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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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ALYNE FORTGANG,  
Petitioner,

v.

WOODLAND PARK ZOOLOGICAL SOCIETY a/k/a WOODLAND  
PARK ZOO  
Respondent.

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**RESPONDENT WOODLAND PARK ZOOLOGICAL SOCIETY'S  
ANSWER TO BRIEF OF AMICUS CURIAE WASHINGTON  
COALITION FOR OPEN GOVERNMENT**

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## I. INTRODUCTION

Amicus curiae Washington Coalition for Open Government (“WCOG”) fails to advance any argument demonstrating why this case merits review under RAP 13.4(b). WCOG does not include a single reference or citation to the applicable RAP governing grounds for review. WCOG does not assert any conflict between the Court of Appeals decision below and any decision of this Court or other Washington Court of Appeals. WCOG does not even assert that the Court of Appeals applied the wrong legal test to determine whether the Woodland Park Zoological Society (“WPZS”) is subject to the Public Records Act (“PRA”). WCOG agrees that the four-factor “functional equivalent” test set forth in *Telford v. Thurston County Board of Commissioners*, 95 Wn. App. 149, 974 P.2d 886 (1999), applied by the Court of Appeals below was the right test. Instead, WCOG takes issue with the Court of Appeals’ factual analysis of one of the four factors to be balanced under *Telford*. But that is not the type of issue that merits this Court’s discretionary review. Regardless, WCOG’s argument lacks merit and is not supported by any case citation from Washington or elsewhere.

WPZS is a private, nonprofit organization that receives the majority of its funding from non-public sources, does not perform a governmental function, was not created by government, and is not under

governmental control. Accordingly, as both the trial court and Court of Appeals have held, under the four-factor “functional equivalent” test set forth in *Telford*, WPZS is not subject to the PRA.

WCOG’s position that receipt of funds through a voter-approved levy is a “significant factor” determinative to functional equivalency is not supported by case law or logic. That the determination to provide funding to a nonprofit is made through a voted levy rather than an act of the elected legislature or executive has no particular relevance. Rather, the appropriate inquiry under the government funding prong of the *Telford* test is the “level of government funding” not the source of funding. WCOG’s concern over government accountability for voter-approved levy funds already is served via the ample oversight provisions contained in the levies at issue here, as well as in the contracts enabling WPZS’s operation of the Woodland Park Zoo (the “Zoo”) and receipt of levy funds.

WCOG ignores the reasonable approach Washington courts consistently have applied: the government funding factor weighs in favor of applying the PRA only when the entity at issue receives the majority of its revenue from public funds. Under WCOG’s proposed approach, levy funding would trump the level of funding analysis and always weigh in favor of application of the PRA. The PRA, however, is not a “follow the money” statute in which receipt of public funding by a nonprofit subjects

the nonprofit to the PRA. WCOG's invitation to reject the Court of Appeals' factual analysis under the "level of government funding" *Telford* factor should be rejected. Review should be denied.

## II. STATEMENT OF THE CASE

WPZS incorporates by reference the Statement of the Case set forth in its Answer to Petition for Review filed with this Court on April 1, 2016.

## III. ARGUMENT

**A. WCOG's position that receipt of funds through a voter-approved levy is a "significant factor" under *Telford*'s "level of government funding" prong is unsupported and does not merit this Court's review.**

**1. WCOG has failed to identify any grounds upon which review should be granted under RAP 13.4(b).**

Initially, WCOG provides no argument regarding why this case merits discretionary review. As WPZS made clear in its Answer to Petition for Review, the Court of Appeals' decision in this case is entirely consistent with four prior opinions addressing whether a private entity is the functional equivalent of a public agency for purposes of the PRA. Nor does the Court of Appeals' opinion conflict with any decision of this Court, therefore neither RAP 13.4(b)(1) or (b)(2) are implicated. WCOG does not challenge that *Telford* is the proper test that should be applied to the PRA claim at issue. There is no suggestion that the decision involves

a significant constitutional question under RAP 13.4(b)(3), and WCOG does not cite to RAP 13.4(b)(4), much less explain how this case involves an issue of substantial public interest that should be determined by the Supreme Court.

The fact that access to records under the PRA, generally, is an important issue does not demonstrate that access to WPZS records is an issue requiring Supreme Court review. Here, the Court of Appeals correctly determined that WPZS—an independently formed and governed nonprofit organization that manages and operates the Zoo pursuant to a contractual relationship with the City, receives almost three quarters of its funding from private sources, neither administers public programs nor exercises police powers, and is not controlled by the City—implicates none of the factors that might militate for public access to all WPZS records. Accordingly, review by this Court is unwarranted.

**2. The source of government funding is not relevant to the “functional equivalent” analysis.**

The *Telford* test provides a “practical”, case-by-case method for distinguishing between a private entity not subject to the PRA and a private entity subject to the Act as the “functional equivalent” of a public agency. See *Worthington v. Westnet*, 182 Wn.2d 500, 508, 341 P.3d 995 (2015). The inquiry under the government funding element of this test is

not, as WCOG posits, whether the entity receives funds through voter-approved levies versus through an elected legislative appropriation or an executive act in contracting for specific services. Rather, the inquiry is what overall level of government funding the entity receives. Indeed, as WPZS has already explained in its answer to the amicus brief WCOG filed with the Court of Appeals in this case, had the legislature wanted to expand the scope of the PRA to include all entities receiving taxpayer levied funding or public funding other than through a government's discretionary acts, it could have so provided. *See, e.g.*, S.C. Code Ann. § 30-4-20(a) (2003) (for disclosure purposes, defining “public body” to include “any organization, corporation, or agency supported in whole or in part by public funds or expending public funds”).

Here, that WPZS receives a part of its funding through voter-approved levies goes not to the overall level of public funding WPZS receives, as relevant under *Telford*, but rather to the source of public funding received—a factor not germane to the *Telford* analysis. WCOG cites no case that places additional significance on the source of taxpayer funds at issue, nor could it. Washington case law is clear that the *Telford* test examines the level of government funding received relative to overall revenue as one factor in determining whether an entity is the functional equivalent of a public agency. *See* 95 Wn. App. at 162; *Clarke v. Tri-*

*Cities Animal Care & Control Shelter*, 144 Wn. App. 185, 194-95, 181 P.3d 881 (2008); *Spokane Research & Def. Fund v. W. Cent. Cmty. Dev. Ass'n*, 133 Wn. App. 602, 609, 137 P.3d 120 (2006).

Focusing on the level of funding rather than the source of funding makes sense in light of the purposes behind the PRA. The PRA promotes government accountability by assuring “access to information concerning the conduct of government”. RCW 42.17A.001 (emphasis added). *Telford*'s functional equivalent test provides an analytical framework for courts to determine whether a private entity is engaged in the “conduct of government” such that it should be subject to the PRA; the level-of-government-funding prong of the test is one factor that informs the analysis. For example, if a private entity's operations are almost entirely funded by government, the likelihood that the entity is in actual fact carrying out governmental functions at the behest of government increases. The source of funds the government utilizes to support a program, however, tells a court very little about whether the entity is engaged in the conduct of government. To hold otherwise—that is, to treat receipt of levy funding as a significant factor in the funding analysis—would mean that private entities could be deemed the functional equivalents of public agencies based not on their characteristics and operations, but rather on the source of public support received. Such a

result does not accord with the practical, case-by-case method Washington courts have developed for distinguishing between private entities not subject to the PRA and private entities engaged in the conduct of government. WCOG's argument elevates form, i.e. the source of funds, over substance, i.e. the level of funding.

**3. Oversight of levy funds does not necessitate application of the PRA.**

The primary justification WCOG advances for focusing on the source of funding and thereby rendering WPZS subject to the PRA is that "open government and government accountability" require it. *See* Amicus Br. at 5. WCOG's concerns are unfounded. As the Court of Appeals recognized, the Management Agreement between the City and WPZS already provides numerous oversight mechanisms related to the City Levy. *See* Appendix to Petition for Review ("App.") at A-4-A-5 (WPZS is required, *inter alia*, to provide the Parks Department Superintendent an annual report, an annual plan, and monthly finance reports, including "a complete financial accounting for all funds, including use of Levy proceeds" and separate quarterly reports to the Levy Oversight Committee "monitoring expenditure of Levy funds").

Likewise, citizen oversight of King County Levy funds<sup>1</sup> is amply accounted for in the ordinance authorizing the levy.<sup>2</sup> Specifically, the ordinance provides for the establishment of a parks levy citizen oversight board. Ordinance 17568, § 7. The board is responsible for “review[ing] the allocation of levy proceeds and progress on achieving the purposes of [the levy proposition]”—not, as WCOG suggests, for providing oversight of WPZS itself. *Id.* The ordinance also states that distribution of levy proceeds “shall be subject to the execution of a contract between the county” and the recipient of funds. *Id.*, § 6.

In turn, WPZS’s contract with King County contains several provisions that ensure public oversight for King County Levy funds.<sup>3</sup> For example, the contract requires WPZS to provide the county with annual reports including a “general summary of the Zoo’s operations and a complete financial accounting for all funds, including use of County Levy Proceeds”. WPZS App. 5, § 4.2 (emphasis added). WPZS also must

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<sup>1</sup> As a threshold matter, it is not evident how WPZS’s receipt of King County Levy funds bears on the question of whether WPZS is the functional equivalent of a City agency. Nevertheless, WCOG raised the King County Levy in its amicus briefing to the Court of Appeals and to this Court; accordingly, WPZS will address WCOG’s arguments.

<sup>2</sup> King County Ordinance 17568, King County, *available at* <http://your.kingcounty.gov/dnrp/library/parks-and-recreation/documents/about/Ordinance%2017568.pdf> (“Ordinance 17568”).

<sup>3</sup> Because issues specific to the King County Levy were raised for the first time in WCOG’s amicus brief to the Court of Appeals, the contract was not part of the trial court record and WPZS provided a copy of the 2014 version of the contract to the Court of Appeals as an appendix to its answer to WCOG’s brief. For the Court’s convenience, WPZS provides a copy of the contract again here. *See* WPZS Appendix (“WPZS App.”) at 1-22.

provide the county with an annual certification of the total dollar amount of county funds expended by WPZS identified by category “(i.e. environmental education, conservation programs, and capital improvement projects)”. *Id.* § 4.3. The contract also requires cooperation with any state or county auditors, who may conduct audits “during or after the Agreement period for purposes of evaluating claims by or payments to WPZS related to this Agreement and for any other reason deemed appropriate and necessary by King County” provided the reason is related to the use of levy funds. *Id.* at 16-17, § 14.4. The contract specifically contemplates that all records provided by WPZS to the county pursuant to the contract are subject to the PRA. *Id.* at 17, § 14.5. Thus, a citizen concerned with how King County Levy funds are used need only make a public records request to King County to receive a full accounting. Application of the PRA to WPZS is unwarranted.<sup>4</sup>

Finally, WCOG does not explain the purported significance of the fact that WPZS “is not required to provide specific services in exchange for receiving the parks levy funds.” Amicus Br. at 5. The YMCA, for example, receives levy funds from the City’s Families and Education Levy to provide Seattle “public school students, Seattle children, and their

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<sup>4</sup> Notably, the requests at issue in this case sought internal documents reflecting the keeping and care of the elephants then resident at the Zoo and WPZS’s public outreach efforts related to the elephant program, and did not reference or seek information pertaining to the use of public funds. CP 24-25.

families education-support services designed to improve academic achievement,” subject to citizen oversight by way of reports and availability for audits.<sup>5</sup> That is very similar to the Zoo’s receipt of funds for “environmental education programs, with emphasis on accessibility for traditionally underserved populations in the county; horticulture and maintenance of buildings and grounds; conservation and animal care for rare, threatened or endangered Pacific Northwest species; and for board-approved capital projects/campaigns . . . .” *See* Amicus Brief at 4. There is no case law supporting the notion that this is not a specific enough legislative determination (nor has the levy been challenged on that basis) or that governments can only support nonprofits on a specified fee for services contract. WPZS does not, as WCOG suggests, spend a “block of public funds at its own discretion, as if the funds were private.” *Id.* at 5. Rather, WPZS, similar to numerous other private nonprofit entities, receives taxpayer levy funds for allocated purposes subject to specific oversight measures as described above. Resorting to the PRA is neither necessary for oversight nor proper under *Telford*.

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<sup>5</sup> City of Seattle Ordinance 123567, *available at* <https://your.kingcounty.gov/elections/elections/201111/measures/Seattle1.pdf>.

**B. WCOG's approach would read the "level of government funding" prong out of the *Telford* test entirely.**

No Washington court has applied the *Telford* government funding factor to find that an entity receiving the majority of its funds from non-public sources is the functional equivalent of a public agency for the purposes of the PRA. *See* cases cited *supra* at 5-6. According to WCOG, however, the "significance of levy funding applies regardless of its percentage ratio to the organization's funding." Amicus Br. at 5-6. Under this approach, the level of government funding prong would be read out of the functional equivalent test entirely where levy funding is involved; the government funding factor would always weigh in favor of applying the PRA to a private entity simply by virtue of that entity's receipt of levy funding. WCOG cites no authority in support of this novel departure from 17 years of prior Washington law and, as explained above, neither do the circumstances of this case justify such a departure. In 2013, almost three-quarters of WPZS's revenue came from non-public sources; non-City funding from public sources accounted for only 10 percent of total WPZS revenue while funding from the City accounted for 16 percent. Supp. CP at 171, 183-208. WCOG's proposed approach should be rejected.

**IV. CONCLUSION**

WCOG has not demonstrated any basis for this Court's review, and review is not warranted. The Court of Appeals engaged in a

thoughtful analysis of the underlying purposes of the PRA and consistently applied *Telford*'s practical, four-factor test to the facts of this case. The level, rather than the source, of government funding that WPZS receives is the relevant inquiry; WCOG's arguments to the contrary and concerns regarding citizen oversight of levy funds are unfounded. WPZS respectfully requests that the Court deny the petition for review.

RESPECTFULLY SUBMITTED this 9th day of June, 2016.

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# WPZS APPENDIX

## WOODLAND PARK ZOO SOCIETY/KING COUNTY

### PARKS PROPERTY TAX LEVY AGREEMENT

This Parks Property Tax Levy Agreement (the "Agreement") is made and entered into as of May 7, 2014, 2014, by and between KING COUNTY, a Washington municipal corporation (the "County") and the WOODLAND PARK ZOOLOGICAL SOCIETY, a Washington non-profit corporation ("WPZS").

#### RECITALS

- A. The City of Seattle (the "City") currently owns public zoological gardens located in the City of Seattle and commonly known as the Woodland Park Zoo (the "Zoo"). The Zoo is located on certain park land owned by the City and described in greater detail in Exhibit A attached hereto.
- B. WPZS is a non-profit public benefit corporation organized in 1965 for charitable, scientific and educational purposes for the study and promotion of zoology and wildlife conservation and for the education and recreation of the public.
- C. In 1995, then-Mayor Norm Rice appointed the Zoo Commission II to review Zoo needs and to propose ways to finance the Zoo's operations and continued development into the 21<sup>st</sup> Century. The Zoo Commission II believed that non-profit management and stable public funding would result in increased private contributions and allow the Zoo to continue to develop and realize its potential for leadership in education and conservation.
- D. In Resolution 29386 adopted on July 1, 1996, the City Council expressed its general support for the recommendations of Zoo Commission II.
- E. In the 2000 state legislative session, Chapter 35.64 of the Revised Code of Washington was passed to authorize certain cities, including the City, to enter into contracts with non-profits or other public organizations for the overall management and operation of a zoo.
- F. Since March 1, 2002, WPZS has provided non-profit management of the Zoo through an agreement with the City's Parks Department (the "Management Agreement").
- G. The Zoo, which originated as a public park with a small menagerie of animals, is now an exceptional center for wildlife exhibition, education, conservation and scientific research.
- H. The Zoo is currently funded by a combination of public support and private contributions.
- I. WPZS endeavors to be a creative partner with the City and other local governments in improving and operating the Zoo for the greatest public good.
- J. Through WPZS's management, the Zoo has evolved into an important civic asset and recreational resource in the City of Seattle and the greater King County area.
- K. King County owns and operates a park system with over twenty-eight thousand (28,000)

acres of regional parks and open spaces and over one hundred seventy-five (175) miles of regional trails. In addition, King County is the provider of local parks in the rural area and is the transitional provider of local parks in the urban incorporated areas.

- L. In November 2006, the King County executive created the Parks Futures Task Force to recommend a funding plan for the current County park system, and to examine what steps should be taken, if any, regarding future park system acquisitions.
- M. Ordinance 15760 specified two contingencies for distribution of any levy proceeds to the WPZS: (1) that the WPZS modify its bylaws to provide for a board member appointed by the King County Council to monitor the expenditure of County monies; and (2) that the WPZS enter into a contract with King County regarding distribution of the levy proceeds.
- N. In a letter dated April 12, 2007, the Board of Directors of WPZS offered to take the necessary steps to modify the bylaws of the WPZS to provide for a board member appointed by the King County Council to monitor the expenditure of county monies.
- O. On August 21, 2007, King County voters approved the Special Property Tax Levy, which included funding for the Zoo. The levy expired at the end of 2013.
- P. In June of 2012, the County Executive convened the King County Parks Levy Task Force to recommend a funding plan for the current park system and to examine how to address the parks and recreation needs of King County residents in the future.
- Q. The King County Parks Levy Task Force recommended that the County replace the expiring levies and put a ballot measure before the voters in 2013 that requests a six-year inflation adjusted property tax levy lift at a total rate of \$0.1901 per one thousand dollars of assessed value with a percentage of the levy proceeds to be distributed to cities for their local parks system projects.
- R. On April 30, 2013, the King County Council adopted Ordinance 17568 which called for a special election in accordance with RCW 29A.04.321 to authorize an additional 6-year property tax levy for special park purposes, including funding for the zoo.
- S. On August 6, 2013, King County voters approved Proposition No. 1 Parks Levy that authorized an additional six year property tax levy at a rate of \$0.1877 in the first year, with subsequent levies adjusted by inflation for the purpose of: maintaining and operating King County's parks system, improving parks, recreation and mobility by acquiring open space, expanding park and recreation opportunities, continuing to develop regional trails; repairing, replacing, and improving local parks and trails in King County's cities; and funding environmental educations, maintenance, conservation, and capital programs at the Woodland Park Zoo.
- T. Section 4, paragraph E of Ordinance 17568 provides that seven (7) percent of the levy proceeds shall be distributed to the Woodland Park Zoological Society for environmental education with emphasis on accessibility to traditionally underserved populations throughout the county, horticulture and maintenance of buildings and grounds,

conservation and animal care for rare, threatened or endangered Pacific Northwest species; and board approved capital projects/campaigns in existence as of December 31, 2012.

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### AGREEMENT

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:
  - 1.1 "Annual Report" shall mean the annual report prepared by WPZS as described in Section 4.2 of this Agreement.
  - 1.2 "Board of Directors" shall mean the Board of Directors of the Woodland Park Zoological Society.
  - 1.3 "Bylaws" shall mean the bylaws of the WPZS, as adopted pursuant to the Washington Nonprofit Corporation Act and the WPZS's Articles of Incorporation.
  - 1.4 "City" shall mean the City of Seattle, State of Washington, and all of its boards, commissions, departments, agencies and other subdivisions.
  - 1.5 "County Council" shall mean the County Council of King County, State of Washington.
  - 1.6 "County Levy" or "Parks Property Tax Levy" means the annual King County property tax levy for park purposes imposed by the King County Council and authorized by Proposition No. 1 Parks Levy that was approved by King County voters on August 6, 2013 that replaces two levies expiring at the end of 2013.
  - 1.7 "County Levy Proceeds" shall mean the principal amount of the County Levy collected by the County.
  - 1.8 "Distribution Request" shall mean the WPZS's written request to King County in a form acceptable to King County.
  - 1.9 "Executive" shall mean the King County Executive or his or her functional successor.
  - 1.10 "Existing Funds" shall have the meaning, as defined by RCW 84.55.050.
  - 1.11 "King County" shall mean King County, State of Washington.

- 1.12 "Management Agreement" shall mean that agreement between the City and the WPZS, dated March 2, 2002, and attached hereto as Exhibit B, which provides for long-term management of the Zoo by WPZS.
- 1.13 "Parks Division" shall mean the King County Parks and Recreation Division of the Department of Natural Resources and Parks.
- 1.14 "Parking Facilities" shall mean any parking facilities, including a Parking Garage, at the Zoo.
- 1.15 "Parking Garage" shall mean any parking structure, structures or surface improvements to bring the Zoo's visitor parking spaces to 1,450 or such other amount as called for in the Long-Range Plan adopted by the City.
- 1.16 "Premises" shall mean the property legally described in Exhibit A attached hereto.
- 1.17 "WPZS" shall mean the non-profit public benefit corporation which operates the Zoo pursuant to the Management Agreement.
- 1.18 "Zoo" shall mean the zoological gardens and related facilities currently operated on the Premises by the WPZS pursuant to the Management Agreement and owned by the City of Seattle.
- 1.19 "Zoo Director" shall mean the Director of the Zoo, as determined by WPZS.
- 1.20 "Zoo Proceeds" shall mean seven percent (7%) of the total County Levy Proceeds collected by King County, plus any interest earned on Zoo Proceeds by King County prior to transfer to WPZS, , and any interest earned on these funds.  
 1.21 "Zoo Projects" shall mean environmental education with an emphasis on accessibility to traditionally underserved populations throughout the county, conservation programs and animal care for rare, threatened, or endangered Pacific Northwest species, board approved capital improvement projects/campaigns at the Woodland Park Zoo in existence as of December 31, 2012, and horticulture and maintenance of buildings and grounds.
2. Term of Agreement. The term of this Agreement (the "Term") shall be for a period commencing on the Effective Date (the "Commencement Date"), and expiring on December 31, 2019 (the "Termination Date"), subject to the termination provisions in Section 11.
3. Receipt and Distribution of County Levy Proceeds for the Zoo.
- 3.1 Generally. Each year the County shall distribute the Zoo Proceeds, to the WPZS as authorized by Ordinance 17568, subject to Council appropriation. Upon execution of this Agreement, WPZS shall provide King County with its calculation of Existing Funds.
- 3.2 Distribution of Levy Proceeds.

- A. Distribution Schedule. Beginning in 2014 and through 2019, except for the immediate distribution described in Section 3.2.C below, the County shall transfer the Zoo Proceeds on a monthly basis. The annual amounts transferred shall never exceed Zoo Proceeds actually collected and appropriated by the County.
- B. Administrative Fee. The Parties agree that King County has authority to deduct a portion from the Zoo Proceeds for eligible expenditures related to the administration of the distribution of the County Levy Proceeds, consistent with Ordinance 17568.
- C. Immediate Distribution. On the effective date of this Agreement or as soon thereafter as reasonably possible, WPZS shall provide King County with an initial Distribution Request and, consistent with Section 3.I, WPZS's calculation of Existing Funds. As soon thereafter as reasonably possible, King County shall transfer to the WPZS the Zoo Proceeds accumulated to date that are due and owing to WPZS.

4. Use of County Levy Proceeds.

- 4.1 Exclusive Use of Proceeds for Zoo Projects. WPZS represents and warrants that all Zoo Proceeds received by WPZS, and any interest earned thereon, shall be used only for purposes consistent with the requirements of the County Levy, including Ordinance No. 17568, and RCW 84.55.050, and all Zoo Projects shall be a Zoo Purpose, as defined in the Management Agreement. This section shall survive termination of this Agreement. WPZS shall maintain financial records to account separately for the Zoo Proceeds.
- 4.2 Annual Report. On or before May 31 of each year throughout the Term of this Agreement, WPZS shall provide King County an Annual Report setting forth a summary of the operations of the Zoo and the services provided by WPZS at the Zoo for the preceding year, along with a general summary of the Zoo's operations and a complete financial accounting for all funds, including use of County Levy Proceeds, and a listing of all capital investments made at the Zoo that were funded by County Levy Proceeds.
- 4.3 Annual Certification. On or before May 31 of each year throughout the Term of this Agreement, the WPZS shall also provide King County with a cover letter, signed by the Zoo Director, or his or her authorized representative, that includes: (1) a statement identifying, by category (i.e. environmental education, conservation programs, and capital improvement projects), the total dollar amounts of Zoo Proceeds expended by WPZS on Zoo Projects in the preceding year; (2) that WPZS's receipt and expenditure of the Zoo Proceeds did not supplant Existing Funds; and (3) that the signature is provided "under penalty of perjury." WPZS shall provide any further documentation reasonably requested by King County showing that the County Levy Proceeds were expended on Zoo Projects and the extent to which, if any, Existing Funds were used.

5. WPZS Board Composition. The WPZS amended the Bylaws to provide for a board member appointed by the County Council. See Exhibit C. The Bylaws will continue to provide for such appointment at all times throughout the Term.
6. Title to Improvements. All appurtenances, fixtures, improvements, equipment, additions and other property attached to or installed in the Zoo premises during the Term shall be and remain the property of the Zoo and shall not be deemed property of King County under any circumstances
7. Management Agreement/Precedence. Except as to provisions concerning the receipt and expenditure of the Zoo Proceeds, insurance and indemnification, and King County required forms identified herein, this Agreement shall at all times be construed consistent with provisions relating to the use and operations of the Zoo in the Management Agreement. In the event of any conflict concerning the use and operation of the Zoo, the Management Agreement shall be deemed to control. If the Management Agreement is amended or terminated, the WPZS shall provide King County with written notice of such amendments or termination within 30 days of execution of the amendment or termination of the Management Agreement.
8. Notices. All notices required to be given hereunder shall be in writing and either delivered personally or sent by certified mail to the appropriate address listed below, or at such other address as shall be provided by written notice. Notice by mail shall be deemed communicated upon actual receipt by King County. For convenience of the parties, copies of notices may also be given by other means; however, neither party may give official or binding notice except by personal delivery or by certified mail.

If to the WPZS:

Woodland Park Zoological Society  
 601 North 59th Street  
 Seattle, Washington 98103-5858  
 Attn: Zoo Director

If to King County:

Kevin R. Brown, Director  
 Parks and Recreation Division  
 201 South Jackson  
 Mailstop: KSC-NR-0700  
 Seattle, WA 98104

9. Compliance with Laws. WPZS shall comply and conform with all laws and all governmental regulations, rules and orders that may from time to time be put into effect relating to, controlling or limiting the use and operation of the Zoo.
10. Miscellaneous.
  - 10.1 Hold Harmless and Indemnification.
    - A. WPZS as Grantee. In receiving the Zoo Proceeds and using such proceeds in compliance with the County Levy and this Agreement, the Parties agree that the relationship of WPZS to the County is similar to (though not the same as) that of a grant recipient and neither WPZS, nor its officers, agents or employees, are employees of King County for any purpose. WPZS shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that

may result from the distribution and use of the Zoo Proceeds and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

King County assumes no responsibility for the payment of any compensation, wages, benefits or taxes by, or on behalf of, WPZS, its employees, and/or others by reason of this Agreement. WPZS shall protect, indemnify, and hold harmless King County, its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) WPZS's failure to pay any such compensation, wages, benefits or taxes, and/or (2) the supplying to WPZS of work, services, materials or supplies by WPZS employees or other suppliers in connection with or support of the performance of this Agreement.

**B. WPZS Indemnification of County.**

- i. WPZS shall protect, defend, indemnify and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of WPZS, its officers, employees, contractors, subcontractors and/or agents, in its performance and/or non-performance of its obligations under this Agreement. WPZS agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, WPZS, by mutual negotiation, hereby waives, as respects to King County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of RCW, Title 51. In the event King County incurs any judgment, award and/or cost arising there from including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from WPZS.
- ii. Claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction, or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name and/or otherwise results in unfair trade practice.
- iii. WPZS agrees not to perform any acts that include use or transfer of software, book, document, report, film, tape, or sound reproduction, or material of any kind, delivered hereunder, that constitutes an infringement of any copyright, patent, trademark, trade name and/or otherwise results in unfair trade practice. WPZS agrees to indemnify King County for any harm resulting from unfair trade practices.
- iv. The provisions in this section shall survive the termination and/or duration of the Agreement term.

v. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

C. WPZS Agreement to Repay. The WPZS further agrees that it is financially responsible for and shall repay King County all indicated amounts following an audit exception concerning the lawful use of the County Levy Proceeds. In the alternative, if acceptable to the auditor, WPZS shall in the following calendar year expend WPZS funds on Zoo Projects in an amount equal to the amount of the audit exception. For purposes of this Section, the Parties agree that "WPZS funds" shall in no circumstance include any Zoo Proceeds. This duty to repay King County shall not be diminished or extinguished by the prior Termination of the Agreement. This Section shall supersede Section 10.2.B.

## 10.2 Dispute Resolution.

A. Dispute Resolution – Other than Use of Levy Proceeds. In the event of a dispute between or among WPZS and King County regarding any term of this Agreement, except for a dispute involving alleged improper use of Zoo Proceeds, the parties shall attempt to resolve the matter informally through the following mechanism: the Executive and the Zoo Director, or their respective designee(s), shall meet to review and discuss the matter(s) in dispute; if the Executive and the Zoo Director are unable to reach a mutual resolution, the WPZS Board Chair(s) shall meet with the Executive and other County representatives, as appropriate, to review and discuss the matter(s) in dispute within fifteen (15) business days. If such persons are unable to resolve the matter informally, either party may submit the matter to a non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution ("ADR") procedures. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent ADR or legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available.

B. Dispute Resolution – Use of Zoo Proceeds. In the event of a dispute between or among WPZS and King County regarding the alleged improper use of Zoo Proceeds, the parties shall attempt to resolve the matter informally through the following mechanism: the Executive and the Zoo Director, or their respective designee(s), shall meet to review and discuss the matter(s) in dispute; if the Executive and the Zoo Director are unable to reach a mutual resolution, the WPZS Board Chair(s) shall meet with the Executive and other County representatives, as appropriate, to review and discuss the matter(s) in dispute within fifteen (15) business days. If such persons are unable to resolve the matter informally, either party may request a determination by the County's

Chief Accountant. The County's Chief Accountant shall consult with the City of Seattle Finance Director in making his or her determination pursuant to this Section. If the County's Chief Accountant determines that WPZS did not use the funds consistent with the terms of the Parks Property Tax Levy, WPZS shall be required in the following calendar year to expend WPZS funds on Zoo Projects in an amount equal to the amount that the County's Chief Accountant finds that the WPZS did not spend consistent with the terms of the Parks Property Tax Levy. For purposes of this Section, the Parties agree that "WPZS funds" shall in no circumstance include any Zoo Proceeds. This section does not apply to disputes that arise from an audit finding.

- 10.3 No Implied Waiver. No failure by either party hereto to insist upon the strict performance of any obligation of the other party under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues (except in cases where this Agreement expressly limits the time for exercising rights or remedies arising out of a breach), shall constitute a waiver of such breach or of that party's right to demand strict compliance such term, covenant or condition or operate as a surrender of this Agreement. No waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of either party hereto given in any instance under the terms of this Agreement shall not relieve the other party of any obligation to secure the consent of the other party in any other or future instance under the terms of this Agreement.
- 10.4 Headings and Subheadings. The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference and such captions in no way define or limit the scope or intent of any provision of this Agreement.
- 10.5 Successors and Assigns. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of King County and WPZS and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third party beneficiaries to this Agreement.
- 10.6 Agreement made in Washington. This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of Washington. Venue of any action brought by one party against the other to enforce or arising out of this Agreement shall be in King County Superior Court.
- 10.7 Integrated Agreement; Modification. This Agreement contains all the agreements of the parties hereto relating to the subject matter addressed herein, and cannot be amended or modified except by a written agreement approved and mutually executed between each of the parties hereto.

- 10.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 10.9 Time of Essence. Time is of the essence of each provision of this Agreement.
- 10.10 Signage. For each capital project funded with County Levy Proceeds and for which donor recognition is provided consistent with WPZS policies, WPZS shall provide a sign including the following language and one of the three "King County Parks-Your Big Backyard" logos below:

"This project was funded [or as applicable, funded in part] by the 2013 'Proposition No.1 Parks Levy' to support King County Parks, regional open space, trails, & the Woodland Park Zoo.

King County Parks **Your** King County  
Big Backyard

King County Parks **Your** King County  
Big Backyard

King County Parks **Your** King County  
Big Backyard ]"

This provision shall survive the termination of this Agreement.

11. Termination.

- 11.1 Termination due to Withdrawal of Funds. If the Levy Funds are withdrawn by actions outside of the control of the Parties prior to the termination date set forth in this Agreement or in any amendment hereto, King County may, upon written notice to WPZS, terminate this Agreement in whole or in part.
- 11.2 Termination due to Non-Appropriation. Funding under this Agreement beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement shall remain in effect but King County shall have no funding obligation for the year in which the County Council failed to appropriate funding to support the Agreement. Alternatively, in the event the County Council appropriates funding in a given year that is less than that anticipated to be appropriated pursuant to the terms of the County Levy, the County shall only be required to provide funding up to the amount appropriated by the County Council.
- 11.3 Termination of the Management Agreement. In the event that the Management Agreement is terminated, this Agreement shall also terminate.
12. Assignment. WPZS shall not assign, transfer or subcontract any portion of this Agreement or transfer or assign any claim arising pursuant to this Agreement without the prior written

consent of King County. Said consent must be sought in writing by WPZS not less than fifteen (15) business days prior to the date of any proposed assignment, transfer or subcontract. WPZS shall deliver to King County with its request for consent, such information regarding the proposed assignee, transferee or subcontractee, including its proposed mission, legal status, and financial and management capabilities as is reasonably available to WPZS. Within fifteen (15) days after such request for consent, King County may reasonably request additional available information on the proposed assignee, subcontractee or transferee. If King County shall give its consent, this Section shall nevertheless continue in full force and effect. Any assignment, transfer or subcontract without prior County consent shall be void.

13. Insurance requirements.

- 13.1 Insurance Required. By the date of execution of this Agreement, WPZS shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of the Zoo Proceeds. WPZS or contractor/subcontractor shall pay the costs of such insurance.

WPZS is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the WPZS, its agents, employees, officers, contractor/subcontractors, providers, and/or provider subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Agreement.

- 13.2 Form. Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior King County approval. If coverage is approved and purchased on a "claims made" basis, WPZS warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of Agreement termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

- 13.3 Risk Assessment by WPZS. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the WPZS under this Agreement, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by WPZS. WPZS shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

- 13.4 Minimum Scope of Insurance. Coverage shall be at least as broad as:

- A. General Liability. Insurance Services Office form number (CG 00 01 or its equivalent) covering COMMERCIAL GENERAL LIABILITY.
- B. Professional Liability, Errors, and Omissions Coverage. In the event that the use of the Zoo Proceeds either directly or indirectly involves or requires professional services, the WPZS shall require that the professional services

provider has Professional Liability, Errors, and Omissions coverage. "Professional Services," for the purpose of this Agreement section, shall mean any services provided by a licensed professional or those services that require a professional standard of care.

- C. Automobile Liability. Insurance Services Office form number (CA 00 01 or its equivalent) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9.
- D. Workers' Compensation. Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law.
- E. Stop Gap/Employers Liability. Coverage shall be at least as broad as the protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.
- F. Builder's Risk/Installation Floater. In the event the use of the Zoo Proceeds is for a major capital construction project, the WPZS shall ensure that the project includes "All Risk" Builders Risk Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100 percent of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of King County, Owner, Contractor and subcontractors of all tiers with King County listed as a loss payee.

13.5 Minimum Limits of Insurance—All Activities: WPZS shall maintain limits no less than, for:

- A. Commercial General Liability: \$1,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.
- C. Workers' Compensation: Statutory requirements of the state of residency.
- D. Stop Gap/Employers Liability: \$1,000,000.

13.6 Minimum Limits of Insurance—Building Design and Construction Period. Prior to commencement of building design and construction and until construction is complete and approved by the WPZS, WPZS shall cause the construction contractor and related professionals to procure and maintain insurance against claims for

injuries to persons or damages to property which may arise from, or in connection with the activities related to this Agreement. WPZS and King County shall be a named as additional insureds on liability policies except Workers Compensation and Professional Liability and as Named Insureds on Builders Risk policies. The cost of such insurance shall be paid by the WPZS and/or any of the WPZS's contractors/ subcontractors. WPZS and/ shall maintain limits no less than, for:

- A. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$2,000,000 in the aggregate.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
- D. Builder's Risk Insurance: One hundred percent replacement cost value.
- E. Workers Compensation: Statutory requirements of the State of residency.
- F. Stop Gap or Employers Liability Coverage: \$1,000,000.

13.7 Minimum Limits of Insurance—Services Agreements: WPZS and/or its contractors shall maintain limits no less than, for:

- A. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$2,000,000 in the aggregate.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
- D. Workers Compensation: Statutory requirements of the State of Residency.
- E. Stop Gap or Employers Liability Coverage: \$1,000,000.

13.8 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, King County. The deductible and/or self-insured retention of the policies shall not apply to the WPZS's liability to King County and shall be the sole responsibility of the WPZS.

13.9 Other Insurance Provisions. The insurance policies required in this Agreement are to contain, or be endorsed to contain, the following provisions:

- A. Liability Policies. All Liability Policies except Professional and Workers Compensation.
- i. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the WPZS/Contractor in connection with this Agreement. Such coverage shall include Products-Completed Operations.
  - ii. To the extent of the WPZS's/Contractor's negligence, the WPZS's/Contractor's insurance coverage shall be primary insurance as respects King County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees, or agents shall not contribute with the WPZS's insurance or benefit the WPZS or contractor in any way.
  - iii. The WPZS's or contractors insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- B. Property Coverage Policies. King County shall be added as a Named Insured as their interests may appear to all Builders Risk policies.
- C. All Policies. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to King County.

13.10 Acceptability of Insurers.

- A. Unless otherwise approved by King County, insurance is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.
- B. Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by King County.
- C. If, at any time, the foregoing policies shall fail to meet the above requirements, the WPZS shall, upon notice to that effect from King County, promptly obtain a new policy, and shall submit the same to King County, with appropriate certificates and endorsements, for approval.

- 13.11 Verification of Coverage. WPZS shall furnish King County with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by King County prior to the commencement of activities associated with the Agreement. King County reserves

the right to require complete, certified copies of all required insurance policies at any time.

13.12 Subcontractors. WPZS shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by contractors/subcontractors, as evidence of compliance with the insurance requirements of this Agreement, shall be subject to all of the requirements stated herein.

14. Required King County Provisions.

14.1 Recycled Paper. During the performance of this Agreement, WPZS shall promote the purchase and utilization of recycled material and products where available. Recycled material means material and byproducts, which have been recovered or diverted from solid waste disposal for the purpose of recycling. It does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. King County encourages WPZS to use recycled products when using the Zoo Proceeds under this Agreement.

14.2 Nondiscrimination.

A. Nondiscrimination in Employment Related to the Use of Zoo Proceeds. During the performance of this Agreement, WPZS and any party subcontracting under the authority of this Agreement shall not discriminate nor tolerate harassment on the basis of race, color, sex, religion, national origin, creed, marital status, sexual orientation, gender identity or expression, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Agreement.

B. Nondiscrimination in Subcontracting Practices. During the term of this Agreement, WPZS shall not create barriers to open and fair opportunities to participate in WPZS contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, WPZS shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation, gender identity or expression, or the presence of any mental or physical disability in an otherwise qualified disabled person.

C. Compliance with Laws and Regulations. WPZS shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination. Unfair Employment Practices, King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Agreement.

- D. Discrimination in Contracting. King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Agreement. During the performance of this Agreement, WPZS and any party subcontracting under the authority of this Agreement shall not discriminate or engage in unfair contracting practices prohibited by KCC 12.17.
- E. Compliance with Section 504 of the Rehabilitation Act of 1973. WPZS shall complete a Disability Self-Evaluation Questionnaire prior to execution of this Agreement. The 504/ADA Disability Assurance of Compliance will cover all programs and services offered (including any services not subject to this Agreement) for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). WPZS shall complete a 504/ADA Disability Assurance of Compliance prior to execution of this Agreement. WPZS shall retain a copy of the completed 504/ADA and submit to King County the original final two (2) signed pages titled "504/ADA Disability Assurance of Compliance", which will be attached as Exhibit D to this Agreement.
- 14.3 Equal Benefits Requirement. King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. WPZS shall complete a Worksheet and Declaration form demonstrating compliance with Ordinance 14823, which compliance is a mandatory condition for execution of this Agreement.
- 14.4 Retention of Records, Audit Access and Proof of Compliance with Agreement.
- A. Retention of Records. WPZS and its Subcontractors shall maintain books, records and documents of its performance under this Agreement in accordance with generally accepted accounting principles. WPZS shall retain for six (6) years after the date of final payment under the Agreement all financial information, data and records relevant to the use of the Zoo Proceeds.
- B. Audit Access.
- i. State or county auditors shall have access to WPZS and its Subcontractors' records for the purpose of inspection, audit or other reasonable purposes related to this Agreement and the WPZS's use of the Zoo Proceeds; provided that, the Parties expressly agree that such information shall not include documents related to the WPZS's private fundraising activities and private donor information. State or county auditors shall have access to records and be able to copy such records during normal business hours. WPZS shall provide proper facilities for such access, inspection and copying.
- ii. Audits may be conducted during or after the Agreement period for purposes of evaluating claims by or payments to WPZS related to this Agreement and for any other reason deemed appropriate and necessary by King County

where such reason is related to the WPZS's use of the Zoo Proceeds. Audits shall be conducted in accordance with generally accepted auditing principles and/or state or county audit procedures, laws or regulations. WPZS shall fully cooperate with the auditor(s).

- iii. If an audit is commenced more than sixty (60) days after the date of final payment under this Agreement, King County shall give reasonable notice to WPZS of the date on which the audit shall begin.

C. Proof of Compliance with Agreement.

- i. WPZS shall, upon request, provide King County with satisfactory documentation of compliance with the Agreement.
- ii. In addition, WPZS shall permit King County, or a duly authorized representative, to inspect all services, materials, payrolls (except for personally identifying information) and other data and records directly related to WPZS's compliance with the Agreement.

- 14.5 Public Records Requests. The Agreement shall be considered a public document and, with exceptions provided under public disclosure laws, shall be available for inspection and copying by the public as required by chapter 42.56 Revised Code of Washington.

If WPZS considers any items related to use of the Zoo Proceeds or to this Agreement, including Software, data and related materials, delivered to King County to be protected under the law, WPZS shall clearly identify such items with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such item, King County shall determine whether the material should be made available under the law. If the material or parts thereof are determined by King County to be exempt from public disclosure, King County will not release the exempted documents. If the material is not exempt from public disclosure law, King County shall notify WPZS of the request and allow WPZS ten (10) Business Days to take whatever action it deems necessary to protect WPZS's interests. If WPZS fails or neglects to take such action within said period, King County shall release the item deemed subject to disclosure. By signing this Agreement, WPZS assents to the procedure outlined in this subsection and shall have no claim against King County on account of actions taken under such procedure.

- 14.6 Internal Control and Accounting System and Audit. The WPZS shall establish and maintain a system of accounting and internal controls that comply with applicable, generally accepted accounting principles, financial and governmental reporting standards as prescribed by the appropriate accounting standards board. WPZS shall have an independent annual financial audit completed annually. WPZS shall provide King County with a copy of the annual audit.

15. Survival of Indemnities. Termination of this Agreement shall not affect the right of either party to enforce any and all Indemnities and representations and warranties given or made to the other party under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof.

16. Exhibits.

- A (Zoo Premises)
- B (Management Agreement)
- C (WPZS Bylaws)
- D (King County required Exhibits)

DATED this 7<sup>th</sup> day of May, 2014.

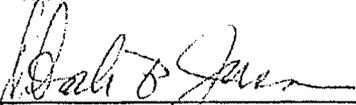
KING COUNTY, a Washington municipal corporation

By 

Its Director

By authority of Ordinance No. 17568

WOODLAND PARK ZOOLOGICAL SOCIETY, a Washington non-profit corporation

By 

Its President / CEO

**Exhibit A (Description of Zoo Premises)**

**Main Zoo Property:**

Beginning at a point which is 30 feet north of and 280 feet east of the Southwest corner of block 69, Plat of Woodland Park Addition to the City of Seattle, Washington, Vol. 3, page 123 of plats, said southwest corner of block 69 is identical with the southwest corner of the north half of the southwest quarter of said section 7, township 25 North, R. 4 E. W.M. Said True Point of Beginning is the intersection of the east line of Phinney Avenue North, with the north line of North 50<sup>th</sup> Street;

Thence north along the east line of said Phinney Avenue North, to the intersection of the south line of North 59<sup>th</sup> Street;

Thence east along said south line of North 59<sup>th</sup> Street to the west margin of Aurora Avenue;

Thence south along said west margin of Aurora Avenue North to the north margin of North 50<sup>th</sup> Street;

Thence west along said north margin of North 50<sup>th</sup> Street to the True Point of Beginning.

Said parcel containing 90.7 acres more or less.

**Offsite Property:**

NE 1/4 LY N OF RIVER LESS CO RDS SUBJECT TO DEED OF AND AGREEMENT  
RELATING TO DEVELOPMENT RIGHTS RECORDED UNDER 8608261178

Located at 22327 Southeast 464th Street in Enumclaw, Washington.

**Exhibit B (Management Agreement)**

**Exhibit C (WPZS Bylaws)**

WPZS Bylaws

**Exhibit D (King County Exhibits)**  
**504/ADA Disability Assurance of Compliance**  
**Equal Benefits Worksheet and Declaration**

Jun 09, 2016, 1:02 pm

RECEIVED ELECTRONICALLY

No. 92846-1

SUPREME COURT OF THE STATE OF WASHINGTON

ALYNE FORTGANG,

Petitioner/Appellant/Plaintiff,

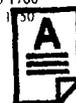
v.

WOODLAND PARK ZOOLIGICAL  
SOCIETY a/k/a WOODLAND PARK  
ZOO,

Respondent/Defendant.

PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 9th day of June, 2016 I caused a true and correct copy of Respondent Woodland Park Zoological Society's Answer to Brief of Amicus Curiae the Washington Coalition for Open Government to be filed with the Supreme Court and served electronically, via email, per the electronic service agreement, to the parties listed below:



ORIGINAL

Rob Roy Smith  
Christopher T. Varas  
KILPATRICK, TOWNSEND &  
STOCKTON, LLP  
1420 Fifth Avenue, Suite 4400  
Seattle, WA 98101

Email: [rrsmith@kilpatricktownsend.com](mailto:rrsmith@kilpatricktownsend.com)  
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*Attorney for Amicus Curiae  
Washington Coalition for Open  
Government*

I declare under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct

DATED this 9th day of June, 2016.

  
Katie Dillon

## OFFICE RECEPTIONIST, CLERK

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**To:** Katie Dillon  
**Cc:** rrrsmith@kilpatricktownsend.com; cvaras@kilpatricktownsend.com; margaret@enslowmartin.com; Paul Lawrence; Greg Wong; Tania Culbertson; Dawn Taylor  
**Subject:** RE: Fortgang v. Woodland Park Zoological Society: Cause No. 92846-1 - WPZS' Answer to Brief of Amicus Curiae WA Coalition for Open Government

Received 6/9/16

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Katie Dillon [mailto:Katie.Dillon@pacificallawgroup.com]  
**Sent:** Thursday, June 09, 2016 1:00 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** rrrsmith@kilpatricktownsend.com; cvaras@kilpatricktownsend.com; margaret@enslowmartin.com; Paul Lawrence <Paul.Lawrence@pacificallawgroup.com>; Greg Wong <Greg.Wong@pacificallawgroup.com>; Tania Culbertson <Tania.Culbertson@pacificallawgroup.com>; Dawn Taylor <Dawn.Taylor@pacificallawgroup.com>  
**Subject:** Fortgang v. Woodland Park Zoological Society: Cause No. 92846-1 - WPZS' Answer to Brief of Amicus Curiae WA Coalition for Open Government

On behalf of Paul J. Lawrence (WSBA No. 13557), attorney for Woodland Park Zoological Society, attached please find Respondent Woodland Park Zoological Society's Answer to Brief of Amicus Curiae Washington Coalition for Open Government.

*Please note that our reception, address suite number and zip code have changed.*

**Katie Dillon**  
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