreation and Cultural Services in situations in which the Society believes the Department may be able to perform the specific maintenance required with City personnel in a more cost efficient manner, subject to payment by the Society of the cost of materials associated with such work.

(h) The management and control over buildings and land described in Exhibit A and the public parking lot previously described. This management and control includes the public sidewalks and parkway panels adjacent to the land described in Exhibit A. The Society is responsible for grass cutting and watering, flower planting and watering, snow plowing, salting and sanding, trash removal, janitorial services and the furnishing of chemical supplies with respect to the real estate under its management and control. Snow and ice control on the parking lot shall be retained by the City Parks, Recreation and Cultural Services Department.

(i) Legal title to the above-described real estate remains with the City. The Society may make capital improvements to the real estate subject to City approval, which approval will not be unreasonably withheld. For purposes of this Agreement, capital improvement shall include the construction, demolition, removal, or major alteration of buildings, and major excavations or alterations in the contour of land. The Society is also authorized to perform ordinary and necessary landscaping. The removal of mature trees is subject to the City's approval, which approval will not be unreasonably withheld. The Society shall not place liens or encumbrances on City owned real estate.

ii. The Society shall also provide some storage space to the City at the Zoo as agreed upon by the parties and consistent with efficient Zoo operations.

- (i) The responsibility for obtaining necessary licenses and permits.
- (j) The responsibility for soliciting contributions and Society memberships from the general public, which funds shall be used for the benefit of Zoo operations and capital improvements.

SECTION 3 - GENERAL INTENT

3.01 **Quality of Operation**. It is the intent of the parties that a quality Zoo continue to be maintained and operated in the City for the recreational enjoyment of the general public. In addition to the rights and responsibilities enumerated in Section 2, the Society is authorized to perform such other functions as may be necessary for the operation of the Zoo for the benefit of the general public. The Society shall strive to maintain a standard of Zoo operations that comports with the requirements of accreditation under the Standards of the American Zoo and Aquarium Association. The operations of the Zoo by the Society shall further comply in all material respects with all applicable federal, state, and municipal laws and regulations.

SECTION 4 - CITY RESPONSIBILITIES

4.01 **City Functions**. During the term of this Agreement the City shall perform the following functions:

(a) The Society may implement capital improvement projects that are included in the City's Capital Improvement Plan ("CIP") without further pre-approval by the City. Capital improvement projects the cost of which is estimated to be less than the amount requiring public bidding under Wis. Stat. §62.15 and City Ordinance Sec. 46-28, shall not require prior approval of the City. Capital improvement projects that require public bidding and are not included in City's CIP shall be subject to City's specific prior approval. City shall promptly review or cause to be reviewed capital improvement projects recommended to it by the Society. Capital projects requiring City's prior specific approval shall be submitted in writing to the City of Racine Common Council through the City Clerk, with a copy to the Director of Parks, Recreation and Cultural Services, and referred to the proper committee or commission for review. The City agrees that if such a capital improvement project is to be financed solely from Society funds, the approval of said project by the City will not be unreasonably withheld.

(b) The Racine Zoological Society (RZS) is interested to have up to three persons appointed by the City to the RZS Board of Directors. It will approve service by an aldermanic representative, the City Director of Parks, Recreation and Cultural Services (or designee of that Director), and an additional person appointed by the Mayor as

regular voting members of the Society's Board of Directors. The Society shall accept these individuals appointed by the City as members of its Board of Directors or show why such service would not be appropriate.

(c) It shall retain title to the real estate, which is made the subject of this Agreement, and shall include all buildings and improvements thereon and shall retain these in its insurance coverage so as to protect the City's interest therein, such insurance to be as set forth in the attached *Exhibit B*.

SECTION 5 - CITY SUBSIDY

5.01 **Subsidy.** The City acknowledges that the Society is not capable of providing all of the financial needs for Zoo operations. Therefore, the City agrees to contribute a fixed sum to those operations in addition to capital improvements and operational maintenance expense items referred to under this Agreement. The City shall contribute to the Society the sum of \$550,000 per year for the first five years and the sum of \$650,000 per year for the last two years of this Agreement.

5.02 **Payments/Financial Reporting.** All payments shall be made by the City to the Treasurer of the Society at an address or to a depository to be furnished in writing by the Society to the City Finance Director. The Society shall submit an annual audited financial report to the City July 1 of each year, such report being for the preceding year.

5.03 **Books and Records.** The Society further agrees that the City Finance Director may inspect the books and records of the Society relating to Zoo operations and may audit or cause to be audited these books and records. The Society shall further submit, when requested by City's Finance Director, statistical records relating to the use and activities of the Zoo.

SECTION 6 - TERM

6.01 **Term.** This Agreement is for a seven-year term from January 1, 2006 through December 31, 2012.

6.02 **Breach.** Either party may terminate this Agreement for a material breach of any of the terms and conditions of this Agreement. Such termination shall be effective thirty days after written termination notice is sent by one party to the other. The termination notice shall state the alleged breach of the Agreement that forms the basis of the termination notice. The notice shall further provide that unless the violation is corrected within the thirty day period, the Agreement shall terminate at the end of such period.

6.03 **Effect of Termination.** Upon termination, the general operating control of the Zoo shall be returned to the City effective on the date of termination. In addition, all equipment and supplies in the possession of the Society and owned by the City shall be returned to the City. It is further agreed that all capital improvements placed at the Zoo, whether at Society's expense or at the City's expense, shall become the property of the City on the date of termination.

6.04 **Suspension.** The City further reserves the right to suspend the Society's right under this Agreement to operate the Zoo if it determines that an emergency exists involving public health and safety, or the health and safety of the Zoo animals. Such suspension shall be on such terms and conditions as may be prescribed by the Mayor of the City of Racine and shall be of such duration as to insure that public health and safety and the welfare of the Zoo animals are secure.

SECTION 7 - ZOO ANIMALS

7.01 **Custody of Animals.** The City has previously transferred custody and control of all animals on exhibit at the Zoo to the Society. This custody and control shall continue for the term of this Agreement. This transfer of custody and control is intended to be for the purpose of safekeeping of the Zoo animals and convenient operation of the Zoo by the Society. The Society agrees to accept said custody and control and, further, shall take and maintain a written inventory of said animals. The Society further agrees that it shall treat, keep and care for said animals to the best of its ability. The Society shall have the authority to sell or trade animals for the sole purpose of improving the exhibits at the Zoo and shall annually provide the City with a current inventory of said animals. The Society further agrees to maintain an inventory of animals in substantially the same number or increased numbers during the term of this Agreement so as to provide a suitable number of animal exhibits for the interest of the general public. The Society shall provide all care and maintenance for the animals at its expense.

SECTION 8 - CITY ACCESS

8.01 **Zoo Access.** The City shall at all times, through its authorized representatives, as designated by the Director of Parks, Recreation and Cultural Services have access without restriction to all parts of the Zoo. The Society shall keep the Zoo open to the general public during the term of this Agreement on a regular basis at such times as shall afford the general public an opportunity to have reasonable access thereto. The Society is authorized to make and enforce rules and regulations affecting public use of the Zoo as may be necessary to insure an orderly operation and in the interest of public health and safety, and the health and safety of the Zoo animals. The Society shall submit a current list of these rules and regulations to the City by January 15 of each year.

8.02 **Discrimination.** The Society agrees that its operation of the Zoo will not deny any person its use or otherwise discriminate against any person or permit

discrimination against any person or group of persons in any manner prohibited by Title VII of the Civil Rights Act of 1964 or amendments thereto, or Section 62-37 of the Municipal Code of the City of Racine.

SECTION 9 - MISCELLANEOUS

9.01 **Notices.** All notices under this Agreement shall be sent in writing to the address of the parties as follows: The City's address is City of Racine, Office of the City Clerk, 730 Washington Avenue, Racine, Wisconsin 53403. The Society's address is 200 Goold Street, Racine, Wisconsin 53402. At the termination or expiration of this Agreement, control and operation of the Zoo shall revert to the City. The Society shall thereafter have a reasonable time within which to remove any equipment and other items of personal property that it owns.

9.02 **Insurance.**

(a) The City shall maintain the insurance coverage set forth in *Exhibit B* during the term of this Agreement.

(b) The Society shall maintain insurance coverage as set forth in the attached *Exhibit C* during the term of this Agreement. The City shall be listed as an additional insured under this insurance coverage.

9.03 **Assignability.** The Society is prohibited from assigning this Agreement or any portion thereof to any third persons without the prior written consent of the City.

9.04 **Severability.** In the event that any part or portion of this Agreement shall be declared invalid by a court of competent jurisdiction or is otherwise determined to be in violation of any law, it is agreed that the balance of this Agreement (exclusive of the section or portion determined to be invalid or unlawful) shall remain in full force and effect.

9.05 **Modification.** This Agreement may not be modified or added to by any agreement or representation that is not expressly set forth in this document. This Agreement may only be changed or modified by an agreement that is in writing and has been duly authorized and executed by both parties to this Agreement.

9.06 **Exhibits.** Exhibits A, B and C are expressly made a part of this Agreement.

9.07 **Captions.** Caption designations are for reference only. They shall not be deemed to interpret, modify, or in any way limit the meaning of this Agreement.

9.08 **Waiver.** The waiver by either party of nonperformance or any breach of any provision of this Agreement will not constitute a waiver of any subsequent nonperformance or other breach of the same or any other provision.

IN WITNESS WHEREOF, the parties have set their hands and seal on the date first written.

CITY OF RACINE

RACINE ZOOLOGICAL SOCIETY, INC.

Gary Becker, Mayor

David Easley, Board Chair

Attest:

Carolyn L. Moskonas, City Clerk

APPROVED AS TO FORM:

Daniel P. Wright, City Attorney

Provisions have been made to pay the liability that will accrue hereunder.

David Brown, Acting Finance Director

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