Ordinance No. 124185

Council Bill No. 117777

AN ORDINANCE relating to the City of Seattle's Department of Parks and Recreation; authorizing the Superintendent to enter into an agreement with Seattle Audubon Society to operate and manage the Administrative Building located in Carkeek Park.

Related Legislation File: _____

Date Introduced and Referred:	To: (committee):
5.13.13	Parks and Neighborhoods
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 5/20/13	Date Presented to Mayor: 5/21/13
Date Signed by Mayor: 5/28/13	Date Returned to City Clerk: 5/29/13
Published by Title Only ✓ Published in Full Text _____	Date Vetoed by Mayor:
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: SgBagshaw

Committee Action:

Date	Recommendation	Vote
5/16/13	Pass	2-0 (Bagshaw, Godden)

This file is complete and ready for presentation to Full Council. _____

Full Council Action:

Date	Decision	Vote
5/20/13	PASSED	9-0

Law Department

Charles Ng
DPR Carkeek Audubon ORD
March 4, 2013
Version #1

CITY OF SEATTLE

ORDINANCE 124185

AN ORDINANCE relating to the City of Seattle's Department of Parks and Recreation; authorizing the Superintendent to enter into an agreement with Seattle Audubon Society to operate and manage the Administrative Building located in Carkeek Park.

WHEREAS, the Department of Parks and Recreation ("DPR") desires to activate and provide public programming from its Administrative Building located in Carkeek Park; and

WHEREAS, DPR does not have the resources to staff and program the Administrative Building; and

WHEREAS, DPR completed a Request for Proposal Process for an operator to manage, operate and maintain the Administrative Building and selected Seattle Audubon Society as the winning proposer of the RFP; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the Department of Parks and Recreation ("Superintendent"), or his designee, is authorized to execute for and on behalf of the City a five-year agreement for the use, operation, community programming, and maintenance of the City's Administrative Building located in Carkeek Park, substantially in the form of the Agreement between the City of Seattle Department of Parks and Recreation and the Seattle Audubon Society which is attached to this ordinance as Attachment 1 ("Agreement").

Section 2. The Superintendent is authorized to renew and extend the term of the Agreement for an additional five years at the Superintendent's option and as provided in the Agreement.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

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Passed by the City Council the 20th day of May, 2013, and signed by me in open session in authentication of its passage this 20th day of May, 2013.

President _____ of the City Council

Approved by me this 28th day of May, 2013.

Michael McGinn, Mayor

Filed by me this 30th day of May, 2013.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Agreement between the City of Seattle Department of Parks and Recreation and the Seattle Audubon Society

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Charles Ng
DPR Carkeek Audubon ORD ATT 1
March 4, 2013
Version #3

AGREEMENT
Between
THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION
and
THE SEATTLE AUDUBON SOCIETY

This Agreement ("Agreement") is entered into by and between THE CITY OF SEATTLE, a municipal corporation ("City"), acting by and through its Seattle Department of Parks and Recreation ("DPR"), and THE SEATTLE AUDUBON SOCIETY, a Washington non-profit organization ("AUDUBON").

Recitals

WHEREAS, the Superintendent of the Seattle Department of Parks and Recreation is responsible for administering broad and varied programs of public recreation activities pursuant to SMC 3.26.040; and

WHEREAS, the City believes Seattle residents' use and enjoyment of the City's park and recreation system is increased through the provision of recreational, educational, and community development opportunities; and

WHEREAS, DPR's Carkeek Park is a popular and well-utilized park for Seattle Citizens, and its Environmental Learning Center Program is a key element of programming at the park; and

WHEREAS, the administrative building adjacent to the Environmental Learning Center is vacant, underutilized, and is a great space to expand environmental education programs at Carkeek Park; and

WHEREAS, DPR completed a request for proposals process and determined AUDUBON to be the most qualified proposer to use the administrative building for purposes of providing environmental education and community development opportunities; and

WHEREAS, DPR and AUDUBON desire to enter into an agreement to memorialize the terms and conditions for AUDUBON's use of the Administrative Building and areas of the park for environmental education and community programs; and

NOW THEREFORE, the DPR and AUDUBON agree as follows:

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ARTICLE 1 DEFINITIONS

1.1 "Commencement Date" means the date on which this Agreement is executed by both parties following an authorizing ordinance by Seattle City Council.

1.2 "Community Programming" means the opportunities for education, community development, and recreation, as more particularly described in Section 3.1. and Attachment 2 of this Agreement.

1.3 "Director" means the Executive Director of AUDUBON or his or her designee.

1.4 "Service Credits" means credits for services provided by AUDUBON, in particular the provision of Community Programming and building maintenance as described in Section 5.4.

1.5 "Premises" means a building commonly referred to as the "Administrative Building" located in Carkeek Park and more particularly described in Article 2.1.

1.6 "Superintendent" means the City's Superintendent of the Seattle Department of Parks and Recreation or his designee.

ARTICLE 2. PREMISES

2.1 Premises Defined. A building of approximately 1200 square feet commonly referred to as the "Administrative Building" having the common address of 950 NW Carkeek Park Road, Seattle, WA 98177-4755. The Premises are located on a portion of Carkeek Park which is legally described as:

> A portion of King County Tax ID#252603-9009, located in the West one-half of Section 25, Township 26N, Range 3E, lying Northly of NW Carkeek Park Road and Southerly of NW 116th Street extended. (Kroll Map 224W).

A site map depicting the location of the Premises is attached as Attachment 1.

2.2 Use Grant. The City grants AUDUBON the right to use and occupancy of the Premises for the Term (defined in Article 4). During the Term, AUDUBON shall use the Premises exclusively for environmental, community development, and educational purposes. In particular, AUDUBON shall use the Premises to provide programs as described in Attachment 2, and to operate the Premises as more specifically described in Article 3 of this Agreement. AUDUBON is authorized to use the Premises for AUDUBON and community meetings, and for fund raising activities supporting the programs described in this Agreement. Additionally, AUDUBON shall maximize the use

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of the Premises by making the space available to DPR and to other community groups as described in Article 21, and by licensing the use of the facility to third parties for special events and other activities consistent with the uses described herein. AUDUBON shall not use the Premises for any other purpose without the prior written consent of the Superintendent, whose consent shall be given or withheld in that official's sole discretion.

2.3 Condition and Acceptance. AUDUBON has examined the Premises, has had a reasonable opportunity to attend a walk-through inspection, and has determined, after such examination, that the Premises are suitable for the use and occupancy desired by AUDUBON hereunder. UPON DPR's COMPLETION OF REPAIRS NOTED IN ATTACHMENT 4, AUDUBON ACCEPTS THE PREMISES in "AS IS "condition, WITH ALL DEFECTS, AND ASSUMES ALL RISK that one or more defects exist in the Premises. The DPR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, express or implied, with respect to the condition of the Premises or the use and occupancy authorized therein other than as specified in this Agreement. AUDUBON agrees that any express or implied representations, statements or warranties made by or on behalf of the DPR prior to the Commencement Date, unless expressly set forth in this Agreement, have been effectively revoked and withdrawn and have no force or effect whatsoever.

2.4 DPR Right to Close Premises. The DPR reserves the right to close the Premises at its convenience for reasons of public safety or other good cause as determined by the Superintendent upon a written notice given to AUDUBON not less than thirty (30) days prior to such closure, provided that in case of emergency the Superintendent may close the Premises immediately without advance written notice. In the event that such action occurs, then the DPR will work with the AUDUBON to make any applicable adjustments to the Use Fee during the time that the Premises are closed.

ARTICLE 3 COVENANTS REGARDING AUDUBON OPERATION, PROGRAMMING, AND SERVICES; ELIGIBLESERVICES AND PROGRAMMING OFFSETS

3.1 Basic Community Programming and Access Covenants. The DPR's willingness to enter into this Agreement is conditioned, in part, upon AUDUBON's covenants herein. During the term of the Agreement, AUDUBON covenants to provide the public with a variety of Community Programming and public access opportunities falling within the category listed below and in a manner suitable for multiple age groups and developmental levels:

> Public Access to Facility and Resources. AUDUBON will provide a minimum of 40 hours a month in October through March and 96 hours per month from April through September of public access to the Premises for family and community events for local organizations, neighborhood groups, individuals and families. AUDUBON will submit a marketing

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plan to DPR staff for review with both general and current information regarding all programs, events, and opportunities offered by AUDUBON at the Premises or elsewhere in Carkeek Park.

3.1.1 The following categories are eligible for service credits and public benefit offsets as described in Section 5.4:

a. Programming Focus. AUDUBON will offer a balance of ongoing classes, of a minimum of 10 hours per month for community events, which includes cultural activities, and other recreational classes at the Premises that meet the needs and interests of the surrounding Neighborhood communities. Recreational classes will concentrate on environmental stewardship, community development, and other identified needs as determined by DPR and AUDUBON collaboratively. Free and reduced-fee registration will be offered as available to applicants.

b. AUDUBON Programs. AUDUBON will offer the programs and follow the requirements described in Attachment 2 –Programming Responsibilities of the Parties. Additional Community programming may be offered during the summer months as the schedule and Premises may allow, and as needed and permitted by DPR, may also utilize outdoor space during these warmer months.

c. Facility Janitorial Maintenance. AUDUBON will be responsible for staff and volunteers providing a minimum of 2 hours a week in general janitorial and building maintenance activities as needed to comply with Sections 8.1 and 8.2. These maintenance hours may be added to the Service Credits to offset the amount of Use Fee due to DPR as described in Section 5.4. AUDUBON must submit detailed documentation that demonstrates the hourly rate that it spent for staff in order to provide the janitorial and building maintenance services. If AUDUBON has volunteers and wants to offset the hours worked, the amount of offset shall be based upon the 2012 rate an hour for volunteer service as defined by Independent Sector. Current rates for 2012 can be found at http://www.independentsector.org/programs/research/volunteer_time.html.

3.2 Permissible Fees. AUDUBON may charge fees for its Community Programming at the Premises that it does not intend to submit for consideration as a Service Credit pursuant to Article 5; however, such fees shall be charged uniformly and shall be consistent with the current Seattle Department of Parks and Recreation Fees and Charges which can be found at

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http://www.ci.seattle.wa.us/parks/reservations/feesAndCharges/contents.htm. AUDUBON may also charge fees for use of the Premises as stated in Article 21.1.2.

3.3 AUDUBON Operation Hours and Closure of Premises. Subject to the requirements under Attachment 2, AUDUBON shall post its hours of operation and schedule of Community Programming on the community blog and other places readily visible to the public. Subject to the prior written approval of the Superintendent, AUDUBON may, for good cause, close the Premises or a portion thereof for a reasonable period during its regularly scheduled hours of operation and Community Programming.

- Seattle Audubon will be open as follows:
  (April – September) 4 days per week, 10:00am to 4:00pm
  (October – March) 2 days per week, 10:00am – 3:00pm

- Seattle Audubon can amend these open hours by written request and approval by Seattle Parks, and will be documented by an amendment to this agreement.

- Park closure hours: 10pm-6am, daily.

3.4 Mandatory Closures. The Premises shall be closed and locked during the hours of 11:30 p.m. to 4:30 a.m., and no activity shall occur on the Premises during such time, except with the prior written approval of the Superintendent, whose approval shall be given or withheld in his/her sole discretion.

3.5 Materials Storage. DPR understands that some Community Programs offered by AUDUBON involve the use of supplies and materials. DPR will allow AUDUBON to store on the Premises supplies and materials used for Community Programming only if, in the opinion of the Superintendent, all such supplies and materials are safely and appropriately stored and secured so as to not unreasonably inconvenience or conflict with other Community Programming and uses of the Premises. There shall be no storage of any items not used in connection with Community Programming permitted under this Agreement. AUDUBON shall store all personal property on the Premises at its own risk; under no circumstances will the DPR be liable for loss of any items stored on the Premises.

3.6 Limited Use of Intoxicating Beverages: AUDUBON shall not permit alcoholic beverages to be used at the Premises without the prior written approval of the Superintendent, which may be conditioned or withheld in the Superintendent's discretion. If the Superintendent provides approval, AUDUBON shall ensure that all use, sale, consumption or dispensation of any alcohol at the Premises is conducted in accordance with the approval and all applicable laws, ordinances, rules and regulations, as now or hereafter amended.

3.7 Keys. AUDUBON shall provide DPR staff with one extra set of keys so

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that they can have access to the Premises.

3.8 Reporting. DPR acknowledges that the AUDUBON's fiscal calendar year runs from July 1 through June 30 of each year. The AUDUBON will provide to DPR a mid-year report by January 31st of each year, and a year-end report no more than sixty (60) days after end of each fiscal year under the Term of this Agreement. The mid-year and year-end reports shall summarize AUDUBON'S Community Programs and other uses of the Premises. Such summary shall consist of all Community Programming and other permitted uses, dates, identification of the user/groups, and rentals. If AUDUBON is requesting Service Credits to offset the Use Fee, then AUDUBON must submit reports semi-annually in a form similar to Attachment 3, and in the time and manner described in Sections 5.2 and 5.4.

3.9 Resolution of Scheduling Conflicts. AUDUBON is responsible for scheduling all Community Programming and other permitted uses at the Premises. In the event of a scheduling conflict, AUDUBON shall be responsible for resolving the conflict.

3.10 City's Programming Responsibilities. DPR will have the responsibilities for support and coordination regarding AUDUBON's activities as described in Attachment 2.

ARTICLE 4. TERM; AUTHORIZED PERIOD OF PREMISES USE

Term of Agreement. This term of this Agreement shall be for five (5) years beginning on the Commencement Date. This Agreement may be extended for an additional five (5) year term at the option of the Superintendent. If the Superintendent decides to exercise the option to extend, then at least thirty (30) days prior to the expiration of the initial Term, the Superintendent or an assigned designee shall send a written notice to AUDUBON of the intent to extend the term of the Agreement. As used in this Agreement, "Term" means the initial Term and the extended term, if any.

ARTICLE 5. CONSIDERATION; USE FEES; REDUCTIONS AND OFFSETS THERETO

5.1 Consideration. In partial consideration of the use of the Premises DPR is granting to AUDUBON under this Agreement, AUDUBON shall pay an annual Use Fee of $53,000. AUDUBON shall pay $1,000 of the annual Use Fee in cash in two semi-annual installments. The balance of the Use Fee is subject to offset through Service Credits as detailed under Sections 3.1.1, 5.4, and 5.5.

5.2. Time of Payment of Annual Use Fee. Beginning on or before the Commencement Date and thereafter on January 31st and on July 31st of each year AUDUBON shall pay DPR the semi-annual installment of the cash Use Fee ($500.00) plus the leasehold excise tax due under Section 5.7.

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5.3 Annual Use Fee Exclusive of Taxes. The Use Fee is exclusive of any and all sales, business, occupation, leasehold excise tax, or other tax levied or assessed as a consequence of this Agreement or any activity of AUDUBON thereunder. Any and all taxes shall be paid by AUDUBON in the time and manner due with no offset or deduction from the Use Fee whatsoever.

5.4 AUDUBON's Opportunity to Offset Annual Use Fee with Services. Up to $52,000 of the Annual Use Fee is eligible for offset by Service Credits. Eligible services include Community Programming, capital investments, and routine maintenance. If AUDUBON desires to take advantage of this opportunity during the term of this Agreement, then AUDUBON must perform these program services and maintenance work prior to the semi-annual cash Use Fee due dates noted in Section 5.2. AUDUBON shall send a written report in accordance with Article 3.8 and Attachment 3 which details the program services and maintenance rendered and the value of such services, supported by an itemized accounting of time, labor rates, and materials, with corresponding dollar values. Attachment 3 is an example of a report that describes the types of eligible programs and maintenance and the calculation of the value that may be used to offset the Annual Use Fee. Service credits must be used within the calendar year in which they are accrued.

5.5 Determination of Fair Use Fee. DPR and AUDUBON believe that the Use Fee set forth in Subsection 5.2 above reflects a fair use fee for the other similar and comparable Premises and taking into account, among other factors, the substantial public benefits that DPR and community receives from AUDUBON's commitment to Community Programming available to the public throughout the term of the Agreement; the benefit to the community resulting from AUDUBON's commitment to provide all routine maintenance and administration of the Premises which results in the building remaining open for use instead of closed indefinitely. The parties further have considered the fact that the availability of parking at the site is limited, the lack of easy access to the site by public transit, and that its location often results in difficult access during certain times of the day.

5.6 Late and Refused Payments. AUDUBON acknowledges that late payment to the DPR of the Use Fee or any other sum due to the DPR hereunder will cause DPR to incur costs not contemplated by this Agreement, including but not limited to processing and accounting charges. Therefore, if AUDUBON fails to pay any sum when due to the DPR, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid. Additionally, a Twenty Dollar ($20.00) charge shall be paid by AUDUBON to the DPR for each check refused payment for insufficient funds or any other reason.

5.7 Leasehold Excise Tax. AUDUBON shall be responsible for payment of all leasehold excise tax ("LET") dues as a result of AUDUBON's use of the Premises under this Agreement. AUDUBON shall remit the applicable amount of LET to DPR

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with each quarterly payment. The Leasehold Excise Tax rate at the time this Permit is drafted is 12.84% (Twelve and eighty-four hundredths percent) of the annual Use Fee.

ARTICLE 6. PAYMENT PROCESSES

All payments due to the DPR hereunder, including Use Fee and leasehold excise tax payments, shall be paid no later than stated in Article 5 to the Department of Parks and Recreation, Attention: Parks Concessions Coordinator, Contracts Administration and Support Office, RDA Bldg, 3rd Floor, 800 Maynard Avenue South Seattle, WA 98134, accompanied by an explanatory cover letter.

ARTICLE 7. UTILITIES AND MAINTENANCE CHARGES

7.1 Responsibility for Utilities. During the term of this Agreement, AUDUBON shall pay the costs associated with maintaining the Premises, including the cost of all utilities, and costs and services to maintain the Premises as referenced in Article 8. AUDUBON will establish utility accounts with any applicable utility provider, including Seattle Public Utilities, City Light, and Puget Sound Energy so that bills will be sent to AUDUBON directly for payment.

7.2 Interruption. DPR shall not be liable, and AUDUBON hereby waives any claim against DPR, for the interruption or failure of any utility service to the Premises, for any reason whatsoever.

ARTICLE 8. CARE OF PREMISES; MAINTENANCE AND REPAIR

AUDUBON shall comply with this Article 8 at no cost or expense to the DPR:

8.1 AUDUBON's Routine Maintenance and Repair Obligation. AUDUBON shall be responsible for ensuring that the Premises are maintained in compliance with all applicable code regulations, including Seattle's fire code and building code, except to the extent that code compliance requires structural modifications, fixtures, or other capital projects for any particular compliance issue (e.g. installation of fire sprinkler system). The DPR shall be responsible for major maintenance of the building, including but not limited to the exterior walls, roof, plumbing, heating and electrical systems, and infrastructures. Major maintenance does not include routine maintenance and repairs to the interior of the building, including but not limited to the painting of the walls, furniture replacements or repairs, replacement of plumbing fixtures, washers, and valves, changing out of heating filters or annual cleaning of the electrical system, and routine changing out of light bulbs, electrical sockets, etc.

8.2 AUDUBON's General Cleaning and Janitorial Services Obligation. AUDUBON shall keep the Premises and immediately adjacent areas in a neat, clean and sanitary condition, and shall provide all general cleaning and janitorial services, at no

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cost or expense to the DPR, as may be required in and for the Premises. AUDUBON shall be responsible for frequent trash removal and litter pickup within the Premises.

8.3 Intrusion Alarm Installation. AUDUBON may at its option, maintain on the Premises, at no cost or expense to the DPR, an intrusion alarm system.

8.4 Fire Suppression Systems Installation. If AUDUBON should decide to install a fire suppression and detection system, it will do so at its own expense and it shall be maintained by AUDUBON at no cost or expense to DPR in accordance with manufacturer specifications.

8.5 DPR Right of Inspection at any time. DPR shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, inspecting, or improving the Premises. Prior to accessing the Premises, DPR shall provide AUDUBON with reasonable notice.

8.6 Emergency Access. If an urgent health and safety issue arises and requires immediate attention as determined by DPR, then DPR may immediately access the Premises in order to undertake such work.

ARTICLE 9. INDEMNIFICATION; WAIVER

9.1 Indemnification. AUDUBON shall hold harmless, indemnify, and defend the City, its officers, agents, and employees, from and against all and any liability, claim, suit, damage, loss, action, fine, cost or expense (including reasonable attorney's fees and costs) arising from or relating to (i) the use and occupancy of the Premises contemplated under this Agreement and any portion thereof, whether used and occupied by AUDUBON, its officers, employees, agents, volunteers, contractors, its invitees, licensees, assignees, or other subordinate users; or (ii) breach of this Agreement or violation of law; or (iii) any act or omission of AUDUBON or any of its officers, employees, agents, contractors, licensees, invitees, assignees, or volunteers in or about the Premises. If the DPR determines that one or more principles of governmental or public law are involved, the DPR retains the right to participate in such action. Nothing contained in this Article shall be construed as requiring AUDUBON to indemnify the City against liability for damage arising out of bodily injury to a person or damage to property to the extent caused by or resulting from the intentional act or negligence of the City or any of its officers, employees, or agents. The parties specifically and expressly intend that this indemnity include AUDUBON's waiver of its immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the City only. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER WAS MUTUALLY NEGOTIATED AND AGREED UPON BY THEM.

9.2 Release of Claims. AUDUBON hereby waives and releases all claims against the City for any losses or other damages sustained by AUDUBON resulting from any accident or occurrence in or upon the Premises, including but not limited to any

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defect in or failure of building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of building facilities or services; broken glass; water leakage; the collapse of any building component; or any act or omission of any other occupants of the Premises.

9.3 Survival of Obligations. The indemnification and release obligations of AUDUBON hereunder shall survive the expiration or earlier termination of this Agreement.

ARTICLE 10. INSURANCE

10.1 AUDUBON Furnished Coverages and Limits of Liability: AUDUBON shall obtain and maintain in full force and effect at all times during the Term of this Lease, at no expense to City, insurance as specified below.

1. Commercial General Liability insurance including
   - Premises/Operations
   - Contractual Liability
   - Independent Contractors
   - Stop Gap/Employers Liability
   - Fire/Tenant Legal Liability

   Limits of liability shall be not less than $1,000,000 each occurrence, bodily injury and property damage combined single limit (CSL) except:

   - $ 1,000,000 each accident - Disease Stop Gap/Employers Liability
   - $ 250,000 each occurrence - Fire/Tenant Legal.

2. Workers Compensation insurance in accordance with Title 51 of the Revised Code of Washington (RCW).

3. All Risks Property insurance on a replacement cost basis, covering AUDUBON's tenant improvements, trade fixtures and business and personal property.

10.2 City-Furnished Coverages and Limits of Liability: The City shall maintain in full force and effect at all times during the Term of this Lease All Risks Property Insurance for the Premises, including earthquake and flood, on a replacement cost basis. Upon request, City shall cause its Property Insurance representative to issue certification of Property insurance coverage to AUDUBON.

10.3 Mutual Waiver of Property Insurance Subrogation: AUDUBON and the City hereby waive their respective (a) insurer's rights of subrogation in favor of the other with respect to perils covered by insurance required under this Agreement, and (b) their respective rights of recovery against one another for claims falling within policy deductible amounts, except to the extent that the other party caused or contributed to the

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loss.

10.4 General Terms and Conditions (Not Applicable to Worker's Compensation):

1. Any self-insured retention in excess of $25,000 must be disclosed and is subject to the City's approval. AUDUBON shall be responsible for paying any claims that fall within amount of the self-insured retention. In order for the City to approve a self-insured retention about the stated amount, AUDUBON must state, in writing, that it will protect and defend the City of Seattle as an additional insured under its self-insured retention to the same extent as City would be protected under a commercial insurance policy meeting the requirements set forth herein has been issued and, in addition, provide detailed information as to how and to whom the City should direct any notice or tender.

2. The City reserves the right to approve any insurer, form or type of coverage. Unless the City approves otherwise, all insurers shall be licensed to do business in the State of Washington and rated A-:VII or higher in the current A.M. Best's Key Rating Guide; or issues as surplus lines under the provisions of chapter 48.15 RCW by a Washington State licensed broker.

3. The City of Seattle shall be named as an additional insured on the CGL insurance for primary and non-contributory limits of liability.

4. City reserves the right to periodically review the appropriateness of coverages and/or limits of liability in view of inflation and/or changing industry conditions and to reasonably require an increase in such coverages and/or limits of liability upon ninety (90) days' written notice to AUDUBON and provided such increases are reasonable with respect to market practices.

5. If AUDUBON fails to maintain insurance as required herein, the City may procure the same and charge AUDUBON for the full expense thereof, which AUDUBON shall pay upon demand.

6. AUDUBON shall not keep or use in or about the Premises any article which is prohibited by City's insurance policy. AUDUBON shall pay immediately any increase in City's premiums for insurance during the term of this Lease that results from AUDUBON's use of the Premises.

10.5 Evidence of Insurance

1. Except with respect to Workers' Compensation insurance, before occupying the Premises, AUDUBON shall provide DPR with evidence of insurance that it has complied with the insurance requirements hereunder, including coverages, limits of liability and other terms and conditions specified in this

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Section.

2. As respects CGL insurance, evidence of insurance must include a copy of the actual designated additional insured endorsement or blanket additional insured policy wording that documents that "The City of Seattle" is an additional insured for primary and non-contributory limits of liability.

3. As respects all coverages, each policy must include evidence that the policy will not be cancelled without at least thirty (30) days' written notice of cancellation having been delivered to the City, except in cases of non-payment of premium, in which case, cancellation may occur upon ten (10) days' written notice.

4. The certificate holder to whom evidence of insurance shall be sent is:

The City of Seattle Department of Parks & Recreation
Parks Concessions Coordinator
Contracts and Administrative Support Office
RDA Bldg, 3rd Floor,
800 Maynard Avenue South
Seattle, WA 98134

Certification shall also be sent to the City's Risk Manager at facsimile number (206) 470-1270 or as an email attachment in PDF format sent to riskmanagement@seattle.gov.

ARTICLE 11. CITY'S CONTROL OF PREMISES AND VICINITY

All common and other facilities provided by the City in or about the Premises, including parking areas, are subject to the exclusive control and management by the City. Accordingly, the City may, therefore, do any and all of the following (among other activities in support of DPR or other municipal objectives) without incurring any liability whatsoever to AUDUBON:

11.1 Change of Vicinity. Increase, reduce, or change in any manner whatsoever the number, dimensions and locations of the walks, buildings, and parking areas in the vicinity of the Premises;

11.2 Traffic and Parking Regulation. Regulate all traffic near and adjacent to the Premises, including the operation and parking of vehicles of AUDUBON and its invitees, employees, and patrons, and including the relocation or removal of the parking spaces adjacent to the Premises. AUDUBON understands that the parking spaces adjacent to the Premises are not reserved for AUDUBON use but may be used by AUDUBON, its invitees, employees, and patrons on an as -available basis;

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11.3 Display of Promotional Materials. Erect, display and remove promotional exhibits and materials and permit special events on property adjacent to the Premises;

11.4 Promulgation of Rules. Promulgate reasonable rules and regulations from time to time regarding the use and occupancy of any DPR property including but not limited to the Premises; and

11.5 Change of Businesses. Change the size, number, and type and identity of any concessions, stores, businesses, programs and operations being conducted or undertaken in the vicinity of the Premises.

ARTICLE 12. RENOVATIONS, IMPROVEMENTS, ALTERATIONS, ADDITIONS

12.1 Prior Written Consent of DPR Required. AUDUBON shall make no major alteration, addition, renovation, or improvement in or to the Premises without first obtaining the written consent of the Superintendant, whose consent shall be given or withheld in his or her sole discretion. All such alterations, additions, renovations, or improvements that are made shall be at the sole cost and expense of AUDUBON. DPR reserves the right to review and approve or disapprove AUDUBON plans, specifications, and proposed contractors for any and all such alterations, additions, renovations and improvements. DPR reserves the right to impose restrictions or conditions upon its consent to any aspect of any work, including without limitation, the requirement that AUDUBON appropriately bond such work, that AUDUBON enter into written contracts for such work in a form approved by DPR, and follow any applicable municipal bidding requirements.

12.2 Any and All Approved Renovations or Improvements are the Property of DPR. Any and all alterations, additions, renovations, or improvements shall remain in and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Agreement; provided, to the extent that DPR determines in its sole discretion that it approves and that it is practicable, AUDUBON may remove any approved improvements at AUDUBON's sole expense. If so removed, AUDUBON shall repair at its sole expense any damage done to the Premises as a result of such removal.

The alterations, additions, renovations, and improvements addressed in this Article expressly include, without limitation, those made and installed pursuant to any prior permits or agreements; all items acquired by AUDUBON with any grant funds provided by or through DPR; and all capital improvements and fixtures installed pursuant to any construction agreement.

12.3 Programming and Use Fee Obligation in the Event of Approved Alterations or Improvements. If AUDUBON obtains DPR approval and undertakes an alteration, addition, renovation, or improvement, and if during such undertaking the

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Premises are wholly or partially unusable, then AUDUBON's obligation to provide Community Programming under Article 3 shall be abated wholly or partially, as reasonably determined by the Superintendent and confirmed by one or more notices to AUDUBON, for the duration of such unusable or partially unusable state. AUDUBON's obligation to pay the cash portion of the Use Fees, however, shall not be abated.

ARTICLE 13. DAMAGE OR DESTRUCTION

13.1. Report of Damage or Destruction. If the Premises are partially or wholly destroyed or damaged by fire, earthquake, or other casualty, AUDUBON shall notify DPR in writing within twenty-four (24) hours after its discovery.

13.2 Use Fee Obligation in Event of Damage or Destruction. If the Premises are destroyed or damaged by fire or other casualty, and such destruction or damage is so extensive as to render such Premises unusable (either because of the need to rebuild or to clean and refurbish the same), and if AUDUBON has given timely notice of such destruction or damage as provided by this Article, then AUDUBON's obligation to pay Use Fees shall be abated until the date that the Premises are made usable. The unusability of the Premises and the duration of any such Use Fee abatement shall be reasonably determined by the Superintendent and confirmed by one or more notices to AUDUBON. If only a portion of the Premises is damaged or destroyed by fire or other casualty but the remainder of such Premises remains usable, as reasonably determined by the Superintendent, and AUDUBON has given timely notice of such destruction or damage as provided by this Article, then AUDUBON shall pay a reduced amount of Use Fee that is proportionate to the extent of the Premises that remains usable for the purposes identified in Article 3 hereof, which reduced Use Fee amount shall be reasonably determined by the Superintendent and identified by notice to AUDUBON, and paid by AUDUBON through the date reasonably specified by the Superintendent in such notice or the later date specified in any subsequent notice.

13.3 Community Programming Obligation in Event of Damage or Destruction. If the Premises are destroyed or damaged by fire or other casualty, and such destruction or damage is so extensive as to render such Premises unusable (either because of the need to rebuild or to clean and refurbish the same), then AUDUBON's obligation to provide Community Programming shall be abated until the date that the Premises are made usable. The unusability of the Premises and the duration of any such Community Programming abatement shall be reasonably determined by the Superintendent and confirmed by one or more notices to AUDUBON. If only a portion of the Premises is damaged or destroyed by fire or other casualty but the remainder of such Premises remains usable, as reasonably determined by the Superintendent, then AUDUBON shall offer a reduced schedule of Community Programming and/or offer Community Programming with a reduced capacity, as shall be reasonably determined by the Superintendent, in consultation with AUDUBON, and identified by notice to AUDUBON.

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13.4 Rebuilding and Repair. If the Premises or a portion thereof are destroyed or damaged by fire or other casualty, the DPR, in its sole discretion, may either repair, rebuild, or demolish the Premises. If DPR elects to repair or rebuild, then unless the Agreement has been terminated under Section 13.5, upon written notice from the Superintendent that the Premises have been restored, AUDUBON shall re-occupy the Premises, the Use Fee abatement or reduction provided pursuant to this Article shall be discontinued, the full Use Fee shall again be due and payable, and the Community Programming schedule shall resume. The DPR shall not be liable to AUDUBON for damages, compensation or any other sum for inconvenience, loss of business, or disruption arising from any repair, rebuilding, or closure of any portion or the whole of the Premises. Nor shall DPR be required to repair or replace any equipment or property located on the Premises and owned or maintained by AUDUBON or other users of the Premises.

13.5 Termination Rights in Event of Damage or Destruction.

By AUDUBON: If a loss to any portion of the Premises effectively renders the entire Premises unusable in the reasonable opinion of the Superintendent, then AUDUBON may elect to terminate this Agreement by thirty (30) days written notice to the DPR.

By DPR: If DPR elects not to repair or restore the Premises, DPR may terminate this Agreement by written notice. DPR will make best efforts to provide AUDUBON notice of termination under this section within sixty (60) days after the happening of any such damage or casualty.

ARTICLE 14. CONDEMNATION

If any part of the Premises shall be taken or condemned, and a part thereof remains that is susceptible of occupation hereunder, this Agreement shall, as to the part so taken, terminate as of the date title shall vest in the condemner, and the Use Fee payable hereunder shall be adjusted so that AUDUBON shall be required to pay for the remainder of the term of this Agreement only such portion of the Use Fee as the number of square feet in the part remaining after the condemnation bears to the number of square feet of the entire Premises immediately prior to the condemnation; but in such event DPR shall have the option to terminate this Agreement by notice to AUDUBON within thirty (30) days of the date when title to the part so condemned vests in the condemner. If part or all of the Premises is taken or condemned, all compensation awarded upon such condemnation or taking shall go to the DPR, and AUDUBON shall have no claim to any of the same, and AUDUBON hereby irrevocably assigns and transfers to the DPR any right to compensation or damages payable by reason of the condemnation of all or a part of the Premises.

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ARTICLE 15. COMPLIANCE WITH LAW

15.1 General Requirements. AUDUBON, at no cost to the DPR, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and the rules, regulations, orders and directives of their administrative agencies and the officers thereof, as such enactments now exist or are hereafter enacted or promulgated. Whenever AUDUBON is informed of any violation of any such law, ordinance, rule, regulation, license, permit or authorization committed by it or any of its officers, employees, volunteers, contractors, subcontractors, agents or invitees, or any person admitted to the Premises, AUDUBON shall immediately desist from and/or prevent or correct such violation.

15.2 Licenses and Other Authorizations. AUDUBON, at no cost to the DPR, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits and similar legal authorizations, and comply with all requirements thereof, and shall submit to DPR evidence of AUDUBON's satisfaction of all such requirements prior to the commencement of any modification of the Premises. AUDUBON shall be responsible for payment of all fees and charges incurred in obtaining any required permits or other governmental approvals and for obtaining a certificate of occupancy prior to the use or occupancy of any modified portion of the Premises.

15.4 Equality Of Treatment. Without limiting the generality of Section 15.1, AUDUBON shall conduct its business in a manner that assures fair, equal, and nondiscriminatory treatment at all times, in all respects, to all persons in accordance with all applicable laws, ordinances, resolutions, rules, and regulations. Any failure to comply with this provision shall be a material breach of this Agreement.

15.5 Nondiscrimination. Without limiting the generality of Section 15.1, AUDUBON will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

15.6 Americans With Disabilities Act Compliance. Without limiting the generality of Section 15.1, the AUDUBON, at no cost to the City, shall comply with all requirements of the Americans With Disabilities Act ("ADA"), as now or hereafter amended, and all rules and regulations implementing the same in connection with all aspects of AUDUBON'S use and operation of the Premises hereunder; provided, however, that the City shall be responsible for ADA compliance with respect to any alterations or improvements it makes to the Premises.

15.7 Recycling of Waste Materials: AUDUBON, at no cost to the City, shall collect, sort and separate into such categories as may be legally required, all solid waste

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products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Premises at such minimum frequency as is specified by the DPR. The City reserves the right to refuse to collect or accept from AUDUBON any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require AUDUBON to arrange for the collection of the same at AUDUBON's sole cost and expense using a contractor satisfactory to the City. AUDUBON shall pay all costs, fines, penalties, and damages that may be imposed on City or AUDUBON as a consequence of AUDUBON's failure to comply with the provisions of this subsection.

ARTICLE 16. LIENS AND ENCUMBRANCES AND CLAIMS

AUDUBON shall keep the Premises free and clear of any liens and encumbrances and claims arising or growing out of its use and occupancy of the Premises. At the City's request, AUDUBON shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

ARTICLE 17. VISUAL ARTIST RIGHTS ACT

17.1. Reservation of Rights by City; Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without Superintendent's Prior Express Written Consent. The City reserves to and for itself the right to approve or disapprove of the installation or integration on or into the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration on or into the Premises of a work of visual art. AUDUBON shall not, without the prior, express, written consent of the Superintendent, install on or integrate into, or permit any other person or entity to install on or integrate into, any portion of the Premises any "work of visual art." The Superintendent's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in the Superintendent's discretion.

17.2. AUDUBON's Indemnification of the City Against Liability under Visual Artists Rights Act of 1990. AUDUBON shall protect, defend, and hold the City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of this section; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by AUDUBON or any of its officers, employees, agents, invitees or licensees. This indemnification obligation shall exist regardless of whether the City or any other person employed by the City has knowledge of such installation, integration, or removal or has consented to any such

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action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Agreement.

ARTICLE 18. RECORDS, BOOKS AND DOCUMENTS FOR CITY ACCESS AND AUDIT

18.1 AUDUBON to Maintain Records. AUDUBON shall maintain records documenting the following with respect to the Premises:

- identify all Community Programs offered, attendance, any fees charged, any waivers granted and basis therefore
- identify all community group users, time of use and purpose of use
- maintain all receipts and any other records relating to any and all maintenance and repair
- all forms and records related to taxes owed and paid.

These records shall be subject at all reasonable times to inspection, review, or audit in King County by personnel duly authorized by the DPR, City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract.

18.2 AUDUBON to Assist City in Providing Data to State and Federal Governments. Upon the request of the City, AUDUBON shall promptly provide, at AUDUBON's sole expense, necessary data to enable the City to fully comply with any and every requirement of the State of Washington or the United States of America for information or reports relating to this Agreement and to AUDUBON's use of the Premises.

18.3 Retention of Records. AUDUBON shall retain in King County all records, documents, and other material relevant to this Agreement for six (6) years after the expiration or termination of this Agreement, and make them available for inspection by the City at such times and on such forms as the City may require. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 19. NAME, SIGNS OR ADVERTISING

19.1 The AUDUBON Name. AUDUBON shall operate its programs under the name "the Seattle Audubon Center at Carkeek Park" and may not refer to itself as the "Seattle Department of Parks and Recreation" or "The City of Seattle" on any correspondence, merchandise, or marketing information. In other cases, naming may simply refer to community programs or events at the Seattle Audubon Center.

19.2 AUDUBON Signs. AUDUBON shall have the right upon prior written approval from DPR to install a sign on the Premises that identifies the same for AUDUBON purposes. Any such sign shall include the name "The Seattle Audubon

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Center at Carkeek Park" and shall be constructed in a style, size and installed in a method consistent with architectural integrity of the facility and DPR's Design Guidelines for Community Center Signs.

19.3 DPR Signs. DPR shall have the right to post its building name, logo and name in an appropriate size on the exterior of the building in a manner compatible with the signage it may approve for AUDUBON.

19.4 Bulletin Boards/ Other Interior Signs or Postings. AUDUBON shall have the right to install bulletin boards and other interior signage or postings within the Premises, and to display community related notices, posters, and similar materials thereon as related to AUDUBON's operation of the Premises.

19.5 No Other Signage on Premises. Other than the DPR approved exterior signage and interior bulletin boards and other interior signage permitted by Subsections 19.2 and 19.4, above, AUDUBON shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever exterior to the Premises, without first obtaining DPR's written consent thereto. At the expiration or sooner termination of this Agreement, AUDUBON will remove all signage it installed and repair any damage or injury to the Premises caused thereby at AUDUBON's sole expense.

19.6 Other Signage on Premises approved by DPR. Conditioned on DPR's approval, AUDUBON is authorized to use existing bulletin boards or place new ones on the exterior of the building to inform the public about its programs and other activities. Additional signage such as directional signs and sandwich boards may be allowed as long as DPR and AUDUBON staff agree on the appropriate locations for them that are not obstructing access or pose safety concerns for the public on existing trails, paths and roads.

ARTICLE 20. WASTEFUL AND DANGEROUS USE

AUDUBON shall not commit or suffer any waste upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Park Code as now existing or hereafter amended, or any activity that is inconsistent with the uses authorized by this Agreement or that will be dangerous to life or limb, or any activity that will increase any insurance rate upon the Premises.

ARTICLE 21. DPR USE OF PREMISES; OTHER COMMUNITY GROUPS USE OF PREMISES

21.1 DPR Use of Premises. DPR shall have access to the Premises at no charge for community hearings and other DPR meetings on an as available basis by contacting AUDUBON at least two (2) weeks in advance of the proposed use date. The parties agree that the space will be considered "available" if there is no other scheduled program

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at the time of DPR's request. DPR shall provide qualified staffing if it uses the Premises on a day or during a time that AUDUBON does not open the Premises; or, if DPR staff is not available to do such opening and closing, then AUDUBON shall perform such function and DPR will pay AUDUBON for its reasonable opening and closing charges. Such use by DPR shall not entitle DPR to use any AUDUBON equipment during its use without the prior approval and supervision of AUDUBON staff.

21.2 Other Community Groups Use of the Premises.

21.2.1 AUDUBON Obligation. AUDUBON shall from time to time, make the Premises available for use by other community groups for small meetings and related activities as stipulated in Section 21.2.3 below. In no event shall the fact of subordinate uses relieve AUDUBON of any of its obligations under this Agreement.

21.2.2 Permissible Fees Charged. AUDUBON may charge fees for use of the meeting rooms inside the Premises; provided that such fees shall be charged uniformly and shall be consistent with the Seattle Parks and Recreation Fees and Charges for Community Meeting Rooms. If AUDUBON waives any fees for particular users, AUDUBON shall document all such waivers, describing the user and category of waiver or in-kind value received in lieu of payment, and AUDUBON shall provide such documentation to DPR at the end of the Agreement term. Additionally, AUDUBON may charge for opening, closing, and staffing charges.

21.2.3 Scheduling. AUDUBON shall allow community groups use of the Premises on an as available basis. The parties agree that the space will be considered "available" if there is no other scheduled program at the time of user's request, and said group has been qualified through AUDUBON and/or DPR.

21.2.4 Supervision, Volunteer, and Staffing. AUDUBON shall provide qualified staffing, volunteers, and supervision or assign volunteers during all subordinate uses of the Premises under this Article 21.2. AUDUBON shall be responsible for opening and closing the facility if the use is on a day or during a time that AUDUBON does not open the facility. AUDUBON shall be responsible for the security of equipment and property inside the facility.

ARTICLE 22. ASSIGNMENT & OTHER INTEREST TRANSFERS

Except as permitted under Sections 2.3 and Article 21, AUDUBON shall not assign, mortgage, encumber, or otherwise transfer any of its rights under this Agreement, in whole or in part, including leasing or licensing use or occupancy of the Premises or any part thereof or any of the rights or privileges or any portion of the Premises granted under this Agreement to any other person, firm or corporation without the prior written authorization of DPR, which authorization may be granted, withheld, or conditioned in

each instance in the sole discretion of the Superintendent. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. The rights and privileges granted hereunder, and the Premises are not assignable or transferable by any process or proceedings in any court, or by attachment. Any assignee or other transferee approved by DPR must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by AUDUBON. Any transfer of this Agreement from AUDUBON by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment for purposes of this Agreement. If AUDUBON in any manner permits anyone to occupy all or any portion of the Premises for any purpose not within the intent of this Agreement, such permission shall be deemed an assignment or other interest transfer, as deemed appropriate by DPR. DPR consent to any assignment or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment or transfer, and the terms of such consent shall be binding upon any person or entity using or occupying the Premises by, under, or through AUDUBON. The City may charge AUDUBON reasonable costs of processing any assignment or other interest transfer, including attorney's fees (not to exceed $500). In no event shall any assignment or any other transfer of this Agreement relieve AUDUBON of any of its obligations under this Agreement unless the assignment or other transfer is to a party that is of equal or better credit and approved in writing in the sole discretion of the Superintendent; and as a condition to DPR's approval of an assignment or other transfer, AUDUBON and such assignee or other transferee shall agree in writing to be jointly and severally liable for the performance of all of AUDUBON's obligations under this Agreement.

ARTICLE 23. DEFAULT, BREACH, AND TERMINATION

23.1 Default defined. If AUDUBON violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Agreement; or if AUDUBON abandons, deserts, vacates, or otherwise removes its operations from the Premises without the prior consent of the Superintendent; or if AUDUBON files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for AUDUBON's assets or if AUDUBON makes an assignment for the benefit of creditors, or if AUDUBON is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; or if AUDUBON violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of any separate agreement between the City and AUDUBON addressing funding or construction of an alteration, addition, renovation, or improvement or other construction project on the Premises, then AUDUBON shall be in default ("Default"). If the City violates, breaches or fails to keep or perform any term, provision, or obligation of this Agreement, the City shall be in Default.

23.2 Termination of Agreement as Remedy for Default.

Either party may terminate this Agreement in the event that the other party has Defaulted and the Default has not been corrected to the reasonable satisfaction of the dissatisfied

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party within thirty (30) days after written notice of Default, or within ten (10) days if the Default is for nonpayment of any monetary obligations owed under this Agreement; provided, however, that if the nature of either party's Default (other than Default of monetary obligations) is such that more than thirty (30) days are required for cure, then that party shall not be in Default if it commences a cure within thirty (30) days of the date of written notice of Default and thereafter diligently prosecutes the same to completion.

23.3 Notice of Termination. Notice of termination shall be given in the manner provided under Article 26 from the party terminating this Agreement, after any applicable cure period in 23.2.1 has elapsed, and not less than five (5) days prior to the effective date of termination.

23.4 Superintendent to Determine AUDUBON Default and breach. The Superintendent shall have the right to determine, on the City's behalf, whether AUDUBON is in Default under this Agreement or has otherwise materially breached this Agreement.

23.5 Re-entry by City Upon Termination. Upon the termination of this Agreement, the City may re-enter the Premises. AUDUBON shall be liable and shall reimburse City upon demand for all costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises as a result of Audubon's Default, AUDUBON shall vacate and surrender the Premises as required under Section 25 and City shall have the right to remove, store and sell any personal property as provided under Sections 25.

23.6 City's non-exclusive remedies upon Termination due to Default of AUDUBON. Notwithstanding such re-entry and anything to the contrary in this Agreement, in the event of the termination of this Agreement because of the Default of AUDUBON, the liability of AUDUBON for the Use Fees and all other sums due under this Agreement provided herein shall not be extinguished for the balance of the Term of this Agreement and shall be subject to the late fees and interest provided for in Section 5.6. AUDUBON shall also be liable to City for any other amount necessary to compensate City for all the detriment proximately caused by AUDUBON's failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington and at equity.

ARTICLE 24. TERMINATION AT OPTION OF DPR OR AUDUBON

CITY. In the event City determines, at any time during the term of this Agreement, to terminate the contract for convenience, it may do so upon written notice

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by DPR to AUDUBON upon ninety (90) days' prior notice in accordance with all terms and conditions of this Agreement.

AUDUBON. In the event AUDUBON determines, at any time during the term of this Agreement, that the Premises are no longer required for its use, this Agreement shall be subject to termination upon ninety (90) days' prior written notice by AUDUBON to DPR and in accordance with all terms and conditions of this Agreement.

ARTICLE 25. VACATING OF PREMISES

25.1 Surrender & Delivery. Upon the expiration or termination date of this Agreement, whichever is earlier, AUDUBON shall surrender the Premises in a broom clean condition, reasonable wear and tear excepted. AUDUBON shall promptly deliver to the DPR all keys that AUDUBON, and any of its officers, agents, and employees have to the Premises. Immediately following the vacating of the Premises and the surrender of the same to the City, AUDUBON shall inspect the Premises with DPR to determine the condition of the Premises. The results of such inspection shall be summarized by the DPR on a Premises inspection report, a copy of which shall be provided to AUDUBON. If the DPR determines that AUDUBON has failed to surrender the Premises in a broom clean condition, the DPR shall have the right, but not the obligation, to restore the Premises to a broom clean condition at the expense of AUDUBON. AUDUBON shall reimburse the City for its costs therefor, including any administrative costs.

25.2 Removal of AUDUBON's Property. Prior to the expiration date of this Agreement, or in the event this Agreement is terminated, within fifteen (15) days after the termination date, whichever is earlier, AUDUBON shall remove, at its sole expense, all equipment and property owned or installed by AUDUBON in, on, or from the Premises, unless DPR agrees in writing that any requested items may stay. AUDUBON shall take due care to not injure or damage the Premises, and shall make such repairs to the Premises as shall be necessary to restore the same to their condition as of the commencement date of this Agreement, ordinary wear and tear and improvements, additions, and alterations, approved by the City excepted.

25.3 Storage and Sale of AUDUBON's Property. If AUDUBON fails to remove equipment and property owned or installed by AUDUBON in the time required under Section 25.2, the DPR may, but shall not be required to remove such material from the Premises and store the same, all at AUDUBON's expense; and in the event the DPR removes or arranges for the storage of such material, AUDUBON shall reimburse the DPR for its costs therefor, including any administrative costs. Additionally, after DPR has stored any personal property removed from the Premises for thirty (30) or more days, DPR shall have the right to treat the property as abandoned and may sell the same and apply the proceeds of the sale to any amounts owed to the City under this Agreement, including the cost for removal and storage.

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25.4 Holdover. If AUDUBON fails to surrender the Premises upon the expiration or sooner termination of this Agreement without the DPR's prior written consent, AUDUBON shall indemnify, defend, and hold harmless the City from all losses, damages, liabilities, and expenses resulting from such failure, including without limiting the generality of the foregoing, any claims made by any succeeding user of the Premises arising out of such failure. Additionally, all terms and conditions of this Agreement shall apply during the period of any holdover, except that in addition to the Use Fee, AUDUBON shall owe City an additional fee of $250.00/day for each day after the expiration or sooner termination of the Agreement that AUDUBON fails to surrender and deliver the Premises in accordance with all of AUDUBON's obligations under this Agreement.

25.5 No Claim for Removal. In no event shall AUDUBON make any claim or demand upon the City nor shall the City be liable for any inconvenience, annoyance, disturbance, or any other damage suffered by the AUDUBON arising out of removal operations under this Agreement.

ARTICLE 26. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Agreement by either party to the other shall be in writing and shall be sufficiently given if either served upon the other party or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to AUDUBON:
Executive Director
Seattle Audubon
8050 35th Avenue NE
Seattle, WA 98115

If to the City:
The City of Seattle
Department of Parks and Recreation
Parks Concession Coordinator
Contracts and Administrative Support Office
RDA Building 3rd Floor
800 Maynard Avenue South
Seattle, WA 98134

or to such other address as either party may specify for itself in a notice to the other.

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ARTICLE 27. MISCELLANEOUS

27.1 Captions. The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

27.2 Time. Time is of the essence.

27.3 Partial Invalidity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or unenforceable, the remainder of this Agreement, and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

27.4 Binding Effect. The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal representatives, successors, assigns and subsidiaries.

27.5 Applicable Law. This Agreement shall be interpreted under the laws of the State of Washington.

27.6 Jurisdiction and Venue. The jurisdiction and venue for any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be the Superior Court of the State of Washington for King County.

27.7 No Partnership or Joint Venture Created. The City does not by this Agreement, in any way or for any purpose, become a partner or joint venture of AUDUBON in the conduct of its business or otherwise.

27.8 City's Remedies Cumulative. The City's rights under this Agreement are cumulative; failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use another.

27.9 Amendments. No modification of this Agreement shall be binding upon the City or AUDUBON unless reduced to writing and signed by an authorized representative of each of the parties hereto.

27.10 Excuse and Suspension of Obligations (Force Majeure). If a party's

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performance (other than any monetary obligations) under this Agreement is prevented by an unforeseeable act of Force Majeure (see 28.10.1 below), then performance of such affected obligation shall be suspended (excluding, however, any monetary obligations), but only for the duration of such condition.

27.10.1 Acts of Force Majeure include, but are not limited to:

(1) Acts of Nature;
(2) Acts of war or public rebellion;
(3) Fire or other casualty for which neither party is responsible;
(4) Quarantine or epidemic;
(5) Strike or defensive lockout;
(6) Unusually severe weather conditions which could not have been reasonably anticipated; and
(7) Unusual and unforeseen delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to City was available at the time the delay became foreseeable or at any later time when delay could have been avoided by prompt action.

27.11 No Third Party Rights. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation that is not a party hereto nor shall any person, firm, organization or corporation other than a party hereto have any right or cause of action hereunder.

27.12 No Waivers. No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by City of any particular breach or default by AUDUBON, nor shall such a document waive any failure by AUDUBON to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

27.13 Attachments. The following documents are attached hereto and hereby incorporated into this Agreement as if set forth in full herein:

Attachment 1: Premises Map
Attachment 2: Programming Responsibilities of the Parties
Attachment 3: Sample Public Benefits report
Attachment 4: Parks repair items

27.14 Entire Agreement. This Agreement and all attachments and exhibits pertaining to same constitute the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties regarding the subject matter hereof. The parties to this Agreement acknowledge that it is

a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of the Agreement are not to be construed against any party on the basis of such party's preparation of the same.

IN WITNESS WHEREOF, the parties have executed this contract:

_____ _____

Charles Kahle, President Date
SEATTLE AUDUBON SOCIETY

_____ _____

Christopher Williams, Acting Superintendent Date
THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION

SEA CITY CLERK

Attachment 1
Premises/Map

SEATTLE CITY CLERK

Attachment 2—Programming Responsibilities of the Parties

AUDUBON will provide the following to the Seattle Department of Parks and Recreation:

AUDUBON will provide public programming at the Premises at Carkeek Park that includes:

- Keeping the Premises open 4 days a week (April – Sept.), 10 am – 4 pm;
- Keeping the Premises open 2 days a week (Oct. – March), 10 am – 3 pm;
- Offering free programming:
  - Nature walks on the trails and beach
  - Drop in presentations at the Admin building;
- Offering fee-based programming:
  - Scheduled education programs for groups (school groups, etc.);
- Providing low cost use of the Premises to other organizations, and make efforts to work with existing pre-school program at the park); and
- Providing information about the park, i.e., natural history, park activities.

In addition, the following table summarizes additional programming responsibilities of AUDUBON and of DPR where specified:

Programs (AUDUBON Responsibilities)	• AUDUBON shall provide outreach and public access to community programs and services being offered primarily at the Premises. • A minimum of 10 free programs per year is required. • Provide an annual report at the end of each calendar year to DPR detailing AUDUBON's operation expenses, community outreach, public benefit and participation data. Include Free and Reduced Lunch school % and other demographic metrics. • Consistent with DPR's mission, AUDUBON's programs shall be community-responsive, particularly to North Seattle communities, and shall provide inquiry-based, hands-on, direct experience in nature programs for families, children, youth and adults. Membership in the AUDUBON Society shall not be a prerequisite for participation. The programs shall be: (i) focused on and relevant to the local community; (ii) culturally inclusive of diverse perspectives and relationships with the environment; (iii) respectful of the natural and human history of Carkeek Park and all living things; (iv) designed to sustain the natural resources at Carkeek Park; (v) compatible with and supportive of the DPR's environmental

SEA CITY CLERK

	stewardship programs; (vi) focused on measurable outcomes; • AUDUBON agrees to operate its programs and activities at Carkeek Park with the goal of providing the widest possible access to the general public while at the same time maintaining the feasibility of the AUDUBON programs and activities. In furtherance of that goal, AUDUBON shall ensure that its Carkeek Park programs shall be affordable and accessible to the public, including low-income park users, children and school-age students. • AUDUBON program fees shall be competitive with DPR fees for programs of similar scope and quality, and a schedule of AUDUBON program fees shall be submitted to the DPR annually along with an annual plan that outlines how AUDUBON shall ensure affordability (i.e., level of scholarships and fees) for the DPR's review. No later than January 30th of the each year, AUDUBON shall report on the actual program fees charged to qualified participants for the prior calendar year in the report. DPR will review this report and determined if the AUDUBON is meeting the Race and Social Justice Best Practices Criteria of DPR.
Communication, Building Operation, Maintenance (both parties)	• DPR maintenance staff will develop a communication process with AUDUBON to notify AUDUBON of noisy or interruptive work and will make efforts to schedule this work during days/times that minimize impacts to programs. • AUDUBON will have permission to call the DPR Work Order Job Line directly with instructions on how to process a work order. • DPR will notify AUDUBON (who may have the first contact with citizens) about water shut offs, parking blockages, comfort station/bathroom closures and similar emergency/urgent issues and events. • AUDUBON will outline security procedures in writing that Parks maintenance staff will follow before and after entering the building.
Keys (AUDUBON)	• In accordance with DPR Administrative Policy 2.7.1, AUDUBON will obtain, account for and collect from DPR keys to the exterior door(s) of the Premises at the time of occupancy, and after any change executed by DPR in the locks of the exterior doors. Any change in locks for the Premises shall be at AUDUBON's expense. AUDUBON shall account for and collect keys in accordance with DPR policy and procedure. • Keys can be ordered directly through the DPR's shops. Key transfers to changing staff must be reported through the Key Requisition process.
Scheduling (both	• The DPR and AUDUBON shall coordinate their environmental

SEA CITY CLERK

parties)	education programs and other activities within the Environmental Learning Center Building (ELC) and other areas of Carkeek Park to avoid overuse and conflicts in scheduling. This shall be coordinated through quarterly meetings or other mutually agreed means of coordination between relevant personnel of AUDUBON and DPR. • If AUDUBON intends to use any part of the Premises or other parts of Carkeek Park during the hours the park is closed to the public, it must obtain DPR's Approval and notify DPR security. • Thirty (30) days before the end of each quarter, Seattle Audubon shall provide DPR, for its Approval, a list of AUDUBON's proposed use dates for the ELC Classroom and other areas in Carkeek Park during the succeeding quarter. • The list shall consist of scheduled programs, meetings, and other business activities, and shall include times and dates for each proposed use. AUDUBON may make changes to this schedule as needed and as space and scheduling permits, to accommodate its programming needs and other permitted uses.
Use of ELC, Meadow/Patio and Other Park Spaces (AUDUBON)	• AUDUBON is one of many users of the ELC Classroom for purposes of implementing environmental education programs. Access to the ELC is based on availability and DPR staff will assist in providing information and a schedule of use on a quarterly basis. • AUDUBON may use the spaces around the Premises including the meadow and patio areas with prior reservation. Other groups may be excluded during pre-planned, specially permitted times, but generally the public will be allowed access to the area. • AUDUBON may reserve shelters and other reserve-able spaces in the park as available through DPR scheduling, and will follow all policy and procedures outlined in rental contracts. • The public will have access to all areas of the park that are not reserved for use by a particular party during specified times. • AUDUBON may reserve outdoor space for fundraising activities two (2) times per year. • If DPR is operating a summer day camp, then AUDUBON may not run a summer day camp at Carkeek Park
Stewardship of Park Spaces (both parties)	• AUDUBON shall work in coordination with the Carkeek STARS voluntary work party, Green Seattle Partnership, Carkeek Park Advisory Council, Carkeek Watershed Community Action Project group, and Parks maintenance staff to implement programs and other on-going volunteer efforts and projects in the park. • Scheduling of volunteer groups shall be coordinated in advance between both AUDUBON and DPR; large volunteer groups of fifty (50) or more will be entered into the scheduling/booking system.

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	• The DPR holds jurisdiction and has administrative authority over Carkeek Park. Decisions concerning the park/facility, its maintenance and operation, are the responsibility of the DPR. Changes, alterations, improvements, or additions may not be made to any area of Carkeek Park without the formal review and approval of the DPR. Any improvements constructed and/or installed by the AUDUBON will become the property of the City of Seattle. Future retention, removal, repair or alteration of the improvements is at the discretion of the DPR. • AUDUBON will refer to the Forest Management Plan, DPR Best Management Practices for Natural Areas, and consult with the Urban Forestry Unit about habitat and wildlife matters. • DPR will take the lead on outlining the habitat management priorities for the park: conservation goals, locations for work, how to use the Vegetation Management Plan as a guide, and the DPR Urban Forestry Unit should act as the lead, clarify roles and decision-making.
Signage and logos; Marketing (both parties)	• AUDUBON, may, with assistance from DPR, produce a map of Carkeek Park for distribution to the public. Said map will be subject to DPR review and display the DPR logo. • Pursuant to Section 19.4 of this Agreement, AUDUBON is authorized to install bulletin boards and other signs or postings within the Premises and display community-related notices, posters, and similar materials related to AUDUBON's operations within the Premises. AUDUBON shall also have the right to place and maintain, within the Premises, any bulletin boards, signs or postings and any plaques or other displays of the names of the donors or contributors to the AUDUBON Center at Carkeek Park; provided that, any such postings shall be subject to the City's Ethics Commission prohibitions on certain signage in public buildings. • Pursuant to Section 19.2 of this Agreement, AUDUBON will be allowed, upon approval by DPR, to present such signs as are necessary for identifying its residency in the Premises. • Sign design and wording must be presented to the DPR Public Information Officer for review. AUDUBON will pay for the sign, DPR will install the sign. The sign must meet all DPR design and material standards. • AUDUBON shall not, without the Superintendent's Approval, install any other signs on the exterior of the Premises. • DPR will display the logo of AUDUBON and a link to its website through the Carkeek Park webpage. Seattle AUDUBON may post programs and events through the Trumba DPR/City calendar. AUDUBON may help maintain and post to a Carkeek Park Face book page (not yet in existence). AUDUBON may send Tweets to the Public Information Office for distribution on the Seattle Parks and

	Recreation Twitter account. • AUDUBON will display the logo of Seattle Parks and Recreation on all publications, e-news, websites and other documents that refer to Carkeek Park.
Community Engagement and Outreach (AUDUBON)	• AUDUBON shall reach out to local citizens and community groups, with emphasis on diverse ethnic, racial, cultural and economic populations and historically underserved communities, to maximize opportunities for all citizens to be involved in the planning, delivery and use of AUDUBON's educational and nature program services. AUDUBON shall report to the DPR on these outreach activities on an annual basis through the audit process. • AUDUBON shall name Seattle Parks and Recreation in AUDUBON publications and website.
Customer service (DPR)	• DPR will assign one Operations Liaison to assist AUDUBON with navigating DPR policy, procedure, scheduling and maintenance issues. • The Operations Liaison will help provide information and guidelines to help AUDUBON direct the public. That includes information about the park, including phone contacts for Lost/Found, Picnic/Event Scheduling, Maintenance, and Security. • The Operations Liaison will provide booking information to help AUDUBON in directing the public to its events in the park, the schedule for shelter use, volunteer events and other information applicable to AUDUBON programming in the park. • The Operations Liaison will help identify DPR department coordination, Community advocacy groups, and other stakeholders, coordinate community relations and discuss how to respond and communicate with these groups together.
In-Kind Services and Contributions (AUDUBON)	• AUDUBON will staff the Premises with an on-site manager and staff to provide services to park patrons and all visitors to the Premises, including access to restrooms in the building. • AUDUBON will provide clear and consistent hours of operation. • AUDUBON will help in providing customer service and information about Carkeek Park to the patrons of the park, including park maps, activities and events, and natural history.
Traffic Plans and Parking (AUDUBON)	• Parking is on a first come, first served basis, unless permission for a large event and cordoning off of the ELC parking area is permitted through the reservation and scheduling system. • Significant events (100+ people) must present a traffic plan to the Events Scheduling office.

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Attachment 3

Example of offset of Use Fee Report

I. Environmental Educational Programs

AUDUBON provided ___hours per month during the peak season for the following environmental education programs to the public:

1. Bird watching
2. Nature camps
3. Trail walks

II. Facility Maintenance and Repair

AUDUBON provided ____hours per month to perform routine maintenance of the Administrative Building.

III. Scholarships, fee waivers, discounts

AUDUBON provided XXXX scholarships, fee discounts and /or waiver per year to the public. Estimated value is $XXXXXXX.

Summary Table of Activities for Public Benefit- July-December 20XX

Activity Category	Activity Hours	Staff Hours (including planning, collaboration, facilitation)	Volunteer Hours	Volunteer Value	Total Volunteers
Community Festivals	10	154	522	$ 9797.94	44
Weekly Facility Maintenance	152	68	42	$ 3097.05	17
Scholarships, discounts and fee waivers given to public	XXX	XX	XX	$ XXXXX	XX
Total	XXX				
FTE Equivalent (37.5 hrs/wk or 1950/yr)		XXXX			
TOTALS		XXX	XXX	$XXXXXX	XXX

SEATTLE CITY CLERK

Attachment 4
Repairs to Premises to be executed by DPR prior to AUDUBON occupancy

Facilities Maintenance agrees to make following repairs and upgrades:

1. Replace all T-12 light fixtures with T-8 fixtures. Replace 6 track lighting fixtures with T-8 fixtures.
2. Remove partition on lower floor. Remove temporary wall upstairs.
3. Replace carpet on lower floor with marmoleum sheet goods or linoleum tiles. Replace carpet upstairs.
4. Patch walls where needed and paint where appropriate.
5. Insure all baseboard heaters work and replace switch knobs

SEATTLE CITY CLERK

Charles Ng
DPR Carkeek Audubon FISC
March 4, 2013
Version #1

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Charles Ng 684-8001	Jeff Muhm 684-8049

Legislation Title:
AN ORDINANCE relating to the City of Seattle's Department of Parks and Recreation; authorizing the Superintendent to enter into an agreement with Seattle Audubon Society to operate and manage the Administrative Building located in Carkeek Park.

Summary of the Legislation:
The proposed legislation authorizes the Department of Parks and Recreation (DPR) to enter into a five-year Agreement with the Seattle Audubon Society (Audubon) to manage and operate the Administrative Building located in Carkeek Park. Audubon will provide environmental, educational, and recreational programs to the public. The proposed agreement includes an option to extend the agreement for one 5-year extension at the discretion of DPR.

Background:
Historic Carkeek Park, covering 186 acres, offers over six miles of trails that wind through stream, beach and forest habitat, providing opportunities for natural exploration and recreation. Carkeek Park also has a popular playground and picnic tables and is a perfect location for gatherings. There are two buildings at the park entry, an Administrative Building (the focus of this RFP) and an Environmental Learning Center (ELC). The ELC is scheduled by Parks for a variety of community meetings and programs. DPR desires to optimize and make best use of the Administrative Building, which has been vacant and unused for eight months. DPR is looking for a tenant that can manage, maintain and program the space in a manner that is consistent with DPR's core mission, particularly in the areas of recreation and environmental education. DPR does not have the resources to staff and program the Administrative Building; therefore, DPR completed a Request for Proposal Process for an operator to manage, operate and maintain the Administrative Building. The Seattle Audubon Society was selected as the winning proposer of the RFP.

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**

CITY CLERK

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL	N/A	N/A	N/A	N/A

Appropriations Notes: There is no appropriation requested as a result of this legislation.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Park and Recreation Fund (10200)	Parks and Recreation	Income from base fee payment	$1,000	$1,000
TOTAL				

Revenue/Reimbursement Notes:
The use fee for the Administrative Building is estimated to be $53,000 annually. The agreement allows Seattle Audubon to offset the use fee with public benefits for the community and DPR. Such offsets are called Service Credits and are to be approved in writing by DPR before use by Audubon. Service Credits are expected to fully offset all use fees assessed except for the $1,000 base annual fee.

This legislation will result in $1,000 of revenue by year end in 2013 and a like amount in 2014. The new Agreement will also transfer utility costs and maintenance for the Administrative Building from DPR to Audubon. (The utility cost savings are difficult to calculate because the building has been closed and was minimally used for office space in the years previous to closure, so there is no utility cost baseline to measure savings against.)

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Position Notes: N/A

Do positions sunset in the future? N/A

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Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Spending/Cash Flow Notes: N/A

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

b) **What is the financial cost of not implementing the legislation?**
The proposed five-year agreement would save DPR at least $53,000 in operations and maintenance costs over the term of the initial five- year agreement. There would be additional savings if DPR agrees to the 5-year extension. Having Audubon operate the facility for environmental, educational, and recreational purposes, provide maintenance, and on site management as additional security for the facility are benefits to DPR, the Carkeek neighborhood and the public.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** The City could decide to allocate more resources to DPR to operate the building; however, that is unlikely given the current budgetary challenges.

Is a public hearing required for this legislation? No.

e) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

f) **Does this legislation affect a piece of property?**
Yes the Carkeek Park Administrative Building.

g) **Other Issues**: None.

List attachments to the fiscal note below:

Attachment A: Contract Summary Form.

Attachment A
Seattle Department of Parks and Recreation

CONTRACT SUMMARY

March 4, 2013

Name of Contracting Party/ Lessee/ Concessionaire/Other: Seattle Audubon Society

Contract Type: Use and Occupancy Agreement

Non-Profit _X_ or **For Profit**_____

New or **Renewal (or extension of existing Lease)** New

Term of Original Agreement: Five years with an option to extend an additional five years at the discretion of the Superintendent of the Department of Parks and Recreation.

Purpose of Agreement: To enter into a five-year agreement with the Seattle Audubon Society (Audubon) to use the Administrative Building at Carkeek Park for the public purposes of providing environmental, educational, and recreational programs for the public.

Public Benefit: Audubon will provide programs and services of a minimum of 10 hours per month for community events, which includes cultural activities, and other recreational classes at the Carkeek Administrative Building that meet the needs and interests of the surrounding communities. Recreational classes will concentrate on environmental stewardship, community development, and other identified needs as determined by DPR and Audubon collaboratively. Free and reduced-fee registration will be offered as available to applicants. Audubon will provide public access for family and community events for local organizations, neighborhood groups, individuals and families for a minimum of 40 hours a month from October through March and 96 hours per month from April through September.

Brief description, overview, history, general terms and other pertinent info:
DPR owns the historic 186-acre Carkeek Park, which offers over six miles of trails that wind through stream, beach and forest habitat. There are two buildings at the Park entrance, an Administrative Building (the focus of this RFP) and an Environmental Learning Center (ELC). The ELC is scheduled by DPR for a variety of community meetings and programs. DPR desires to optimize and make best use of the Administrative Building, which has been vacant and unused for eight months. DPR does not have the resources to staff and program the Administration Building; therefore, DPR completed a Request for Proposal process for an operator to manage, operate and maintain the Administrative Building and selected the Seattle Audubon Society as the winning proposer of the RFP.

SEA CITY CLERK

City of Seattle
Office of the Mayor

April 2, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill which authorizes the Superintendent of Parks and Recreation to enter into an agreement with the Seattle Audubon Society (Audubon) for the operation, community outreach and management of the City's Administrative Building located in Carkeek Park. The ordinance provides for a five-year agreement with Audubon with an option to extend an additional five years at the option of the Superintendent.

In November 2011, the Department of Parks and Recreation (DPR) completed a Request for Proposal (RFP) process to select an operator for the City's Administrative Building located in Carkeek Park. Two operators responded to the RFP, Audubon and the Center for ARTs. Both proposals were thoroughly reviewed by a team of evaluators that included three DPR staff and one Carkeek Park Advisory Council representative. The proposal from Audubon met the RFP review criteria and was judged to be the most advantageous to the City. Audubon completed its business planning in 2012 for new programming and is now ready to open the Administrative Building for public programming by spring 2013.

Approval of this legislation will allow continued environmental and community outreach and provide educational opportunities to the public visiting Carkeek Park. Thank you for your consideration of this legislation. Should you have questions, please contact Charles Ng, Contracts Administration Manager at 684-8001.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

SEA CITY CLERK

STATE OF WASHINGTON -- KING COUNTY

--ss.

298536 No.

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:124182-185 TITLE ONLY

was published on

06/05/13

The amount of the fee charged for the foregoing publication is the sum of $90.75 which amount has been paid in full.

Subscribed and sworn to before me on

06/05/2013

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

The full text of the following legislation, passed by the City Council on May 20, 2013, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar. Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 124182

AN ORDINANCE relating to the City Light Department; amending Seattle Municipal Code Chapter 21.49.081 to include BPA transmission costs in the automatic BPA cost adjustment rate pass-through.

ORDINANCE NO. 124183

AN ORDINANCE relating to the City Light Department; amending Seattle Municipal Code Chapter 21.49.040 to simplify the eligibility verification process for residential rate assistance.

ORDINANCE NO. 124184

AN ORDINANCE accepting for general street purposes 18 deeds, four correction deeds, and a re recording of quit claim deed, conveyed to the City of Seattle by the Central Puget Sound Regional Transit Authority ("Sound Transit") in connection with the Central Link Light Rail Transit Project as agreed to in a Property Acquisition and Transfer Procedures Agreement between the City of Seattle and Sound Transit, dated August 12, 2003 ("Property Transfer Agreement"); laying off, opening, widening, extending, and establishing portions of the rights-of-way located on Martin Luther King Jr. Way South between South Alaska Street and South Angeline Street, South Brandon Street and South Lucile Street, South Juneau Street and South Warsaw Street, and Beacon Avenue South and the Seattle City Limits; and placing the real property conveyed by the deeds under the jurisdiction of the Seattle Department of Transportation; and ratifying and confirming certain prior acts.

ORDINANCE NO. 124185

AN ORDINANCE relating to the City of Seattle's Department of Parks and Recreation; authorizing the Superintendent to enter into an agreement with Seattle Audubon Society to operate and manage the Administrative Building located in Carkeek Park.

Date of publication in the Seattle Daily Journal of Commerce, June 5, 2013.

6/5(298536)