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<b>Analyst</b>	<b>rb</b>

## UNIVERSITY OF MINNESOTA SERVICES AGREEMENT

***THIS SERVICES AGREEMENT*** and its addenda, including the City of Saint Paul Request for Professional Services Agreement Packet, attached as Addendum A (the “Agreement”) is between the Regents of the University of Minnesota (the “University”), a Minnesota constitutional corporation, and City of Saint Paul, through its Department of Parks and Recreation Como Park Zoo and Conservatory (the “Company” or “City”). This Agreement is entered into by University through its College of Veterinary Medicine and the Department of Veterinary Population Medicine.

The parties agree as follows:

**1. Description of Services.** University shall perform the following services for Company (“Services”):

It is expected that the parties will remain in close communication as to the ongoing operation of the Agreement, and the College of Veterinary Medicine (CVM) and the Como Park Zoo and Conservatory 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 Services and review of any other significant issues affecting the operation of the facility. The Services will be completed in accordance with the schedule mutually agreed upon by the parties.

The College of Veterinary Medicine ("CVM") will provide the following Services:

**A. On Site Clinical Service**

- i. The CVM will identify a licensed and accredited veterinary faculty member to serve as the primary veterinarian for clinical service to Como Park Zoo and Conservatory. This veterinarian must be agreeable to Como Park Zoo and Conservatory. The identified CVM faculty will also serve as the CVM liaison to Como Park Zoo and Conservatory. The CVM will also identify one or more backup licensed and accredited veterinarian(s) to provide Services when the primary veterinarian is not available. The CVM will ensure that a minimum of 15% and a maximum of 25% 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 and Conservatory care.
- ii. 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 and Conservatory staff and trade personnel to help maintain an OSHA-compliant working environment.

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

#### B. After-Hours Emergency Coverage

The primary and back-up veterinarians responsible for on-site clinical service will also provide coverage for emergencies outside of regular operational hours (8am to 5pm on weekdays). This service will include on-site care as well as oversight for admission of an emergency case to the VMC, TRC, or VDL.

#### C. 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.

Como Park Zoo and Conservatory will be responsible for:

##### A. Clinical Service

- i. Como Park Zoo and Conservatory 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 and Conservatory, will maintain inventory.
- ii. Como Park Zoo and Conservatory staff will participate in case care under the supervision of the attending veterinarian, including daily medications, record keeping, and assisting with examinations when appropriate.
- iii. Como Park Zoo and Conservatory 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.

##### B. Educational Programs

Como Park Zoo and Conservatory 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 and Conservatory. Access should be minimally disruptive for Como Park Zoo and Conservatory 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 Conservatory and the attending veterinarian.

**C. General Responsibilities**

Como Park Zoo and Conservatory retains ultimate authority and liability for all operations and final decisions regarding management of the Como Park Zoo and Conservatory 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. Como Park Zoo and Conservatory is ultimately responsible for all medical records created as a result of the Services performed. CVM will transfer records for procedures and testing done at CVM's site, and once delivered to Como Park Zoo and Conservatory, Como Park Zoo and Conservatory will be responsible to maintain those records and CVM may delete their copies according to their normal record retention policies.

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 University Thirty Eight Thousand one hundred twenty one and 00/100 Dollars (\$38,121.00), plus any sales or use tax if applicable.

2.1 The compensation shall be paid in the following manner (check one of the following):

- % upon the signing of this Agreement, with the balance payable monthly after prepayment is applied; or
- monthly, based on any work completed in that month.

2.2 Invoices shall be payable net 35 days from date of invoice and sent to:

City of Saint Paul Como Park Zoo  
Attn: Allison Jungheim  
1225 Estabrook Drive  
St. Paul, MN 55103

Phone No.: 651-207-0339  
Email: allsion.jungheim@ci.stpaul.mn.us

In the event the compensation is not a fixed firm price for the services, but instead is set forth on an attached schedule and contains published rates, the University reserves the right to modify the fees set forth thereon effective July 1 of each year of this Agreement.

**3. Term.** The term of this Agreement shall commence on **January 1, 2022** ("Effective Date") and shall expire on **December 31, 2023** 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 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 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 University is subject to the terms and limitations of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, as amended.

8.2 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.**

9.1 Company shall not convey export-controlled technical data, technology, commodities, or software on the U.S. Munitions List, 22 C.F.R. pt. 121, or the Commerce Control List, 15 C.F.R. pt. 774, to University without the prior written consent of University's Export Controls Officer (J. Patrick Briscoe, [bris0022@umn.edu](mailto:bris0022@umn.edu), 612-625-3860). 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 items, 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.

9.2 Company represents that the items being procured (a) are not specifically designed or modified for military purposes or specifications, and (b) will not be used in connection with the development or use of any missiles or chemical, biological, or nuclear weapons.

## **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, addendum, or similar document submitted by Company in connection with the services provided under this Agreement shall be binding upon University but if there are any discrepancies between the terms of this Agreement, and a Company purchase order, addendum or similar document, the order of control will be as follows (1) this Services Agreement, (2) Addendum A, (3) purchase order.

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 Ramsey 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 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; submitted to the courier service; or, with respect to U.S. mail, three days after mailing.

*If to University:*

Attn: Chris Dillon  
College of Veterinary Medicine  
1365 Gortner Avenue  
St. Paul, MN 55108  
Phone No.: 612-624-5877  
E-mail Address: [cdillon@umn.edu](mailto:cdillon@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 SE  
Minneapolis, MN 55455-2006  
E-Mail: [contracts@mail.ogc.umn.edu](mailto:contracts@mail.ogc.umn.edu)

*With a copy to:*

University of Minnesota  
Office of External Sales  
295 West Bank Office Building  
1300 South Second Street  
Minneapolis, MN 55454  
E-Mail: [extsales@umn.edu](mailto:extsales@umn.edu)

*If to Company:*

City of Saint Paul Como Park Zoo  
Attn: Allison Jungheim  
1225 Estabrook Drive  
St. Paul, MN 55103  
Phone No.: 651-207-0339  
E-mail Address: allson.jungheim@ci.stpaul.mn.us

10.8 Taxes and Similar Fees. In addition to the payment obligation in Section 2, Company is responsible for the payment of any and all income, sales, use, consumption, value added, excise, custom duties or other taxes and similar fees in connection with this Agreement, levied or required to be withheld from payment(s) to University by any taxing authority or any other body having jurisdiction under any present or future laws. To the extent that Company is required to withhold or deduct taxes or similar fees on any payment to be made to University, then the amount payable shall be increased by the amount that will result in University receiving a net payment in the amount it would have received absent such withholding or deduction. If University is required to pay any of such fees and/or taxes or any related penalties or interest, then any such payments shall be reimbursed to University by Company.

10.9. Counterparts. The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute on instrument.

10.10. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

10.11. 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**

**City of Saint Paul, through its Department of  
Parks and Recreation Como Park Zoo and  
Conservatory**

By: \_\_\_\_\_

Name: Chris Dillon

Title: CFO,CVM

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_