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UNIVERSITY OF MINNESOTA SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the "Agreement") is between the Regents of the University of Minnesota (the "University"), a Minnesota constitutional corporation, and the St. Paul Como Park Zoo, (the "Company"). This Agreement is entered into by University through its College of Veterinary Medicine.

The parties agree as follows:

1. **Description of Services.** University shall perform the following services for Company:

It is expected that the parties will remain in close communication as to the on-going operation of the agreement, and the College of Veterinary Medicine (CVM) and Como Park Zoo shall each identify a primary person or persons responsible for liaison during the course of the agreement. The appointment of liaison contacts shall be subject to the mutual approval of the parties. The individuals responsible for the liaison will jointly plan for periodic preparation and review of objectives for the program and review of any other significant issues affecting the operation of the facility.

The College of Veterinary Medicine will provide the following services:

1. On Site Clinical Service

a. The CVM will identify a licensed and accredited veterinary faculty member to serve as the primary veterinarian for clinical service to the Como Park Zoo. This veterinarian must be agreeable to Como Park Zoo. The identified CVM faculty will also serve as the CVM liaison to Como Park Zoo. The CVM will also identify a backup licensed and accredited veterinarian to provide services when the primary veterinarian is not available. The CVM will ensure that a minimum of 15% of the primary veterinarian's time (or backup if the primary veterinarian is not available) during regular working hours is available for work related to Como Park Zoo care.

b. The primary or backup veterinarian will perform the services expected of a veterinarian for an AZA accredited zoo including treatment of clinical cases, recommendations for health management and case care, routine physical examinations, recommendations on safety of botanical and enrichment items, accompany selected animal transports, maintain veterinary drug and equipment inventory on site, and maintain required medical records. The primary or backup veterinarian will also be expected to coordinate and oversee any cases admitted to the Raptor Center (TRC), Veterinary Medical Center (VMC), or Veterinary Diagnostic Lab (VDL) for advanced diagnostic evaluation or treatment. In addition, the primary or backup veterinarian may be requested to provide on site

training for Como Park Zoo staff and trade personnel to help maintain a safe working environment.

c. The CVM will provide access to the VMC, TRC, and VDL for Como Park Zoo animals that require more advanced diagnostic and therapeutic services than can be provided on site for a fee/service basis.

2. CVM Educational Programs

The CVM will assume overall responsibility for all educational experiences for students of the CVM under this Agreement. Educational programs will be overseen by the primary zoo veterinarian and must be approved by both parties.

The Como Park Zoo will be responsible for:

1. Clinical Service

a. Como Park Zoo will maintain a sufficient inventory of drugs, supplies and equipment on site to manage routine animal care. The primary veterinarian will recommend supplies and equipment and, once approved by Como Park Zoo, will maintain inventory.

b. Como Park Zoo staff will participate in case care under the supervision of the attending veterinarian, including daily medications, record keeping, and assisting with examinations when appropriate.

c. Como Park Zoo will make the ultimate decision on how to proceed with animal care and management based on recommendations by the attending CVM veterinarian and will be responsible for the cost of care

2. Educational Programs

Como Park Zoo will allow access to animals and records for veterinary students with interest in zoo and exotic practice. All access will be supervised by the attending veterinarian and pre-approved by Como Park Zoo. Access should be minimally disruptive for Como Park Zoo animals and staff. Information and images are expected to remain confidential and not for public distribution unless explicitly approved by both Como Park Zoo and the attending veterinarian.

3. General Responsibilities

Como Park Zoo retains ultimate authority and liability for all operations and final decisions regarding management of the facility, and assumes all business risk and liability for the operation of the facility, including matters relating to animal health, and all matters relating to compliance with all applicable law and regulations.

("Services"). Reference to Services in this Agreement shall be deemed to include any deliverables provided to Company in connection with the Services, including without limitation, reports, results, materials, products, and information.

2. Compensation. For the Services performed under section 1, Company shall pay the University twenty thousand and no/100 (\$20,000), plus any sales or use tax if applicable.

2.1 The compensation shall be paid (check one of the two boxes):

☐ in full upon the signing of this Agreement; or

☒ in installments, payable on the following dates: December 1, 2012

Como Park Zoo will pay an annual sum of \$20,000 to the CVM for the time spent by the primary and back-up veterinarians on all regular activities related to veterinary services at Como Park Zoo. This cost is associated with the veterinarian's time only, and does not include the cost of VMC materials, supplies, and equipment that are used on site on clinical cases. This fee does not apply to services performed at the VMC, Raptor Center, or Veterinary Diagnostic Labs, including case care and diagnostic tests.

Como Park Zoo agrees to pay for clinical services performed at the VMC and for materials, supplies and equipment usage provided by the VMC. Como Park Zoo also agrees to pay for diagnostic service provided at The Raptor Center and the Veterinary Diagnostic laboratory.

2.2 Invoices shall be sent to:

Attn: JoAnne Kelly

Como Park and Conservatory

1225 Estabrook Drive

Saint Paul, MN 55102

Phone No.: (651) 487-8208

Facsimile No.: (651) 487-8209

Email: joanne.kelly@ci.stpaul.mn.us

3. **Term.** The term of this Agreement shall commence on **January 1, 2012** ("Effective Date") and shall expire on **December 31, 2012** unless terminated earlier as provided in section 4.

4. **Termination.** Either party may terminate this Agreement if the other party (i) fails to perform any material obligation under this Agreement and (ii) does not correct such failure within seven (7) days after having received written notice of such failure. Additionally, either party may terminate this Agreement for its convenience upon thirty (30) days' prior written notice to the other party. Upon any termination under this Section 4, Company shall promptly pay University for all Services rendered and costs incurred up to and including the effective date of termination.

5. **DISCLAIMER OF WARRANTIES.** UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION, ORIGINALITY OR ACCURACY OF THE SERVICES PERFORMED OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT. UNIVERSITY

EXPRESSLY DISCLAIMS WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATION OF LIABILITY FOR BREACH OF CONTRACT. IN NO EVENT SHALL EITHER'S PARTY'S LIABILITY FOR BREACH OF THIS AGREEMENT INCLUDE DAMAGES FOR WORK STOPPAGE, LOST DATA, OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFIT), OF ANY KIND. EXCEPT FOR EACH PARTY'S OBLIGATIONS UNDER SECTIONS 8.1 AND 8.2, EACH PARTY'S LIABILITY TO THE OTHER FOR BREACH OF THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE MONETARY CONSIDERATION PAID TO UNIVERSITY UNDER THIS AGREEMENT.

7. Use of University Name or Logo. Company agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with University or the name of any representative of University in any sales promotion work or advertising, or in any form of publicity, without the prior written permission of University in each instance. However, Company may use the name of University in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements. Company agrees to provide University with a copy of any such document.

8. Indemnification.

8.1 Except as provided in Section 8.2, each party shall be responsible for its own acts and omissions and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Liability of the University is subject to the terms and limitations of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, as amended.

8.2 Company shall indemnify, defend, and hold harmless University, its regents, faculty members, students, employees, agents, contractors, and authorized volunteer workers against any and all claims, costs, or liabilities, including attorneys' fees and court costs at both trial and appellate levels, for any loss, damage, injury, or loss of life (other than that attributable to willful, wanton or intentional acts or omissions of University) arising out of (i) use by Company (or any third party acting on behalf of or under authorization from Company) of the Services or any information, reports, deliverables, materials, products or other results of University's work under this Agreement or (ii) Company's infringement of a third party's intellectual property rights or Company's violation of any law, rule, or regulation in the provision of any materials to University.

8.3 Each party represents that it has and will continue to have at least the following levels of insurance during the term of this Agreement: (i) as to University, Workers' Compensation in statutory compliance with Minnesota law and General Liability insurance in an amount not less than \$1,000,000 each claim/\$3,000,000 each occurrence; and (ii) as to Company, General Liability insurance in an amount not less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate. Certificates of all insurance detailed above shall be furnished to the other party upon request.

9. Export Controls. Company shall notify University in writing if any technological information or data to be provided to University is subject to export controls under U.S. law or if technological information or data that Company is requesting University to produce during the course of work under this Agreement is expected to be subject to such controls. Company shall notify University of the applicable export controls (for example, Commerce Control List designations, reasons for control, and countries for which an export license is required). University shall have the right to decline export controlled information or tasks requiring production of such information. If the Services cannot reasonably be performed without University access to export controlled information or data, the Agreement may be terminated by either party for convenience in accordance with Section 4, except that such termination shall occur immediately upon written notice to the other instead of at the end of the 30-day period set forth in Section 4. Company shall not release export controlled information or data to University until Company has been notified in writing by University that University has implemented a technology control plan for such information.

10. General Provisions.

10.1 Amendment. This Agreement shall be amended only in writing duly executed by all the parties to this Agreement.

10.2 Assignment. The parties may not assign any rights or obligations of this Agreement without the prior written consent of the other party. Any assignment attempted to be made in violation of this Agreement shall be void.

10.3 Entire Agreement. This Agreement (including all documents attached or referenced) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement, including without limitation, any non-disclosure agreements. The terms and conditions of any purchase order or similar document submitted by Company in connection with the services provided under this Agreement shall not be binding upon University.

10.4 Force Majeure. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties' duty to perform obligations shall be suspended.

10.5 Governing Law and Jurisdiction. The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County, Minnesota.

10.6 Independent Contractor. In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint ventures, or employees. Each party's employees (i) shall be regarded as the employees of such party and shall not be regarded as the employees of the other party; (ii) shall be subject to the employment policies and procedures of such party and shall not be subject to the employment practices and procedures of the other party; and (iii) shall not be entitled to any employment benefits of the other party. Neither party shall have the right or power to bind the other party and any attempt to enter into an agreement in violation of this section 10.6 shall be void. Neither party shall take any actions to bind the other party to an agreement.

10.7. Notices. All notices and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally or by facsimile or by a recognized courier service or by United States Mail (first-class, postage pre-paid, certified return receipt requested) to the other party at the following addresses. Such notices and other communications shall be deemed made when delivered; faxed; submitted to the courier service; or, with respect to U.S. mail, three days after mailing.

If to University:

University of Minnesota
Veterinary Medical Center
Attn: **Paula J. Buchner**
1365 Gortner Ave
St. Paul, MN 55108

Phone No.: (612) 624-5877
Facsimile No.: (612) 624-8753
E-mail: buchn009@umn.edu

With a copy to:

University of Minnesota
Office of the General Counsel
Attn: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street S.E.
Minneapolis, MN 55455-2006
Facsimile No.: (612) 626-9624
E-mail: contracts@mail.ogc.umn.edu

With a copy to:

University of Minnesota
Office of External Sales
660 West Bank Office Building
1300 South 2nd Street
Minneapolis, MN 55454
Facsimile No.: (612) 624-4149
Email: extsales@umn.edu

If to Company:

Attn:

Phone No.:

Facsimile No.:

E-mail:

10.8. Breach; Attorneys' Fees. In the event it fails to perform any of its obligations under this Agreement, Company shall reimburse University for all University's costs and expenses (including reasonable attorneys' fees, court costs, and costs of investigation) to enforce this Agreement, regardless of whether a suit or action had been commenced or concluded.

10.9. Survival. Upon termination or expiration of this Agreement, Sections 2, 5, 6, 7, 8, 9, and 10 shall survive.

IN WITNESS WHEREOF, the parties have entered into the Agreement as of the dates indicated below. Each individual signing below represents that they have the authority to bind the party on whose behalf they are signing.

Regents of the University of Minnesota

By: Paula J. Buchner
Name: **Paula J. Buchner**
Title: **COO/CFO College of Veterinary
Medicine**
Date: 9/11/12

By: _____
Name: _____
Title: _____
Date: _____