

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 03-3319A
RELEASE OF RFP 03-1065-ZOO FOR RETAIL)
OPERATIONS AT THE OREGON ZOO AND) Introduced by Michael Jordan, Chief
EXEMPTING SELECTED CONTRACTOR) Operating Officer, with the concurrence of
FROM EXCISE TAX) David Bragdon, Council President

WHEREAS, The Oregon Zoo is dependent on enterprise income for over 60% of its operating budget, and

WHEREAS, retail sales are a critical component of the Zoo's revenue base, and

WHEREAS, currently retail sales at Oregon Zoo are below the median for similar zoos, and

WHEREAS, an operating contract with a retail expert should increase operating revenues for the Oregon Zoo, and

WHEREAS, the prospective contractor will provide Metro with a percentage rent payment and is not providing a Metro good or service and will not be willing to pay Metro excise tax on retail gross revenues over and above the percentage rent payment, and

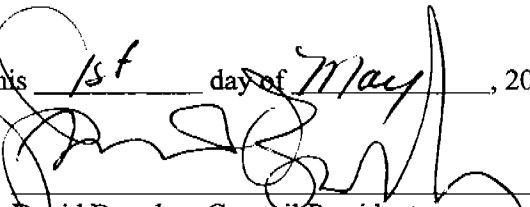
WHEREAS, this resolution is submitted by the Chief Operating Officer for consideration of the Metro Council for approval; now, therefore,

BE IT RESOLVED:

That the Metro Council,

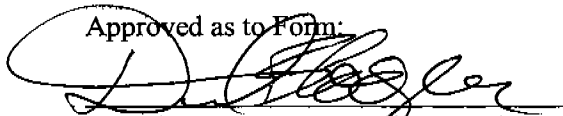
1. Authorizes the issuance of RFP 03-1065-ZOO, attached as Exhibit A.

ADOPTED by the Metro Contract Review Board this 1st day of May, 2003.

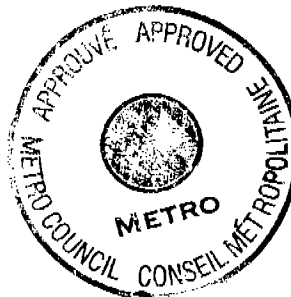


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, General Counsel



BEFORE THE METRO COUNCIL

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WHEREAS, the prospective contractor will provide Metro with a percentage rent payment and is not providing a Metro good or service and will not be willing to pay Metro excise tax on retail gross revenues over and above the percentage rent payment, and

WHEREAS, this resolution is submitted by the Chief Operating Officer for consideration of the Metro Council for approval; now, therefore,

BE IT RESOLVED:

That the Metro Council,

1. Authorizes the issuance of RFP 03-1065-ZOO, attached as Exhibit A, and authorizes the Chief Operating Officer to execute a contract with the most responsive and responsible proposer, and
2. Exempts the selected contractor from Metro excise tax on operators and users of Metro facilities, (excise tax will be received on percentage rent payments to Metro).

ADOPTED by the Metro Contract Review Board this _____ day of _____, 2003.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

EXHIBIT A
REQUEST FOR PROPOSALS
RETAIL OPERATIONS
RFP 03-1065-ZOO

I. INTRODUCTION

The Oregon Zoo, a service of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for retail operations services. Proposals will be due no later than 3:00 p.m., Wednesday, June 11, 2003 in the zoo's administration offices at 4001 S. W. Canyon Rd, Portland, OR 97221. Details concerning the project and proposal are contained in this document.

II. BACKGROUND/HISTORY OF PROJECT

The Oregon Zoo, located in Portland, Oregon, is the leading fee based visitor attraction in the state. The zoo is achieving record breaking attendance, with over 1.3 million people visiting in fiscal year 2001 - 2002. The Oregon Zoo runs a successful retail operation, and is considering initiating a retail operations contract to further enhance revenues in the retail area.

The zoo is desirous of creating a winning relationship with a highly qualified firm to operate the main gift shop and the satellite locations on zoo grounds over the next five years. If the zoo is satisfied that an advantageous relationship can be established, the firm awarded the contract will be responsible for retail operations at the zoo, including providing financial reports, necessary equipment, maintenance and improvements of the retail outlets, and initial inventory buyout. The contract would require the successful proposer to pay Zoo a percentage of gross sales, with a minimum financial guarantee to the Zoo.

III. PROPOSED SCOPE OF WORK/SCHEDULE

The Oregon Zoo is seeking proposals from qualified firms to perform the following services:
Operate the retail program at the Oregon Zoo according to the scope of work defined in Attachment A.

IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following experience:

1. Must have considerable experience operating retail stores in an attractions setting, such as a zoo, aquarium, theme park or museum.
2. Must be able to demonstrate high levels of per capita income and client satisfaction at current operations.
3. Must be knowledgeable of current practices in retail management, inventory control, visual merchandising and customer expectations.
4. Must utilize state of the art point of sale equipment and be able to provide detailed financial reporting.
5. Must employ a management team that is highly professional and be able to demonstrate the ability to provide adequate time and attention to achieve the success of the Oregon Zoo retail operations.
6. Must demonstrate an ability to operate sensitively in a conservation education zoo environment, with a thorough understanding and empathy towards how the business goals of the Oregon Zoo fit into this setting.

7. Must be able to provide services at the level outlined in the scope of work.
8. Must have experience with website development and on-line sales.

V. PROJECT ADMINISTRATION

Staffing/Project Manager Designation: Identify specific personnel assigned to major project tasks, their roles in relation to the work required, percent of their time on the project, and special qualifications they may bring to the project. Include resumes of individuals proposed for this contract.

VI. PROPOSAL INSTRUCTIONS

A. Submission of Proposals

Two (2) copies of the proposal shall be furnished to the zoo, addressed to:
Teri Dresler, Guest Services Manager
Oregon Zoo
4001 S. W. Canyon Road
Portland, OR 97221

B. Deadline

Proposals will not be considered if received after 3:00 p.m. on Wednesday, June 11, 2003.

C. RFP as Basis for Proposals:

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Teri Dresler at (503) 220-2453 or dreslert@metro.dst.or.us. Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received after June 5, 2003.

D. Information Release

All proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all proposers agree to such activity and release Metro from all claims arising from such activity.

E. Minority and Women-Owned Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the proposer's attention is directed to Metro Code provisions 2.04.100.

Copies of that document are available from the Risk and Contracts Management Division of Administrative Services, Metro, Metro Center, 600 NE Grand Avenue, Portland, OR 97232 or call (503) 797-1816.

VII. PROPOSAL CONTENTS

The proposal should contain written material describing the ability of the firm to perform the work requested, as outlined below.

- A. Transmittal Letter: Provide information about your firm. Indicate who will be assigned to the operation, who will be project manager, and that the proposal will be valid for ninety (90) days.
- B. Approach/Project Work Plan: Describe how the retail operations will be conducted. Include a proposed work plan and schedule.
- C. Staffing/Project Manager Designation: Identify specific personnel assigned to major project tasks, their roles in relation to the work required, percent of their time on the project, and special qualifications they may bring to the project. Include resumes of individuals proposed for this contract.

Metro intends to award this contract to a single firm to provide the services required. Proposals must identify a single person as project manager to work with Metro. The firm must assure responsibility for any subcontractor work and shall be responsible for the day-to-day direction and internal management of the work effort.

- D. Experience: Indicate how your firm meets the experience requirements listed in section IV of this RFP. List projects conducted over the past five years which involved services similar to the services required here. For each of these other projects, include the name of the customer contact person, his/her title, role on the project, and telephone number. Identify persons on the proposed project team who worked on each of the other projects listed, and their respective roles.
- E. Cost/Budget: Describe financial goals for the retail operation of the Oregon Zoo and explain how the firm will achieve those goals.
- F. Exceptions and Comments: To facilitate evaluation of proposals, all responding firms will adhere to the format outlined within this RFP. Firms wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized.

VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals

with authority to bind any company contacted during the period in which Metro is evaluating the proposal.

- C. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

IX. EVALUATION OF PROPOSALS

- A. Evaluation Procedure: Proposals received that conform to the proposal instructions will be evaluated by the Zoo Director, the Guest Services Manager, Metro's Director of Business Support Services, and other individuals deemed appropriate. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of one firm.
- B. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.
1. Work Plan/Approach (10 points)
 - a. Demonstration of understanding of the scope of work objectives
 - b. Plan and approach for running retail operations
 2. Qualifications of Firm
 - a. Project leaders (10 points)
 - b. Commitment to project (10 points)
 - c. Experience with similar retail operations (30 points)
 3. Timeline (10 points)

Ability of the firm to begin operations in a timely manner.
 4. Budget/Cost Proposal (30 points)
 - a. Percentage of gross receipts transmitted to the zoo.
 - b. Ability to maximize value to the zoo.

X. NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached Personal Services Agreement (Attachment B) is a standard agreement approved for use by the Metro Office of General Counsel. This is the contract the successful proposer will enter into with Metro; it is included for your review prior to submitting a proposal.

ATTACHMENT B

Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and _____ referred to herein as "Contractor," located at _____.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective _____ and shall remain in effect until and including _____, unless terminated or extended as provided in this Agreement.

2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A — Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed _____ AND _____/100THS DOLLARS (\$_____).

4. Insurance.

a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:

(1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage; and

(2) Automobile bodily injury and property damage liability insurance coverage shall be a minimum of \$1,000,000 per occurrence.

b. **Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.** Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

c. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without

the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

d. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$1,000,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

e. Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or

claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

CONTRACTOR

METRO

By _____

By _____

Title _____

Title _____

Date _____

Date _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 03-3319 FOR THE PURPOSE OF AUTHORIZING RELEASE OF RFP 03-1065-ZOO FOR RETAIL OPERATIONS SERVICES AT THE OREGON ZOO AND EXEMPTING THE SELECTED CONTRACTOR FROM PAYING EXCISE TAX

Date: April 17, 2003

Presented by: Teri Dresler

BACKGROUND

The Oregon Zoo is dependent on enterprise revenue for over 60% of its operating requirements. Retail sales are a critical component of the Zoo's revenue base. Although the Zoo has been highly successful in its food operations, and has the highest per capita food and catering sales of comparable zoos (according to *The State of the Industry: Zoo and Aquarium Visitor Services in North America, A Survey of Operational Data for 2000*), it is below the median for retail sales.

Many of the zoos with high per capita retail sales figures use the services of highly qualified retail experts to run their retail operations. Services such as buying, monitoring of industry trends, refining of best practices for retail operations, and point of sale equipment expertise may be shared across the operations of several facilities.

It is the Zoo's intention to issue an RFP to solicit proposals from highly qualified retail firms, select the firm that best meets the Zoo's operational needs and returns the highest percentage of gross sales to Zoo operations.

BUDGET IMPACT

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents**

Metro Code section 2.04.026 (1)(A) requires Council approval for private operation of Metro concessions.

Metro Code section 2.04.054(c) authorizes, subject to ORS 279.015, the use of alternative contracting practices that take into account market realities and innovative contracting methods consistent with the public policy of encouraging competition.

Metro Code section 7.01.020 provides for users of Metro facilities to pay excise tax, unless exempted as provided therein.

3. **Anticipated Effects**

Employees: There are currently 1.85 regular FTE and between 50 - 75 seasonal staff in the retail section. The full and part-time regular staff will be re-deployed within the Guest Services Division without loss of wages or benefits. The seasonal staff will have the opportunity to apply for employment with the prospective contractor, or as seasonal positions become available in the Guest Services Division, those individuals will be considered.

Additional Revenue: It is expected that the increased retail sales resulting from this change will generate over \$ 800,000 in additional revenue to the Zoo over the five years of the contract.

Costs Savings: The cost of in-house service delivery is reduced. Costs reduction includes direct cost including inventory, wages, benefits, PERS, and indirect cost savings including eliminating purchasing and accounting transactions, along with other overhead charges. Direct cost reductions will be approximately \$1,200,000 annually.

Excise Tax: Current excise tax requirements provides for tax to be paid on each item sold. In a competitive environment, this additional tax is a hardship. The Zoo recommends that the excise tax is based on the amount the contractor pays the Zoo.

4. Budget Impacts

The Zoo expects that the initial increase in per capita sales as a result of an operating contract will be at least 50 cents compared to current sales within two years of start-up. The Zoo will pay excise tax on the percentage of gross sales paid by the contractor to the Zoo.

RECOMMENDATION

The Chief Operating Officer recommends approval of Resolution No.03-3319.

ATTACHMENT A
SCOPE OF WORK
RETAIL OPERATIONS
RFP 03-1065 ZOO

1. Space:

The retail shop located near the main entrance to the Zoo (Cascade Outfitters); and any existing office space in the Zoo that is currently dedicated to the retail operation; and retail kiosks in numbers and locations to be determined by the Zoo, with Contractor's advice (collectively, the "Premises", which currently totals approximately 4,000 square feet of space).

2. Use:

Within the Premises, which shall be the only locations within the Zoo where merchandise is sold, the retail sale of educational and Zoo-related gift items and non-food merchandise including, but not limited to, the sale of books, prints, statuary, jewelry, stuffed animals, posters, paintings, paper products, educational children's gifts, design objects, decorative accessories, design furniture, clothing, accessories, and collectibles for adults and children in connection with Zoo promotions and exhibits, and other similar type merchandise, and for no other purpose whatsoever. ZOO shall have the right to require CONTRACTOR to remove from the Premises or prohibit CONTRACTOR from selling in the Premises merchandise that ZOO's Guest Services Manager, in her sole discretion, determines is inappropriate for display and sale in the Premises or inconsistent with ZOO's mission statement.

3. Term:

Five (5) years commencing on July 1, 2003 (commencement date) and continuing through June 30, 2008.

Renewal Term: The Contract may be extended once, for an additional 5-year term, in Metro's sole discretion.

4. Percentage of Gross Receipts:

CONTRACTOR shall pay ZOO 26 % of gross receipts. The percentage of gross receipts shall be paid monthly in arrears no later than the 5th day of each month, the first due date following the commencement date being August 5, 2003. The term "gross receipts" shall mean the dollar aggregate of:

- a. the sales price charged for all goods, wares and merchandise sold and the charges for all services rendered or performed by CONTRACTOR or otherwise, from all business conducted on, in, at, or from the Premises, whether made for cash, by check, on credit, charge account, exchange or otherwise, without reserve or deduction for inability or failure to collect for the same, and regardless of the amount, if any, of profits realized on any transaction, including, but not limited to, such sales and services (i) where the orders therefore originate at and are accepted by CONTRACTOR in the Premises, but delivery or performance thereof is made from or at any other place; (ii) pursuant to mail, telegraph, internet, telephone or other similar orders received or billed at or from the Premises; (iii) by means of mechanical or other vending devices; (iv) as a result of transactions originating from whatever source, and which CONTRACTOR in the normal and customary course of its operations would credit or attribute to its business; and

- b. All moneys or other things of value received by CONTRACTOR from its operations, which are neither included in nor excluded from gross receipts by the other provisions of this definition. All sales and orders originally made in or at the Premises shall be considered as made and completed therein, even though payment of the account may be transferred to some other office of CONTRACTOR for collection, or although delivery of merchandise sold or the performance of service ordered in or at the Premises be made from or at a place other than the Premises.
- c. The term "gross receipts" shall not include (or if included, there shall be deducted to the extent of such inclusion) the following: (a) the selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made thereon, or the amount of discounts or allowances made in lieu of acceptance thereof, (b) Zoo Member Discounts (as defined in paragraph 14).

5. Annual Payment Guarantee:

Annual payment guarantees will be based on a July through June year (Zoo fiscal year). From July 1, 2003 to June 30, 2004, CONTRACTOR guarantees total annual payments – the sum of all minimum guarantees and percentage of gross receipt payments – to ZOO of \$450,000.00. If on June 30, 2004, CONTRACTOR has made total minimum and percentage of gross receipts payments to ZOO during the year of less than \$450,000.00, then CONTRACTOR shall remit to ZOO an amount equal to the difference between \$450,000.00 and the sum of all minimum and percentage gross receipts payments made. CONTRACTOR will be assessed late penalty of 1.5% per month from date payment is due for any late payments.

During each of the Zoo fiscal years in years two through five (2-5) of the Agreement, beginning on July 1, 2004, CONTRACTOR guarantees total annual minimum payments to ZOO of \$500,000.00. Any shortfalls due shall be paid on the 365th day of each Zoo fiscal year.

6. Minimum Attendance Guarantee and Reductions to Annual Payment Guarantee:

ZOO guarantees that annual attendance (as defined below) during each Zoo fiscal year shall be no less than 1,200,000 visitors. Should annual attendance fall below the minimum, Contractor's annual payment guarantee (as described in paragraph 5) to ZOO shall be reduced by the same percentage as the attendance shortfall.

Annual attendance is defined as the number of ticketed individuals counted through the Zoo admission point near the main entrance from the first day to the 365th day of each Zoo fiscal year of Contractor's retail operations, beginning with July 1, 2003.

A schedule, which shows total annual attendance, as defined herein, at the Zoo for the years 1998 through 2002 shall be attached to this document as an exhibit and ZOO shall represent that such attendance figures are true and correct. During the life of this Agreement, weekly attendance reports shall be made available to CONTRACTOR by ZOO.

7. Premises Condition:

Surrender: ZOO will deliver the Cascade Outfitters store in its "AS-IS", present condition. Upon the termination of the Agreement, CONTRACTOR shall surrender the Premises and all keys thereto, including all improvements, apparatus, fixtures (including lighting fixtures), display cases and shelving, furniture, equipment, storefront signage and all signage within the Premises, and all components to the heating, air-conditioning, plumbing and electrical systems, which were located

in or installed in the Premises on the commencement date (the "ZOO Property"), in as good condition and repair as on the commencement date, reasonable wear and tear excepted. CONTRACTOR will be permitted to remove from the Premises only Contractor's personal property, such as computers, point of sale systems and registers that are installed on the Premises and paid for by CONTRACTOR. At the time that ZOO conducts the inventory of merchandise pursuant to paragraph 10, ZOO will also prepare a schedule of the ZOO Property contained in the Premises, which schedule will be signed by ZOO and CONTRACTOR and will be attached to and become a part of this Agreement.

If at any time during the life of the Agreement CONTRACTOR and ZOO mutually agree upon terms and conditions for Contractor, at Contractor's sole expense, to make any substantial improvements (as defined below) to the Premises for the purpose of enhancing the performance of the retail operation, then upon termination of the Agreement for any reason, except for breach of contract by CONTRACTOR, ZOO shall be responsible to reimburse CONTRACTOR for the unamortized portion of the capital expenditure. All improvements shall be amortized over five years on a straight-line basis from the date any improvements are made. As of June 30, 2008, any improvements made will be 100% depreciated and ZOO shall have no responsibility to reimburse CONTRACTOR and shall have free and unencumbered title to said improvements.

"Substantial improvements" are defined as improvements that require capital expenditures by CONTRACTOR of \$25,000.00 or more.

8. Assignment: CONTRACTOR will have no right to sublet or assign its rights under the Agreement.

9. Operating Covenants:

- a. Hours of Operation: The Premises shall be open for business to the public during the same hours in which the Zoo is open and remain open at least 30 minutes later during April, May and September or until substantially all visitors have left the Zoo; and at least 1 hour later from Memorial Day weekend through Labor Day weekend or until substantially all visitors have left the Zoo. ZOO staff can access the Premises during Contractor's hours of operations.
- b. Trade Names: Initially, CONTRACTOR will operate the store under its current name Cascade Outfitters, but may propose and implement, with ZOO's consent, a name change for the store.
- c. Noise Control: CONTRACTOR will keep the noise level associated with the Premises to a level acceptable to ZOO, in its discretion.
- d. Merchandise Controls: CONTRACTOR will purchase and sell only merchandise that is appropriate relative to ZOO's mission statement and in conformance with the permitted uses as provided in paragraph 2. CONTRACTOR will select, order, stock, replenish, insure, and pay for, a sufficient level of merchandise so that there is ample inventory for sale during the term of the Agreement. The ZOO maintains the right to disapprove of any products sold in the retail operations.
- e. Recording of Sales: All sales by CONTRACTOR in the Premises shall be recorded in the POS system maintained by CONTRACTOR and approved by ZOO.

- f. Gross Receipts and Tax Records and Reporting: CONTRACTOR will exercise its best efforts to maximize gross receipts relating thereto during the term of the Agreement. With each monthly percentage of gross receipts payment, CONTRACTOR will provide ZOO with a monthly summary report that shows the daily sales for each retail location separately for the corresponding period. On a daily basis, ZOO's Guest Services Manager will be included in the distribution of Contractor's summary sales reporting via e-mail and, on a weekly basis, will receive the POS system station summary reports and the sales by department report for each retail location.
- g. Quality Control Standards: CONTRACTOR shall provide adequate personnel and shall carry a full and complete stock of merchandise during the term of the Agreement.
- h. Signage: All signage shall be subject to review and approval by ZOO's Guest Services Manager.
- i. Licenses: CONTRACTOR will obtain and maintain all business and other licenses as may be required by law in connection with the operation of the Premises for retail purposes.
- j. POS System: CONTRACTOR will install and maintain a computer point of sale system necessary to process transactions and control inventory throughout the term of this Agreement. Maintenance and upgrade of such systems will be the responsibility of CONTRACTOR.
- k. Contractor Staff:
 - (1) CONTRACTOR shall employ and compensate its own employees at the Premises.
 - (2) CONTRACTOR shall employ a highly skilled professional retail sales manager who possesses the necessary experience and expertise to provide the overall management capability for a first-class retail sales operation. The zoo retains the right to approve or disapprove the retail sales manager at any time during the term of this Agreement, and to require CONTRACTOR to replace such personnel within thirty (30) days of receipt of written notice by the Oregon Zoo Guest Services Manager notifying CONTRACTOR of dissatisfaction with the manager's performance.
 - (3) CONTRACTOR shall employ and train all employees necessary for the successful operation of the retail sales operation. Training of the employees must encompass the concepts and policies of a first-class retail operation, including superior customer services skills.
 - (4) CONTRACTOR shall employ only competent and orderly employees who will keep themselves neat and clean and accord courteous and competent treatment and service to all Zoo guests. Whenever ZOO notifies CONTRACTOR or its retail operations manager that any employee is deemed by ZOO to be incompetent, disorderly or unsatisfactory, CONTRACTOR will investigate the matter thoroughly and if good cause, as determined by CONTRACTOR exists, CONTRACTOR shall discharge such person, provided however that such discharge is not in violation of any outstanding

collective bargaining agreements that may be entered into between CONTRACTOR and a union or any Oregon or federal employment law or regulation.

- (5) CONTRACTOR shall design and prepare specifications for the purchase of uniforms for retail operations employees to be worn on Zoo premises at all times. The uniform design must be approved the Zoo Guest Services Manager, prior to purchase. CONTRACTOR shall ensure that employees' uniforms are neat and clean at all times.
 - (6) CONTRACTOR employees shall have free access to the Premises under the guidelines of the zoos access policy, but family and friends of CONTRACTOR employees must pay normal ZOO fees to enter the Zoo.
- l. Additional Powers: The ZOO shall at all times have the following powers reserved to itself:
- (1) The right to final approval of all policies and procedures related to the operation and management of the retail operations.
 - (2) Sole discretion to cancel, terminate, or interrupt any Zoo event, and cause the patrons to be dismissed, or to stop the sale of any product by CONTRACTOR. ZOO shall not be liable to CONTRACTOR for any loss or cost occasioned by any such determination or action by ZOO taken in good faith for the benefit or protection of Metro, Oregon Zoo, or the public generally.
 - (3) In the event that any of the retail sales premises are destroyed by an act of God, fire, vandalism, etc., to the extent that continued operation of the retail sales operations is not feasible, Oregon Zoo is under no obligation to replace the facilities.
- m. Applicable Laws: CONTRACTOR shall comply with all applicable laws and regulations in the operation of the retail sales operations.
- n. Taxes: CONTRACTOR shall pay all sales, business, occupational and property taxes, including any property tax ZOO may be assessed as a result of this Agreement, required by law related to the operation of the facilities.
- o. Marketing: CONTRACTOR is solely responsible for any marketing or advertising of the store. Advertising materials on Zoo grounds or in public media developed by CONTRACTOR must be approved by ZOO. ZOO reserves the right to display materials promoting Zoo programs in the store. At the request of the Zoo Guest Services Manager, CONTRACTOR shall participate in marketing and advertising-related meetings and provide ZOO with recommendations and assistance related to marketing and advertising. CONTRACTOR acknowledges and agrees to support ZOO's sponsorship sales to the degree that CONTRACTOR is sensitive to any merchandise tie-ins that are contemplated as part of a ZOO sponsorship package.
- p. Non-exclusivity: ZOO reserves the right to sell special promotional items, event-related items, or items through the Oregon Zoo Foundation.

10. Existing Inventory: As soon as ZOO agrees to do so, ZOO and CONTRACTOR will jointly conduct a preliminary physical inventory of the merchandise ZOO currently owns and intends to resell in the Zoo store. CONTRACTOR will have at least one representative present during the time when such inventory is taken. During the period between the time when the preliminary inventory is taken and the commencement date, ZOO shall provide CONTRACTOR with the inventory data from the preliminary inventory and shall permit CONTRACTOR to enter such inventory data into Contractor's systems, provided that Contractor's presence at the Zoo or in the Zoo store during such period shall not be interpreted or regarded in any way as a commencement of the Agreement. Immediately prior to the commencement date, ZOO and CONTRACTOR will conduct a final physical inventory of the merchandise. CONTRACTOR will have at least one representative present during the time when such inventory is taken. All damaged and obsolete merchandise, not to exceed \$50,000.00 in value, will be removed from stock by ZOO at the time of the final inventory. The removed merchandise will belong exclusively to ZOO. The remaining merchandise will be valued at the time of the final inventory, at the price that ZOO paid for such merchandise, plus freight costs of 1.5%. CONTRACTOR will make cash payments to ZOO for the remaining merchandise – excluding that which is deemed to be damaged or obsolete, up to \$300,000.00 – in accordance with the following schedule:

July 1, 2003: 25% of value
October 1, 2003: 25% of value
January 1, 2004: 25% of value
April 1, 2004: 25% of value

11. ZOO's Services: ZOO shall provide the following services to CONTRACTOR:
- a. Utilities: HVAC and electrical power "AS-IS" to site. CONTRACTOR will pay ZOO monthly for electric and natural gas utilities, based on sub-meter readings. Telephone hook-ups and point of sale network cable lines in the store will be "AS-IS", present condition. CONTRACTOR shall be responsible for procuring telephone service to and point of sale network cable lines within the store. Electrical power to the store will be "AS-IS", present condition. Electrical power lines, telephone lines and point of sale network cable lines, as may be required by CONTRACTOR to the retail kiosks will be installed at Contractor's cost. ZOO will be responsible for the supervision of the installation of telephone lines and electrical power lines and will bill CONTRACTOR for the cost thereof.
 - b. Security: ZOO will provide security service to the Premises at levels consistent with levels of security currently being provided by ZOO at the Zoo. ZOO shall not be responsible for any losses that CONTRACTOR may suffer due to shrinkage. Security staff will have reasonable access to the store to patrol and provide emergency response as necessary during non-operating hours.
 - c. Janitorial/Trash and Pest Control Services: When the Premises are open for business, ZOO will provide janitorial services to the extent that services like emptying trash are part of the daily routine. CONTRACTOR will pay ZOO for the costs of any necessary janitorial services requested by CONTRACTOR or required as a result of Contractor's operations in the Premises. CONTRACTOR will be responsible for cleaning the Premises. ZOO shall provide pest control and extermination services in the Premises.

- d. **Maintenance and Repairs:** CONTRACTOR will be responsible for maintenance, repair and replacement of fixtures, personal property and computer point of sale systems. CONTRACTOR will be responsible for cleanup of all trash and rubbish in and around delivery areas, loading platforms and docks and service corridors that occur in connection with the delivery of merchandise to the Zoo and the Premises. CONTRACTOR will utilize ZOO's maintenance personnel with regard to Contractor's maintenance, repair and cleanup obligations and will be billed by ZOO on a monthly basis for such work. Maintenance and repair functions may be performed outside of the shop's normal operating hours with prior arrangement by CONTRACTOR.
12. **Parking:** The use and occupation by CONTRACTOR of the Premises shall include the non-exclusive use in common with others entitled thereto the parking area designated for Zoo employees, subject to the terms and conditions of this Agreement and reasonable rules and regulations for the use thereof as prescribed from time to time by ZOO. The parking area shall be subject to the exclusive control of ZOO, and ZOO shall have the right to make changes, additions, deletions, alterations or improvements to the parking area. ZOO may designate certain portions of the parking area as reserved for use by certain designated parties. CONTRACTOR and Contractor's employees and agents will park their vehicles only in those portions of the parking area designated for that purpose by ZOO. Contractor's employees will participate in ZOO employee programs to limit parking usage in peak visitor periods.
13. **Website:** CONTRACTOR must develop, host and operate ZOO's online store at www.oregonzoo.org, subject to ZOO's approval, in ZOO's sole and absolute discretion. The cost of hosting, software and maintenance of the website would be solely CONTRACTOR's. CONTRACTOR shall obtain written approval by ZOO for text, logo use, and website design.
14. **Zoo Member Discounts:** CONTRACTOR agrees to participate in ZOO's program which offers discounts on merchandise to ZOO members as a benefit of membership ("Zoo Member Discounts"), as may be determined by ZOO, and approved by CONTRACTOR, from time to time. Members, Zoo and Metro employees, to the extent that discounts are provided to Metro employees as part of Metro's employment compensation and benefit program, will be entitled to a 10% discount off the ticketed or otherwise listed price of each item in the Premises for the life of the Agreement. Verification of membership or ZOO employment must be made at the time of the purchase.
15. **CONTRACTOR Inventory:** At the expiration (or earlier termination) of the Agreement, provided that CONTRACTOR is not then in default, ZOO will pay CONTRACTOR for the merchandise then in the Premises per paragraph 10 above – i.e., in the same manner and with the exactly the same terms that CONTRACTOR buys the existing inventory (as of the commencement date) from ZOO.
16. **Annual Meetings:** Commencing in the year 2004, during the month of January of each calendar year during the term of the Agreement, ZOO and CONTRACTOR will meet to discuss Contractor's operations in the Premises, including, but not limited to, the nature and type of merchandise being marketed in the Premises, Contractor's success in meeting targeted gross receipts, capital improvements to the premises which may be necessary, staffing issues and any other matters which ZOO and CONTRACTOR consider appropriate to enhance operations in the Premises. At least 90 days in advance of the annual meeting, CONTRACTOR will develop a

survey of the Zoo visitor shopping experience that will be administered by ZOO. The results from the survey will be discussed at the annual meeting.

17. **Financial Statements:** Commencing in the year 2004, during the month of January of each calendar year during the term of the Agreement, CONTRACTOR shall provide ZOO with a copy of Contractor's most recent audited financial statement, or, if no such audited statement has been prepared, such other financial statement as may have been prepared by a certified public accountant and/or Contractor's income tax returns. CONTRACTOR shall also provide monthly, during the term of the Agreement, financial reports accompanying the monthly payments, as specified by ZOO.
18. **Construction in the Premises:** All construction, renovation and alterations in the Premises during the term of the Agreement must be approved by and supervised by ZOO's Guest Services Manager.
19. **Indemnity and Insurance:** CONTRACTOR shall indemnify and hold Metro, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement.

CONTRACTOR shall procure and maintain at Contractor's sole cost and expense, throughout the term of the Agreement, the following insurance policies, written by companies licensed in the State of Oregon and acceptable to Metro:

- a. Commercial General Liability Insurance covering the Premises with combined single limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and annual aggregate for bodily injury and property damage with automatic coverage for premises operations and product liability; and
- b. Contractual liability insurance sufficient to cover CONTRACTOR's indemnity obligations under the Agreement; and
- c. Automobile bodily injury and property damage liability insurance; and
- d. Worker's Compensation Insurance to comply with the laws of the State of Oregon and shall comply with ORS 656; and
- e. CONTRACTOR must provide all risk or special form insurance coverage for inventory, CONTRACTOR's contents, or any real or personal property, or its agents, employees, and waives all rights of subrogation. Business Interruption Insurance to assure continued payments in amounts consistent with the contract and all other payments historically received; and
- f. CONTRACTOR must provide 1) Money and Security coverage and 2) employee dishonesty coverage to cover loss or theft of money and property by employees. Each coverage will have a minimum limit of \$100,000.
- g. Metro will provide property insurance on all real and personal property owned by Metro and waives subrogation for all losses except such waiver of subrogation shall not be applied toward deductibles or any amounts not reimbursed by Metro's property insurance; and

- h. CONTRACTOR will provide a performance bond in the attached form in the amount of not less than \$500,000 to Metro to assure compliance with all provisions of this Agreement, including all financial obligations. The performance bond shall be conditioned on the faithful performance of CONTRACTOR's payment of moneys due or obligations owing to Metro, all suppliers, material men, subcontractors, and employees.

All insurance policies required (as outlined above) by the Agreement shall be in form and content satisfactory to ZOO and shall name Metro, Oregon Zoo, its elected officials, employees, and agents as an additional insured. CONTRACTOR shall make no modifications to its insurance without the authorization of Metro. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

20. Inspection and Audit of Records

- a. CONTRACTOR shall keep within the City of Portland true and complete records and accounts of all revenues, including daily bank deposits, with respect to Gross Receipts. CONTRACTOR agrees to establish and maintain a system of bookkeeping, which is, consistent with generally accepted accounting principles and satisfactory to ZOO and to give the ZOO's authorized representatives access during reasonable hours to such books and records upon reasonable advance written notice to CONTRACTOR. CONTRACTOR agrees that it will keep and preserve for at least three (3) years all cash register tapes, credit card invoices, bank books, or duplicate deposit slips, and other evidence of Gross Receipts and business transacted for such period, and upon ten (10) days' written notice, CONTRACTOR shall make available to ZOO all documents required to be kept and maintained pursuant to the Agreement.
- b. ZOO shall have the right at any time, and from time to time at ZOO's expense, to engage auditors to conduct an audit of all of the books of account, bank statements, documents, records, returns, papers, and files of CONTRACTOR relating to Gross Receipts, and Contractor, upon reasonable advance written request, shall make all such matters available for such examination. If such audit shows a deficiency in reporting Percentage of gross for the period covered, and a deficiency in the payment of such fees shall be finally determined to exist, the amount thereof shall be paid promptly by CONTRACTOR to ZOO plus a service charge of 1% of said sum per month for each month from the date payment was due until the date payment is made. Further, in the event any audit or inspection discloses a single or cumulative deficiency in excess of 1% of the amount previously paid by Contractor to ZOO on account of any month, CONTRACTOR shall forthwith pay to ZOO the cost of the audit and/or inspection and such cost shall include all direct and indirect salary costs of ZOO, any charges made by any auditor or consultant of ZOO, and materials, supplies, and administrative overhead (as shall be determined by ZOO's Guest Services Manager from time to time).
- c. Nothing contained in this paragraph shall preclude ZOO from terminating in the event any inspection or audit discloses a material deficiency or deficiencies as indicated in this paragraph. In the event the ZOO uses counsel to collect any sums ultimately determined to be due to it from Contractor, CONTRACTOR agrees to pay ZOO its costs and reasonable attorney's fees, including the reasonable value of any services provided by in-house counsel.

- d. **CONTRACTOR** will record each individual sale by cash register tape and will not permit any of its employees to make change for customers from boxes or containers, or from pockets of clothing, but will, instead, furnish lockable cash registers and cash drawers for its employees.
21. **Inspection and Testing by ZOO** ZOO shall have the right to observe a transaction or transactions between **CONTRACTOR** and the public to determine the quality and quantity of merchandise offered to the public, the prices charged for merchandise, and the accountability of the revenue received from the sale of merchandise.
22. **Termination by ZOO**
- a. In the event of termination, ZOO shall be entitled to use all equipment, supplies, and inventory of **CONTRACTOR** until all parts of this Agreement are complete. The ZOO may terminate if any one or more of the following events shall occur:
- (1) **CONTRACTOR** shall become insolvent, or shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or
 - (2) by order or decree of a court **CONTRACTOR** shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any state thereof; or
 - (3) a petition under any part of the Federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against **CONTRACTOR** and shall not be dismissed within ninety (90) days after the filing thereof; or
 - (4) by or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or government board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of **CONTRACTOR** and such possession or control shall continue in effect for a period of thirty (30) days; or
 - (5) **CONTRACTOR** shall become a corporation in dissolution; or
 - (6) the interests of or rights of **CONTRACTOR** hereunder shall be transferred to, passed to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceeding or occurrence described in sub-paragraph 1, 2, 3, 4 or 5 of this paragraph; or

- (7) Labor Disputes: In the event CONTRACTOR cannot perform its obligations under this Agreement because of labor disputes, ZOO may terminate the contract, in part or in whole, and take control of the operations.
- (8) CONTRACTOR shall abandon its operations on the Premises, or, after exhausting or abandoning any further appeals, CONTRACTOR shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its full operation on the Premises regardless of the fault of Contractor ;then, in any such events, ZOO may, at its option and without prior notice, terminate the Agreement.
- b. In the ZOO opinion, if a change in ownership or control of the CONTRACTOR occurs, then such change shall not be grounds for termination of CONTRACTOR's rights hereunder if the successor corporation shall acknowledge in writing to ZOO that it has all the obligations of CONTRACTOR under the Agreement and the ZOO provides written consent. The ZOO reserves the right to change terms and conditions as it sees appropriate. If the successor corporation shall fail to satisfy the foregoing condition, ZOO may, at its option, terminate this Agreement by sending written notice of termination, by registered or certified mail, at its address set forth herein, which notice shall be deemed given when mailed.
- c. If CONTRACTOR shall fail duly and punctually to pay the Percentage of gross, or shall fail to pay when due any other sum required to be made to ZOO pursuant to the Agreement, or if CONTRACTOR shall be in default of any payment required to be made to ZOO pursuant to any other agreement between CONTRACTOR and ZOO, or if CONTRACTOR violates any of the terms of the Agreement with respect to the items sold, their quality, or price, then fifteen (15) days after receipt by CONTRACTOR of notice of default sent by ZOO by registered or certified mail return receipt requested, ZOO may, at its option, terminate the Agreement by sending written notice of termination, by registered or certified mail, to CONTRACTOR at its address specified herein; provided, however, that ZOO may, at its option, include notice of termination in its notice of default. It is understood and agreed that CONTRACTOR may avoid termination by curing all such defaults within the fifteen-(15) day period described herein.
- d. If any one or more of the following shall occur:
- (1) Any lien shall be filed against the Premises or any portion thereof because of any act or omission of CONTRACTOR and not discharged within thirty (30) days, unless CONTRACTOR within the aforesaid thirty (30) days furnishes to ZOO such bond as ZOO in its discretion determines to be adequate to protect the interests of ZOO; or
 - (2) CONTRACTOR fails to keep, perform and observe any promise, covenant, or other provision of the Agreement (other than a default as described in sub-paragraph c. hereof), or fails to keep, perform, and observe any promise, covenant, or other provision of any other agreement between CONTRACTOR and ZOO, within thirty (30) days after receipt by CONTRACTOR of written notice of default by registered or certified mail, return receipt requested, from ZOO; or if fulfillment of the obligation in question requires activity over a longer period of time, CONTRACTOR fails to begin such activity within thirty (30) days after receipt by CONTRACTOR of notice of default as aforesaid, or in the opinion of ZOO fails diligently to pursue such activity;

(3) Then upon the occurrence of any such event or at any time thereafter during the continuance thereof, ZOO may, at its option, terminate the Agreement by sending ten-(10) days' written notice of termination by registered or certified mail to CONTRACTOR at its address specified herein.

e. CONTRACTOR will be allowed only one (1) notices of material default under subparagraphs c. or d. above in any Zoo fiscal year which it may cure within the time specified therein. The second such notice in any Zoo fiscal year shall, at the option of ZOO, be final and shall cancel and terminate all of Contractor's rights hereunder without any right on the part of CONTRACTOR to cure such default after receiving such notice.

f. Right of Re-entry: ZOO shall, as an additional remedy, have the right to re-enter the Premises and every part thereof upon the effective date of any termination provided herein, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of CONTRACTOR under the Agreement, and shall in no event constitute an acceptance of surrender.

23. Notices

a. All notices required to be given by CONTRACTOR to ZOO pursuant to the Agreement shall be in writing and sent by registered mail to:

Oregon Zoo
Attn: Teri Dresler, Guest Services Manager
4001 SW Canyon Road
Portland, OR 97221

Or to any other place as the Deputy Director may from time to time designate in writing to CONTRACTOR.

b. All notices required to be given by ZOO to CONTRACTOR pursuant to the Agreement shall be in writing and sent by registered mail to:

xxx
xxx
xxx

Or such other place as CONTRACTOR may from time to time designate in writing to ZOO.

24. Equal Employment Opportunity

During the performance of the contract, CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, or natural origin.