

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 11-4279
THE METRO CHIEF OPERATING OFFICER)	
TO EXECUTE AN AGREEMENT WITH THE)	Introduced by Acting Chief Operating Officer
OREGON ZOO FOUNDATION)	Daniel B. Cooper with the Concurrence of
)	Council President Thomas Hughes

WHEREAS, The Oregon Zoo Foundation is a tax-exempt non-profit Oregon corporation organized and operated exclusively for charitable, scientific, and educational purposes permitted by Section 501(c)(3) of the Internal Revenue Code ("OZF"); and

WHEREAS, the exclusive purpose of OZF is to support and benefit the Oregon Zoo, a Metro-owned and operated facility; and

WHEREAS, on May 9, 2002, the Metro Council approved and adopted Resolution No. 02-3190, "For the Purpose of Authorizing the Executive Officer to Execute an Amended and Fully Restated Agreement with the Oregon Zoo Foundation"; and


WHEREAS, while the Amended and Fully Restated Agreement with the Oregon Zoo Foundation "Agreement" has served its primary purpose of linking the mission of the two organizations in support of building a great Oregon Zoo, OZF board members, Metro Councilors, and Metro staff have identified a need to create more autonomy, transparency and accountability between the two entities; and

WHEREAS, after a top-to-bottom review of the entities' working relationship, Metro staff and OZF board members jointly crafted a new agreement that retains the essential linkage of the two organizations' missions, while correcting weaknesses in five key areas of the Agreement through the following improvements: clearly articulating the parties' roles and responsibilities; reestablishing OZF autonomy; redefining the fiscal relationship, increasing transparency; and improving accountability to the Metro Council; and

WHEREAS, Metro desires to enter into a new agreement with OZF, reestablishing and recognizing the mutual roles and responsibilities of each other and mutual benefit of the OZF – Metro relationship to the Oregon Zoo; now therefore

BE IT RESOLVED that the Metro Council authorizes the Metro Chief Operating Officer to execute the Metro – Oregon Zoo Foundation Agreement, attached as Exhibit A.

ADOPTED by the Metro Council this 14 day of July 2011.

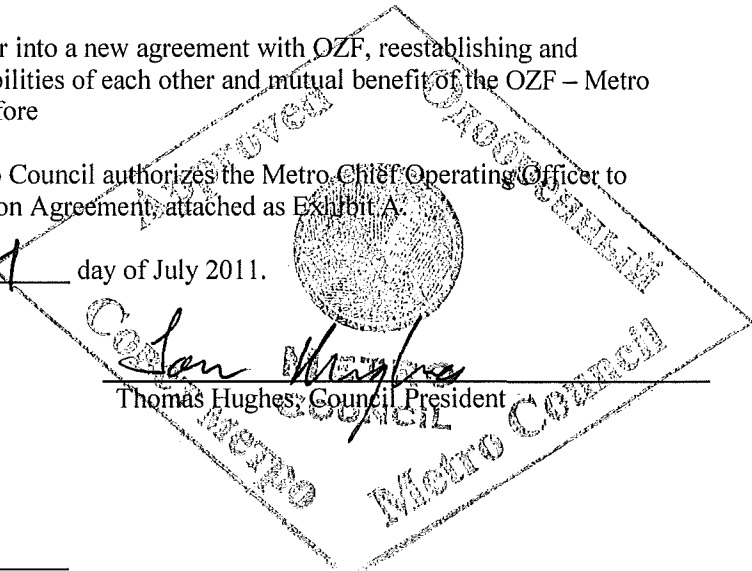


Thomas Hughes, Council President

Approved as to Form:



Alison Kean Campbell, Acting Metro Attorney



**Exhibit A to Resolution No. 11-4279
Metro – Oregon Zoo Foundation Agreement**

[Placeholder]

METRO – OREGON ZOO FOUNDATION AGREEMENT

This Metro-Oregon Zoo Foundation Agreement (“Agreement”), effective _____, 2011 (the “Effective Date”) is entered into by and between Metro, a municipal corporation and political subdivision of the state of Oregon, organized in accord with state law and the Metro Charter (“Metro”), and the Oregon Zoo Foundation, an independent Oregon non-profit public benefit corporation, recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (“OZF”), also collectively referred to herein as (“Party” or “Parties”).

PURPOSE OF AGREEMENT

The purpose of this Agreement is to formalize the working relationship between the Oregon Zoo Foundation and Metro. Metro desires to continue to receive the support of the foundation, its board members, members and employees. The OZF and Metro wish to assure the continued success and prosperous growth of the Oregon Zoo in the future.

RECITALS

- A. Metro, a municipal corporation, owns and operates The Oregon Zoo (also, the “Zoo”), pursuant to Oregon law and Metro Charter. The terms “Metro” and “Zoo” are used interchangeably herein.
- B. OZF is an independent tax-exempt Oregon nonprofit public benefit corporation organized to support the Zoo via fundraising, advocacy and community relations in consultation and collaboration with Metro.
- C. Metro and OZF are committed to working collaboratively to achieve the shared goal of making the Zoo a world-class institution and a world-wide leader in best practices for animal welfare, guest services, conservation action and education.
- D. Metro acknowledges that OZF is an invaluable asset to the Zoo, and OZF’s historic fund-raising and support has made it an essential on-going partner in sustaining the Zoo and its mission. OZF’s independent 501(c)(3) status provides the Zoo with the opportunity to benefit from charitable giving that Metro would otherwise not receive, and the flexibility of this funding, applied to facilitate work that Metro could not otherwise perform, has provided much needed assistance to the Zoo.
- E. Both Metro and OZF wish to restate and replace that certain agreement between the OZF and Metro dated March 29, 1985, amended as of November 28, 1989 and April 2, 1997, further amended and fully restated as of May 9, 2002, and entitled “Amended and Fully Restated Agreement.”
- F. The purpose of this Agreement is to establish the roles and responsibilities of Metro and OZF with respect to each other and their shared goals.

NOW, THEREFORE:

AGREEMENT

Metro and OZF, in reliance on the above recitals and in consideration of the mutual covenants and agreements set forth herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree to the following terms:

1. Metro – OZF Relationship

- 1.1 Metro and OZF agree that, during the term hereof, each party shall act in its individual capacity and not as agents, employees, partners, joint ventures or associates of one another, and that nothing in this Agreement, nor the Parties' acts or failures to act hereunder, shall constitute or be construed by the parties, or by any third person, to create an employment, partnership, joint venture, association or joint employer relationship between them. Metro and OZF agree that, as independent and separate entities, each shall maintain a staff and management structure independent of the other during the term hereof.
- 1.2 Metro is subject to Governmental Accounting Standards Board (GASB) rule and regulation. OZF, by GASB definition, is a component unit of Metro and has been reported as such since 2003. OZF agrees to provide to Metro audited financial statements in a timely manner to allow Metro to continue to meet the GASB requirements. OZF agrees that, if GASB rules change during the term of this Agreement, OZF will provide Metro with any and all financial information and reporting needed by Metro to allow Metro to fully comply with GASB requirements.

2. OZF Duties and Responsibilities. OZF shall:

- 2.1 Purpose. OZF shall maintain articles of incorporation establishing that the sole and exclusive purpose of the OZF is to support and benefit the Oregon Zoo.
- 2.2 Development Plan. Create a Development Plan to raise funds for the Zoo in consultation and collaboration with the Zoo Director, recruit a broad based membership, and develop community support for the Zoo. OZF will review the Development Plan on an annual basis with Metro.
- 2.3 Ensure that all funds raised, donated or contributed to OZF are disbursed in support of the Zoo vision, strategy and Master Plan. In the event OZF wishes to pursue fundraising for a capital project that is not included in the Master Plan, the OZF must enter into a project agreement with the Zoo.
- 2.4 Advocacy. Advocate in support of the Zoo in accord with the Model Advocacy Process attached as Attachment A hereto.
- 2.5 OZF Membership Services. Provide Membership Services, which shall be defined as including, but not limited to: personnel and general administrative costs to service members, materials, mailings, social media efforts, acquisition and renewal costs for members, and costs for member events.
- 2.6 Perform such other services to benefit the Zoo as agreed to by the Parties, provided that all OZF services and activities will be consistent with maintaining its status as a tax-exempt, non-profit corporation.

- 2.7 Undertake the activities set forth in this Section 2 at OZF's expense except as provided in this Agreement or as otherwise agreed to by the Parties.
- 2.8 Operate in compliance with Metro policies and code provisions governing Metro Facilities, including those policies and provisions pertaining to naming rights and sponsorships set forth in Metro Code, Chapter 2.16, "Naming of Facilities," and Metro Code, Chapter 2.04, Section 2.04.054(b)(16).
- 2.9 Duties on Dissolution. Upon dissolution of OZF, after payment or provision for payment of all OZF liabilities, assets of OZF shall be distributed to Metro, or the tax-exempt successor operating the Oregon Zoo, to be used for zoological purposes at the Oregon Zoo that qualify as exclusively public purposes.
- 2.10 Changes to Articles and Bylaws. OZF shall promptly provide Metro with written notice and an updated copy of its articles of incorporation and corporate bylaws any time they are amended, restated or otherwise changed.
- 2.11 OZF Annual Operating Budget. Maintain all fiscal records relating to its activities in accordance with generally accepted accounting principles. The OZF shall adopt and publish an annual operating budget on or before June 7 of each fiscal year.
- 2.12 Upon termination of this Agreement, cease using the Oregon Zoo name, and cease representing the Zoo in fundraising activity.
- 2.13 The OZF shall purchase and maintain at OZF's expense, the types of insurance listed below covering OZF, its employees and agents. The OZF shall provide Metro with a certificate of insurance complying with this Agreement within thirty (30) days of executing this Agreement. Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to any change.
- 2.13.1 The most recently approved ISO (Insurance Services Offices) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate, providing coverage against claims for bodily injury, death, personal injury, property damage, contractual liability, premises and products /completed operations. Said Commercial General Liability policy shall name Metro, its elected officials, officers, employees and agents as additional insureds. OZF's coverage will be primary as respects Metro.
- 2.13.2 Workers' Compensation insurance providing coverage for Oregon statutory requirements, including Employer's Liability Insurance with limits not less than \$500,000 each accident.
- 2.13.3 Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage including coverage for owned, non-owned, and hired vehicles, including loading and unloading operations. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. Said Automobile Liability Insurance policy shall name Metro, its elected officials, officers, employees and agents as additional insureds.

- 2.13.4 Non-Profit Directors and Officers Insurance to protect the directors, officers and board members (past, present, and future) of the OZF. Coverage shall include employment practices liability coverage, which must also include employees as insureds, with limits not less than \$1,000,000.
- 2.13.5 Crime and employee dishonesty insurance covering all OZF officers and employees, with limits of not less than \$1,000,000, with a deductible of no more than \$10,000.

3. Metro Duties and Responsibilities. Metro shall:

- 3.1 Operate the Zoo, including the volunteer, education and conservation programs, and, through the Zoo Director, manage the Zoo operations, staff and volunteers.
- 3.2 Through the Zoo Director and in collaboration with the OZF, establish the vision, strategy and Master Plan for the Zoo, as approved by the Metro Chief Operating Officer and the Metro Council.
- 3.3 Through the Zoo Director, manage the implementation of the Zoo vision, strategy and Master Plan.
- 3.4 Through the Zoo Director, consult and collaborate with OZF to support the Development Plan and actively engage in the solicitation and cultivation of donors to the OZF.
- 3.5 Through the Zoo Director, undertake the lead role in external public relations for the Zoo, engaging the public in support of the Zoo vision, strategy and Master Plan. The Zoo Director shall serve as the official public spokesperson for the Zoo.
- 3.6 Grant permission to OZF to use its name, "The Oregon Zoo" in OZF's name and fund raising materials with membership drives, newsletters, annual reports and such other matters as the Parties shall agree. Other OZF uses for "The Oregon Zoo" shall be mutually pre-approved by the Zoo Director and the OZF Director prior to use.
- 3.7 Provide OZF, under this Agreement, the following services in accord with section 5:
 - 3.7.1 OZF staff office space, OZF meeting space, and other indoor or outdoor space as agreed by the Parties, telephone service and internet services, utilities, and any other needed services associated with using the office space provided.
 - 3.7.2 Membership services assistance, including general administrative services and supplies, media relations and public relations services, photography and graphic design services, internet and information technology support services.
 - 3.7.3 Event planning and catering services excluding the cost of food and beverages.
- 3.8 Provide reciprocal Zoo admission for members of recognized societies formed under the auspices of national and/or international zoos, provided that said reciprocal admission shall be reviewed annually by the Zoo Director and OZF Director and may be limited or terminated by mutual agreement.

- 3.9 Provide space for special events and member events aligned with the Development Plan to the OZF free of charge. The nature and dates of these events shall be determined by the Parties' mutual agreement and in coordination with the Zoo Director and staff.
 - 3.10 OZF participation in Metro benefit plans, with the exception of Flexible Spending Accounts, shall fully and finally terminate July 30, 2011. Flexible Spending Accounts benefits shall terminate December 31, 2011, subject to the reimbursement rights of OZF employees for a further 90 days. The OZF acknowledges that the Metro group health plan is a governmental plan not subject to the Employee Retirement Income Security Act (ERISA), as amended. This clause shall not be interpreted to preclude OZF participation in Metro benefit plans in the future, if a mutually satisfactory arrangement can be agreed upon.
 - 3.11 If Metro receives OZF assets as a result of termination or dissolution, Metro shall maintain and distribute such funds as restricted funds for the exclusive benefit of the Zoo, and subject to any additional restrictions placed on those funds by donors.
4. Coordination Between Metro and OZF. Metro and OZF will coordinate their efforts to accomplish their goals and purposes as effectively as possible, recognizing that transparency and extensive and consistent communication between the two organizations is essential to the strength of the relationship. Specifically:
 - 4.1 The Zoo Director and two Metro Councilors, appointed by the Metro Council President, shall serve as non-voting ex-officio members of the OZF Board. The Councilors shall not be counted for purposes of calculating OZF Board quorum and voting requirements. Metro and the OZF shall ensure that each are fully informed of all relevant developments occurring at their respective institutions, through one-on-one meetings between the OZF Director and the Zoo Director, and mutual participation in all relevant operational meetings of the Parties.
 - 4.2 An Annual Report will be jointly published by OZF and the Oregon Zoo.
 - 4.3 The OZF Board and the Metro Council shall meet semi-annually, to share information about both organizations and review accomplishments and goals. One such annual meeting shall be held for the purpose of presenting and discussing the Annual Report.
 - 4.4 The OZF Director shall ensure that public information materials routinely identify the Zoo's affiliation with Metro in a manner which is consistent with Metro's communication standards.
5. OZF Memberships, Allocation of Membership Revenues, Donations, and Contributions.
 - 5.1 OZF shall establish the fees charged and, the benefits extended to members at the various OZF membership levels, upon consultation with Metro, subject to the provisions of this section and section 10.2. At the inception of this Agreement, the cost of an OZF "Family" membership shall be established based on the cost of admission on the Effective Date for a family of two adults and two children multiplied by 2.5, which is the AZA acknowledged national average ratio of the price of a zoo membership to the price of admission on the date hereof. The price of a "Family" membership thus established shall be reviewed annually during the budgeting process. Unless otherwise agreed

between the Parties, if the Metro Council elects to increase rates for general admission to the Zoo, the price for new/renewed memberships sold after the rate increase shall be increased such that the cost of membership keeps pace with the AZA acknowledged national average ratio. If OZF determines, upon consultation with Metro that the optimal relative ratio of the price of OZF memberships to the cost of general admission for the Oregon Zoo is higher than the National Average Ratio, Metro and OZF may coordinate increases in admission and membership fees to establish and maintain said higher relative ratio.

- 5.2 Revenues from the sale of memberships at the current “Patron,” “Sponsor” and “Benefactor” level or above, or their future equivalents, shall be directed to the OZF.
 - 5.3 Revenues from the sale of memberships below the “Patron” level, currently the “Family Plus” level and below, or its future equivalent, shall be directed to designated accounts held by the OZF for the benefit of the Oregon Zoo. The allocation of revenues to said designated accounts will be based on a “Funding Formula” that shall direct the expenditure of such funds in support of new and existing operations. The Funding Formula will be mutually agreed upon by Metro and OZF, and must be approved by the OZF Board and the Metro Council. The purpose of each designated account, and the Funding Formula for all such accounts, will be identified and set forth in a “Five-year Proforma,” which shall be updated annually as an addendum attached hereto as Attachment B.
 - 5.4 The OZF agrees to promptly deposit all funds it receives from any source, unless otherwise directed by the donor, to bank accounts controlled by the OZF Board. The OZF Board will direct the future investment and disposition of these funds consistent with the terms and objectives of this Agreement, the Development Plan and according to OZF’s approved investment policies.
6. Term of Agreement. This Agreement shall become effective when signed by both Parties. The term shall be five years, and shall automatically renew annually for successive five year terms, unless terminated in accord with section 7.
 7. Termination. This Agreement may be terminated by either Party for cause or convenience, subject to the requirements set forth in this section. Notices of termination must be issued in one of the two forms set forth below:
 - 7.1 Termination for Cause. If either party determines that a material breach of the terms of this Agreement has occurred, the aggrieved party shall promptly provide written notice of such breach, reasonably documenting said breach and demanding that the breach be cured. The breaching party shall thereafter cure said breach within 10 days of receipt of said notice. If the breaching party fails to so cure, or under circumstances where the breach cannot reasonably be cured within a 10-day period, fails to begin curing such violation within the 10-day period, or after 10-days has expired fails to continue diligently to cure the breach until finally cured, the aggrieved party may, at its sole discretion, immediately terminate this Agreement. The exercise of this termination right shall not extinguish or prejudice the terminating party’s right to seek damages and enforcement of the terms of this Agreement in a court of competent jurisdiction with respect to any breach that has not been cured.

- 7.2 Termination for Convenience. The party wishing to terminate for convenience shall promptly notify the other party in writing of the decision to terminate. The parties shall begin the process of non-binding mediation on the matter within 14 days, and attempt to negotiate in good faith the continuation of the relationship on the same, similar or different terms. The mediation between the parties shall be conducted by one mediator. The mediator and the ground rules for mediation shall be determined by mutual agreement, and the cost of the mediator's services shall be shared equally between the parties. If the parties are unable to agree upon the continuation of the relationship within 120 days of the date of the notice of termination, the terminating party shall notify the other party of this failure and the Agreement shall immediately terminate. The rights and obligations of the parties set forth in sections 2.11, 3.11 and 9 shall survive and not be limited by any termination of this Agreement.
8. Amendments. This Agreement may be amended at any time by a written agreement signed by both Parties.
9. Indemnification.
- 9.1 OZF agrees to defend, indemnify and hold harmless Metro, its elected officials, officers, agents and employees, against all loss, damage, expenses, and liability, whether arising in tort, contract or by operation of any statute or common law, relating to or arising out of any claims, demands, judgments or other determination that OZF is not an independent contractor as set forth in Section 1.1.
- 9.2 OZF shall defend, indemnify and hold harmless Metro, its elected officials, officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of OZF's performance of, or failure to perform, this Agreement.
- 9.3 Metro shall defend, indemnify and hold harmless OZF and its officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to Metro's performance of, or failure to perform, this Agreement, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.
- 9.4 The foregoing indemnification, defense, and hold harmless provisions are for the sole and exclusive benefit of OZF, Metro, and their respective elected officials, officers, employees, and agents, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than Metro, OZF and their respective elected officials, officers, employees and agents.
- 9.5 Each Party hereby waives any and every claim during the term of this Agreement or any extension or renewal thereof for any loss or damage covered by an insurance policy to the extent that such loss or damage is recovered under said insurance policy. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person) the Parties are advised to give each insurance company written notice of terms of such waiver, and to have insurance policies properly endorsed, if necessary.

10. Miscellaneous Provisions.

10.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matter addressed herein, and supersedes all prior or contemporaneous oral or written communications, agreements or representations relating to its subject matter, including, but not limited to, that certain agreement between Metro and the Friends of the Washington Parks Zoo, dated March 29, 1985, amended as of November 28, 1989 and April 2, 1997, and amended and fully restated as of May 9, 2002. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. The failure of a Party to enforce any provision of this Agreement shall not constitute a waiver by any Party of that or any other provision.

10.2 Agreement Subject to Regulatory Requirements. Metro and OZF agree that the terms of this Agreement and the Parties' duties hereunder are subject to federal, state and local regulatory requirements, including but not limited to requirements imposed by the City of Portland as conditions of land use approval.

10.3 Notices. Notices will be deemed received upon personal service or upon deposit in the United States Mail, certified mail, postage prepaid, return receipt requested addressed as follows:

To OZF: Oregon Zoo Foundation
OZF Director
4001 SW Canyon Road
Portland, Oregon 97221
Fax No. (503) 223-9323
Phone No. (503) 220-5747

To Metro: Metro
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736
Fax No. (503) 797-1792
Phone No. (503) 797-1534

Copy to: Oregon Zoo
Oregon Zoo Director
4001 SW Canyon Road
Portland, Oregon 97221
Fax No. (503) 226-6836
Phone No. (503) 220-2450

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the Party for whom it is intended. Telephone and fax numbers are for information only.

10.4 No Benefit to Third Parties. Metro and the OZF are the only Parties to this Agreement and as such are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to

third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

- 10.5 Headings/Construction. Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 10.6 Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to either Party's benefit under this Agreement shall be considered a waiver of any other rights of that Party. No waiver by either Party of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.
- 10.7 Choice of Law/Place of Enforcement. This Agreement shall be construed, governed and enforced in accord with the laws of Oregon. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon in Portland, Oregon.
- 10.8 Severability. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part, or in any other respect, then such provision or provisions shall be deemed null and void and shall not affect the validity of the remainder of the Agreement, which shall remain operative and in full force and effect to the fullest extent permitted by law.
- 10.9 Entire Agreement. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties, and except as otherwise set forth herein, supersede any and all other implied or express, oral or written agreements between the Parties with regard to this subject matter.
- 10.10 Successors and Assigns. Subject to and except as otherwise set forth herein, the benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.
- 10.11 The signature of the OZF Chair below has been duly authorized by OZF Board of Directors.

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METRO

OREGON ZOO FOUNDATION

By: _____
Daniel B. Cooper
Acting Chief Operating Officer

By: _____
Daniel Jarman
Chair, OZF Board of Trustees

Date: _____

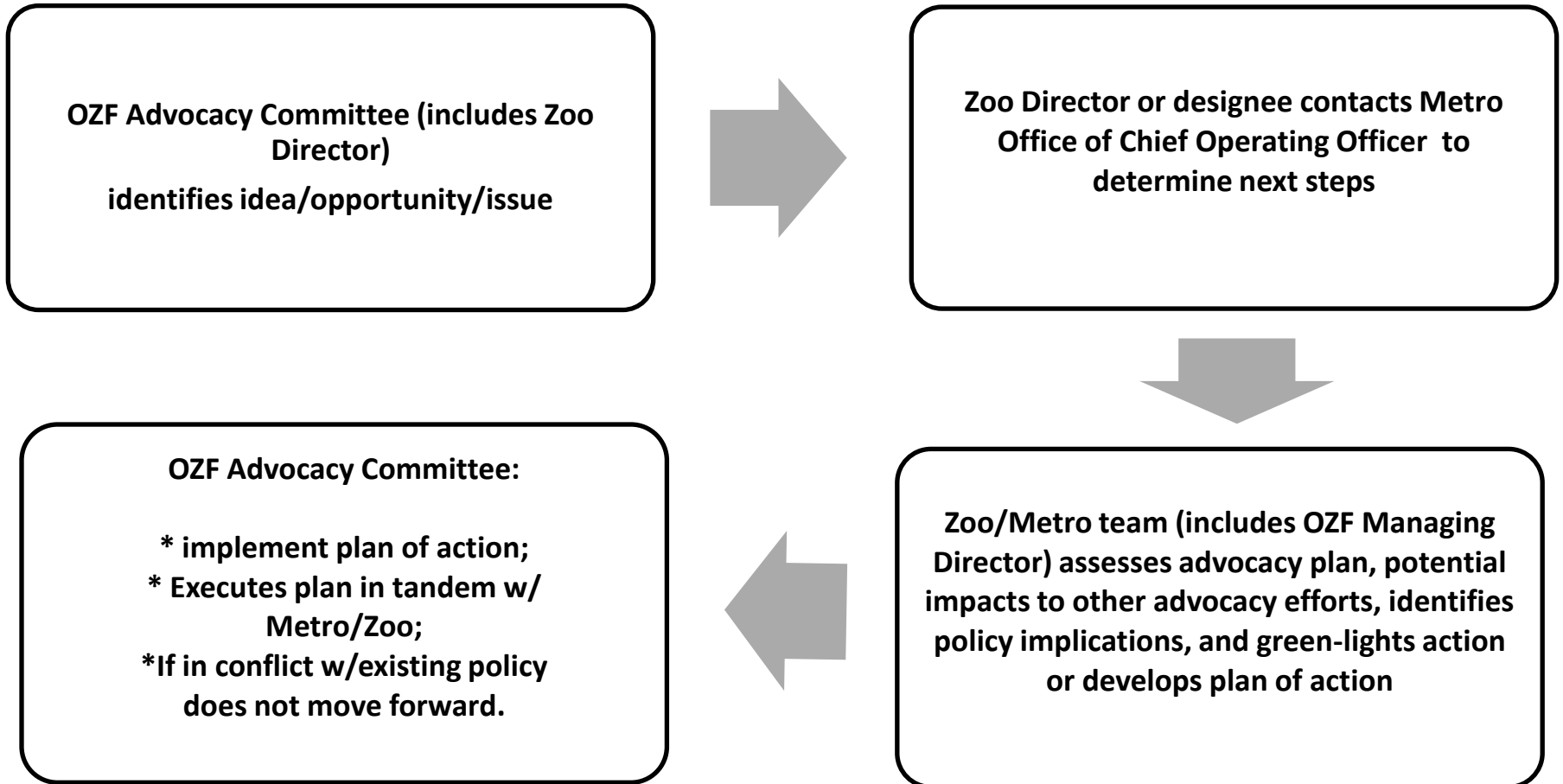
Date: _____

Attachments:

- A. OZF Advocacy Process
- B. Addendum: 5-Year Proforma

Oregon Zoo Foundation Advocacy Process

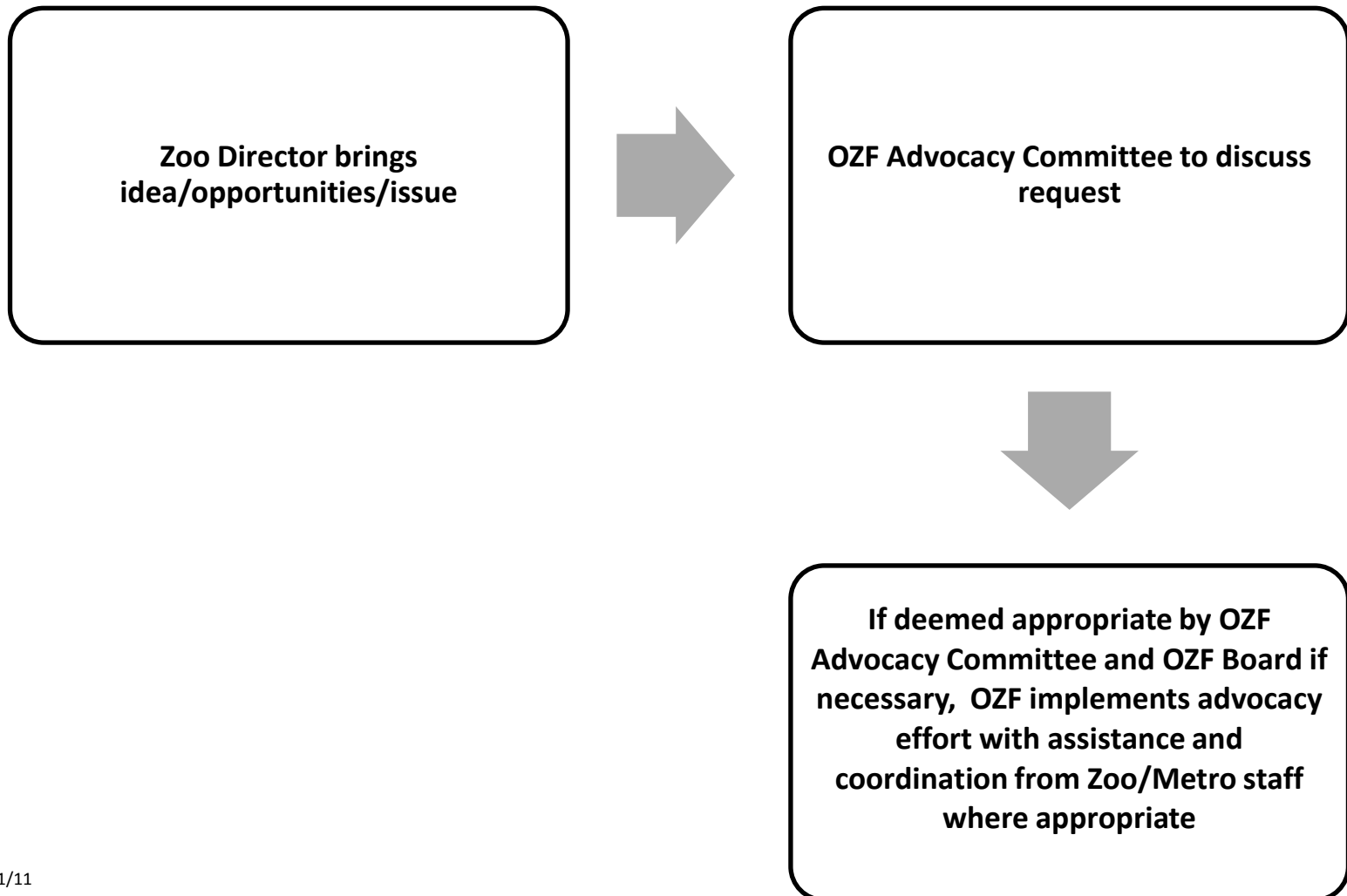
Foundation Originated Advocacy Request



For the purposes of this discussion, “advocacy” is defined as contacting federal, state or local elected officials, boards and commissions appointed as policy making bodies, and business associations, community organizations, industry trade groups and individuals that are not directly related to the mission of the Oregon Zoo.

Oregon Zoo Foundation Advocacy Process

Zoo/Metro Originated Advocacy Request



THE OREGON ZOO FOUNDATION	5 YEAR FUNDING PROFORMA USING PROPOSED MOU FORMULA																																																							
	2010-11 Current Basis	2011-12 Current Basis	2011-12 New Basis	2012-13 Pro Forma	2013-14 Pro Forma	2014-15 Pro Forma	2015-16 Proforma																																																	
Revenues																																																								
Memberships through Family Plus	\$3,022,700	\$3,200,000	\$3,200,000	\$3,360,000	\$3,528,000	\$3,704,400	\$3,889,600																																																	
Patron through Sponsor	\$1,002,300	\$1,103,300	\$1,103,300	\$1,125,400	\$1,147,900	\$1,170,800	\$1,194,200																																																	
Conservation Circle, Corporate Partners, etc.	\$267,800	\$260,100	\$260,100	\$264,800	\$270,100	\$275,500	\$281,000																																																	
Events	\$526,000	\$671,100	\$671,100	\$684,500	\$698,200	\$712,200	\$726,400																																																	
Distributions from Invested Funds	\$0	\$30,600	\$30,600	\$40,000	\$42,000	\$44,100	\$46,300																																																	
Earnings from Invested Funds	\$0	\$0	\$69,900	\$89,600	\$100,000	\$100,000	\$100,000																																																	
Total Revenues Available to Support Foundation	\$4,818,800	\$5,265,100	\$5,335,000	\$5,564,300	\$5,786,200	\$6,007,000	\$6,237,500																																																	
Planned Giving	\$0	\$0	\$0	\$0	\$0	\$0	\$0																																																	
Earnings on invested funds (retained in invested funds)	\$17,000	\$285,400	\$215,500	\$10,400	\$0	\$0	\$0																																																	
Gifts Solicited by the Foundation for the Zoo (capital, sponsorships, etc.)	\$1,285,300	\$2,320,000	\$2,320,000	\$5,187,600	\$5,195,200	\$5,203,200	\$5,211,300																																																	
Grand Total All Revenue	\$6,121,100	\$7,870,500	\$7,870,500	\$10,762,300	\$10,981,400	\$11,210,200	\$11,448,800																																																	
Foundation Operating Costs																																																								
Membership Costs	\$1,068,804	\$1,313,600	\$1,313,600	\$1,353,000	\$1,393,600	\$1,435,400	\$1,478,500																																																	
Fund Raising Costs	\$1,418,596	\$1,785,700	\$1,785,700	\$1,874,000	\$1,930,200	\$1,988,100	\$2,047,700																																																	
Foundation Operating Costs	\$2,487,400	\$3,099,300	\$3,099,300	\$3,227,000	\$3,323,800	\$3,423,500	\$3,526,200																																																	
Full Time Equivalent Employees (FTEs)	15.08	18.20	18.20	18.70	18.70	18.70	18.70																																																	
Zoo Support from Foundation Funds																																																								
Member Admission Support 2.5 times gate adult admission	\$1,140,100	\$1,221,500	\$0	\$0	\$0	\$0	\$0																																																	
Continuing Operations Support	\$500,000	\$500,000	\$0	\$0	\$0	\$0	\$0																																																	
Member Admission Support (Individ - Fam Plus less OZF member costs)	\$0	\$0	\$1,886,400	\$2,007,000	\$2,134,400	\$2,269,000	\$2,411,100																																																	
Net Proceeds from Events	\$259,300	\$383,100	\$316,700	\$328,200	\$334,800	\$341,400	\$348,200																																																	
Predators Exhibit Support	\$0	\$30,600	\$30,600	\$40,000	\$42,000	\$44,100	\$46,300																																																	
Other	\$5,000	\$2,000	\$2,000	\$2,100	\$2,100	\$2,200	\$2,300																																																	
Zoo Operations Support from OZF	\$1,904,400	\$2,137,200	\$2,235,700	\$2,377,300	\$2,513,300	\$2,656,700	\$2,807,900																																																	
Total Foundation Costs	\$4,391,800	\$5,236,500	\$5,335,000	\$5,604,300	\$5,837,100	\$6,080,200	\$6,334,100																																																	
SURPLUS (LOSS) from revenues available to support the foundation	\$427,000	\$28,600	\$0	(\$40,000)	(\$50,900)	(\$73,200)	(\$96,600)																																																	
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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO.11- 4279 FOR THE PURPOSE OF AUTHORIZING THE METRO CHIEF OPERATING OFFICER TO EXECUTE AN AGREEMENT WITH THE OREGON ZOO FOUNDATION

Date: July 14, 2011

Prepared by: Kim Smith
Teri Dresler

BACKGROUND

The Oregon Zoo and Oregon Zoo Foundation (OZF) have enjoyed a long and productive relationship that has served as one of the many important ingredients to the success of the Oregon Zoo. The relationship between the Oregon Zoo and the OZF has been guided by an agreement originally executed March 29, 1985, subsequently amended in November 28, 1989 and again on April 2, 1997 and further amended and fully restated as of May 9, 2002.

While the agreement has served its primary purpose of linking the missions of the two organizations in support of building a great Oregon Zoo, the agreement has become outdated.

In January of 2010 a group of Oregon Zoo Foundation (OZF) members, Metro Councilors, and Metro staff met to discuss the structure of the on-going relationship between the Oregon Zoo Foundation and the Oregon Zoo, a service of Metro. These discussions led to an identified need to create more autonomy, transparency and accountability between the two operations. The initial discussions led to a follow-on meeting of Councilors and OZF board members in August of 2010 which identified a set of "Framing Principles for a New Working Agreement", which were used to guide the work effort of a joint work group made up of Metro staff and OZF board members and staff who were tasked with a complete top to bottom review and re-write of the agreement. The result of this work effort is comprised in the agreement which is before you today.

The proposed agreement retains the essential linkage of the two organizations' missions, while improving on five key areas of weakness in the previous agreement.

Roles and Responsibilities

The agreement clearly articulates the role of Metro and the Oregon Zoo in visioning and operating the Oregon Zoo and its conservation education programming. The OZF's role in supporting the Oregon Zoo is clearly tied to its primary responsibility for fundraising, executing the Development Plan with support from Metro. The OZF also retains an advocacy role as it relates to promoting the Oregon Zoo in alignment with the Oregon Zoo's strategic vision, 20 year master plan and Metro Council policy.

Autonomy

The new agreement creates an appropriate level of autonomy by ensuring that the OZF (a separate 501c3) is run by an independent director serving at the pleasure of the independent OZF board. The Oregon Zoo director and Metro Council retain a non-voting presence on the OZF board. The change eliminates the role of the Oregon Zoo Director as Executive Director of the OZF.

Fiscal relationship

The agreement clarifies the allocation of membership revenues creating transparency in source and use of funds. Membership revenues are delineated into one of two categories, supporting either zoo operational enhancements or supporting OZF operations. The new allocation provides enhanced funding to the zoo to support enhanced operations. In addition, under the allocation, the OZF has an increased incentive to be fiscally sustainable.

The agreement also requires the annual development of a five year pro forma reflecting the intended sources and uses of funds collected through the OZF. Separately, the agreement provides a clearly defined mechanism to ensure the regular review and management of both regular gate admissions and membership pricing in a manner that reflects American Zoo and Aquarium Association best practices.

Transparency

The request for and use of funds is generated from the Oregon Zoo who creates the vision, strategy, and Master plan in consultation with OZF. OZF creates a Development Plan in consultation with Metro. The Development Plan is shared with Metro Council in advance of fundraising. Subsequently, all funds used by the Oregon Zoo are approved by Metro Council through the budgeting process. All requests for and use of funds are submitted through a five year pro forma that is updated annually for Council review.

Accountability

The Metro Council and OZF will meet on a formal basis semi-annually to review the direction and results of the relationship. Annually the Council will recognize the pro forma submitted as part of the budgeting process and separately, the council will receive an annual report on the activities and results of the Oregon Zoo and OZF.

The working group addressed a rich and complex history in their work to arrive at language that would provide for future growth and development of both organizations while clearly defining roles and responsibilities. The working group grappled with revisions to current business practices successfully achieving mutually acceptable language to define new business practices. Overall, the transparency of daily operations of both organizations has been better defined and afforded more structure that will lead to an on-going positive working relationship. The working group developed a strong bond over a renewed commitment to maintain a spirit of aligned autonomy that continues the Oregon Zoo on the trajectory towards being one of the world's greatest zoos.

In June of 2011, the OZF board unanimously approved the Agreement that is before you today for approval.

ANALYSIS/INFORMATION

- 1. Known Opposition - None**
- 2. Legal Antecedents -** The legal relationship between Metro and the Oregon Zoo Foundation is currently governed by the Amended and Fully Restated Agreement between the parties, dated May 9, 2002.
- 3. Anticipated Effects – Anticipated Effects –** The anticipated effects of this new agreement are increased transparency and awareness on the part of both parties; clearer operating guidelines and principles; and better defined roles and responsibilities. In addition, it is understood by both parties that revenue from membership dues will support operations and fund a new reserve account for

mutually agreed upon projects or program support. All of this groundwork should lead to an increased level of success in fundraising and fulfillment of the vision of both groups to achieve a world-class zoo.

- 4. Budget Impacts** – Please refer to the attached 5-year ProForma which shows increased annual operating revenues for the zoo.

RECOMMENDED ACTION

Staff recommends, with the Acting Chief Operating Officers' support, approval of Resolution No. 11-4279.