

ORDINANCE No. 121190

me

Patt

COUNCIL BILL No. 114587

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to execute an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs; and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years with an option to continue said use and occupancy for an additional ten years.

Introduced: JUN - 9 2003	By: STEINBRUECK
Referred: JUN - 9 2003	To: Parks, Education & Libraries Committee
Referred:	To:
Referred:	To:
Reported: 6-16-03	Second Reading:
Third Reading: 6-16-03	Signed: 6-16-03
Presented to Mayor: 6-17-03	Approved: 6/25/03
Returned to City Clerk: 6/26/03	Published: TRW 2pgs
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

The City of Seattle--Legislative

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____ report that we have considered the same and respectfully recommended that the same:

2-0 P.S. JD As Amended (E)
6-16-03 Passed 8-0 (Nicastro)

Law Department

Final note (clear/2003)
Approved
Final report (encl)
Attachment: 8/11/03, A.D., A.D., 8/11/03
Commissioner
1/10/04
1/10/04
 Committee Chair

ORDINANCE 121190

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to execute an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs; and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years with an option to continue said use and occupancy for an additional ten years.

WHEREAS, the City owns and the Department of Parks and Recreation (DPR) has jurisdiction over and manages Seward Park and the Seward Park Music Annex Building and the Hatchery located within Seward Park; and

WHEREAS, on November 7, 2000, the voters of the City of Seattle approved Ordinance 120024, the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy, which identified the sum of \$618,600.00 to partially fund renovation of the Seward Park Music Annex Building for use as an Environmental Education Center; and

WHEREAS, the Department's 2002 Adopted Capital Improvement Program appropriated funding in the amount of \$124,000 and the Department's 2003 Adopted Capital Improvement Program appropriated funding in the amount of \$494,000; and

WHEREAS, Ordinance 120024 expresses the City's intention to leverage levy funds through collaboration with public and private organizations to enhance the projects and the programs funded through the levy lid lift; and

WHEREAS, Audubon and the Department desire to collaborate financially and programmatically to achieve their shared long-term vision and goals with respect to the renovation of the buildings and the development and delivery of complementary community-based environmental educational programs and conservation initiatives to a diverse audience; and

WHEREAS, the Audubon Society is willing to contribute \$1,372,869 toward the renovation of the Seward Park Music Annex Building and Hatchery to accomplish this project; and

WHEREAS, Audubon and the Department concur that the renovation of the buildings is an appropriate project for a joint public agency and private sector venture; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:



IT IS DUE TO THE QUALITY OF THE DOCUMENT.

1 Section 1. As requested by the Superintendent of Parks and Recreation and
2 recommended by the Mayor, the Superintendent is authorized to execute, deliver and perform f
3 and on behalf of the City of Seattle, a "Development Agreement between The City of Seattle
4 Department of Parks and Recreation and National Audubon Society, Inc." and the associated
5 "Use and Occupancy Agreement" substantially in the form of Exhibit A.
6

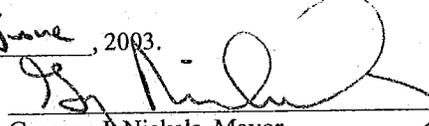
7 Section 2. Any act consistent with the authority and prior to the effective date of this
8 ordinance is hereby ratified and confirmed.

9 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after
10 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
11 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
12

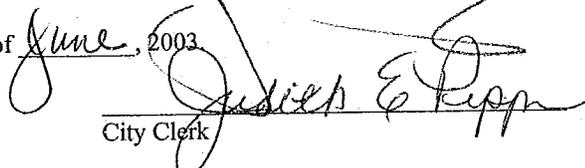
13 Passed by the City Council the 16th day of June, 2003, and signed by me in
14 open session in authentication of its passage this 16th day of June, 2003.

15
16 
17 President _____ of the City Council

18 Approved by me this 25 day of June, 2003.

19 
20 Gregory J. Nickels, Mayor

21 Filed by me this 26th day of June, 2003.

22 
23 City Clerk

24
25 (Seal)

26 Attachment 1: "Development Agreement between The City of Seattle Department of Parks and
27 Recreation and National Audubon Society, Inc."
28



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Form revised January 17, 2003

Fiscal Note

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Cindi Shiota 390-3520 Charles Ng 684-8001	Marilynne Gardner 233-5109

Legislation Title:

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to execute an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs; and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years with an option to continue said use and occupancy for an additional ten years.

Summary of the Legislation:

The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years and exercise an option to continue to use and occupy a portion of the named facilities for an additional ten years. No new appropriation authority is required. The Agreement memorializes the parties' understandings and objectives pertaining to the provision of environmental education programs, building renovation, budget, design, construction, project management, and Audubon fund-raising requirements. DPR's financial contribution to this project is capped at \$618,600 and Audubon has pledged to contribute the remaining \$1,372,869 required to complete the project as mutually agreed and designed.

Appropriations (in \$1,000's): Not applicable.

Fund Name and Number	Department	Budget Control Level*	2003 Appropriation	2004 Anticipated Appropriation
TOTAL	N/A	N/A	N/A	N/A

** This is line of business for operating budgets, and program or project for capital improvements*

Funds for this project have already been appropriated in the 2002 and 2003 Capital Improvement Programs under CIP Program # K723003 and CIP Project # K733120. No additional appropriation results from this legislation.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Expenditures (in \$1,000's): Not applicable.

Fund Name and Number	Department	Budget Control Level*	2003 Expenditures	2004 Anticipated Expenditures
TOTAL	N/A	N/A	N/A	N/A

**This is line of business for operating budgets, and program or project for capital improvements*

Anticipated Revenue/Reimbursement (in \$1,000's): Not applicable.

Fund Name and Number	Department	Revenue Source	2003 Revenue	2004 Revenue
TOTAL	N/A	N/A	N/A	N/A

Notes:

As conditions such as the square footage to be leased by Audubon cannot be identified until the renovation is completed, a "Form of Amendment" will be executed when this information is available (Exhibit F of the Use and Occupancy Agreement).

Rent will be based on the fair market value of the space to be occupied by Audubon plus 50% of the fair rental value of the Building's common areas and 33% of the Hatchery program areas, with annual adjustments based on the Consumer Price Index for all Urban Consumers, limited to 4% each year. For the duration of the lease, Audubon shall be entitled to an offset against its rent for the total amount of Audubon's capital contributions to the renovation project and for the value of the public benefit of Audubon's environmental programs to under-served communities. Should Audubon's contributions exceed the amount of offset, the excess shall be a gift to the City.

Total Permanent Positions Created Or Abrogated Through Legislation, Including FTE Impact; Estimated FTE Impact for Temporary Positions: Not applicable.

Fund Name and Number	Department	Position Title*	2003 FTE	2004 FTE
TOTAL	N/A	N/A	N/A	N/A

- List each position separately

New positions will be requested in the 2005 Budget (see Operations & Maintenance section below). No positions will be abrogated as a result of this legislation.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota

Date: April 8, 2003

Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
Version #2.

Do positions sunset in the future? (If yes, identify sunset date):

N/A

Background (Include brief description which states the purpose and context of legislation and include record of previous legislation and funding history, if applicable):

Renovation of the Annex Building into an environmental education center was one of the initiatives identified by DPR as a priority in the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy to further its commitment to environmental stewardship. City funding of \$618,000 was identified for this purpose in Ordinance 120024 authorizing the Levy, which was subsequently approved by the voters on November 7, 2000. DPR intends to revise the Proposed 2004-2009 CIP to reflect the addition of the hatchery element and the additional Audubon funding commitment, to the Department's Seward Park Annex project (CIP Project K733120).

This agreement is consistent with Ordinance 120024 which reads, in part, "Whereas the City will seek to leverage funds through collaboration with County, State and Federal sources and with private and non-profit organizations...through the development of partnerships for the purpose of enhancing projects and programs funded through the levy lid lift..."

In July 2001, the City passed Resolution 30339 authorizing a Memorandum of Understanding between DPR and Audubon, which established a framework for the development of this agreement.

The financial cost of not implementing the legislation (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented):

This project was specifically approved by the voters as part of the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy on November 7, 2000.

Possible alternatives to the legislation which could achieve the same or similar objectives (Include any potential alternatives to the proposed legislation, including using an existing facility to fulfill the uses envisioned by the proposed project, adding components to or subtracting components from the total proposed project, contracting with an outside organization to provide the services the proposed project would fill, or other alternatives):

N/A

Is the legislation subject to public hearing requirements (If yes, what public hearings have been held to date):

Public meetings were conducted on March 6, June 5, 2002; and March 25, 2003. A Park Board Hearing was conducted on April 10, 2003.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Cindi Shiota

Date: April 8, 2003

Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.

Version #2.

Other Issues (including long-term implications of the legislation):

If Audubon fails to successfully raise its required funding, it will reimburse DPR for its capital contributions to the Project and DPR will use its funding to do small improvements to the Annex Building. This will result in the continuation of the current, limited environmental programming at Seward Park

FOR CAPITAL PROJECTS ONLY

Background (Include brief description that states the purpose and context of legislation, the expected useful life, anticipated customers/users, assumed level of LEED or other sustainable design elements. Also include record of previous legislation and funding history, if applicable):

Not applicable.

Spending Plan and Future Appropriations for Capital Projects (Estimate cost of legislation over time; list timing of anticipated appropriation authority requests and expected spending plan. Please identify your cost estimate methodology including inflation assumptions and key assumptions related to the timing of appropriation requests and expected expenditures. In addition, include the projected costs of meeting the LEED Silver standard in all facilities and buildings with over 5,000 gross square feet of occupied space. Also, be sure to include percent for art and percent for design as appropriate):

Spending Plan and Budget	2003	2004	2005	2006	2007	2008	Total
Planning	\$31,665						\$31,665
Design	\$210,279	\$105,141					\$315,420
Construction		\$1,644,384					\$1,644,384
Total	\$241,944	\$1,749,525					\$1,991,469

Key Assumptions:

The above spending plan is based upon the following planned project schedule:

Planning and Design: 3rd Quarter 2003 – 1st Quarter 2004

Construction: 1st Quarter 2004 – 4th Quarter 2004

Building and Hatchery Opens: 1st Quarter 2005

Funding source (Identify funding sources including revenue generated from the project and the expected level of funding from each source):

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Cindi Sanota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Funding Source	2003	2004	2005	2006	2007	2008	Total
2000 Parks Levy Fund (33850)	\$124,000	\$494,600					\$618,600
Audubon Funding	\$236,352	\$1,136,517					\$1,372,869
TOTAL	\$360,352	\$1,631,117					\$1,991,469

Bond Financing Required: Not applicable.

Type	Amount	Assumed Interest Rate	Term	Timing	Expected Annual Debt Service/Payment
TOTAL	N/A	N/A	N/A	N/A	N/A

Uses and Sources for Operation and Maintenance Costs for the Project:

O&M	2003	2004	2005	2006	2007	2008	Total
Uses							
Start Up							
On-going			36	37	38	39	150
Sources (itemize)							
2000 Parks Levy Fund			4.5	5	5.5	6	21
Audubon Society			31.5	32	32.5	33	129

Key Assumptions:

Audubon will pay all the costs of utilities, custodial service, and security alarm costs at the Annex Building. DPR will pay the same costs at the Hatchery with existing base budget funding allocated to the Annex Building. New O&M costs expected to come online in 2005 are funded by the 2000 Parks Levy Fund and include gardening supplies, a 0.02 Utility Laborer, a 0.02 Gardener, and major maintenance work related to the Seward Park Annex – Renovation project.

Periodic Major Maintenance costs for the project (Estimate capital cost of performing periodic maintenance over life of facility. Please identify major work items, frequency):

Major Maintenance Item	Frequency	Cost	Likely Funding Source
TOTAL			

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT



Attachment 1
DRAFT
DEVELOPMENT AGREEMENT
Between
THE CITY OF SEATTLE
Department of Parks and Recreation
and
NATIONAL AUDUBON SOCIETY, INC.

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into by and between THE CITY OF SEATTLE ("City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR"), and NATIONAL Audubon SOCIETY, INC. ("Audubon"), a not-for-profit corporation organized in 1905 under the laws of the State of New York.

RECITALS

WHEREAS, the City owns and DPR has jurisdiction over and manages Seward Park including the Seward Park Music Annex Building (the "Building") and the Hatchery located within Seward Park; and

WHEREAS, on November 7, 2000, the voters of the City of Seattle approved Ordinance 120024, the Parks and Green Spaces Levy, which identified the sum of \$618,600.00 to partially fund renovation of the Building and the Hatchery for use as an Environmental Education Center (the "Project"); and

WHEREAS, Ordinance 120024 expresses the City's intention to leverage said funds through collaborations with public and private organizations to enhance the projects and programs funded through the levy lid lift; and

WHEREAS, Audubon is a private non-profit conservation organization, whose mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity. The organization is named after naturalist and wildlife painter John James Audubon, a renowned conservationist of Haitian and French parentage; and

WHEREAS, Audubon has established a state office in Washington, Audubon Washington, to carry out its mission and oversee its activities in the State of Washington; and

WHEREAS, DPR has established an Environmental Stewardship Commitment Statement, which reads, in part,

Seattle Parks and Recreation will be a role model for environmentally friendly practices. The Department will provide opportunities and offer programs for citizens that foster awareness, appreciation, and knowledge that inspire actions to protect and enhance the

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



natural environment. All Department classes and programs will promote environmental stewardship and volunteerism; and

WHEREAS, DPR and Audubon both work to educate the general public about environmental issues and conservation and to develop educational programs for children, youth, and families; and

WHEREAS, both parties share a commitment to serving diverse audiences and a programmatic approach that uses first-hand experience in the natural habitat; and

WHEREAS, Audubon and DPR concur that the renovation of the Building and the Hatchery is an appropriate project for a public/private partnership; and

WHEREAS, the parties agree that the public benefits from this programmatic partnership are substantial, including financial contributions from Audubon to renovate and improve the Building to develop an important public environmental education and community programming facility; and

WHEREAS, Audubon and DPR recognize that they cannot accomplish the environmental and conservation educational goals alone and given the many other demands for DPR's financial resources, DPR cannot complete the Project without substantial private donations; and

WHEREAS, Audubon recognizes that a successful private fundraising campaign needs a public commitment to the Project from governmental agencies, including the City; and

WHEREAS, Audubon and DPR desire to collaborate to achieve their shared long-term vision and goals with respect to the renovation of the Building and the Hatchery and the development and delivery of complementary community-based environmental education programs and conservation initiatives to a diverse audience; and

WHEREAS, Resolution 30339 authorized a Memorandum of Understanding between DPR and Audubon for a partnership to provide environmental education in Seward Park; for the renovation of the Seward Park Music Annex Building for said purpose; and authorizing future work to implement the terms of the parties' agreement; and

WHEREAS, Audubon and DPR wish to enter into this Agreement for the purpose of setting forth the development parameters and funding commitments and establishing the parameters for joint use of the Building and the Hatchery.

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and covenants described herein, DPR and Audubon agree as follows:

ARTICLE 1 DEFINITIONS



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

Capital words not defined herein shall have the meanings ascribed to them in the Use and Occupancy Agreement between The City of Seattle and National Audubon Society, Inc., attached hereto as Exhibit E.

- 1.1 "Approval" (or "Approved") means the prior written consent of a party whose consent is required, or an authorized designee thereof.
- 1.2 "Audubon Project Representative" means the individual/entity hired by Audubon to manage the Building portion of the Project for Audubon.
- 1.3 "Audubon Share of Project Costs" means the total sum of \$1,372,869.
- 1.4 "Building" means the Seward Park Music Annex Building located at 5902 Lake Washington Boulevard, Seattle, Washington, and situated on the real property described on Exhibit A and depicted on Exhibit B hereto.
- 1.5 "Building Common Areas" means those portions of the Building not used exclusively for DPR's TREC program nor within the exclusive control of any tenant, licensee or concessionaire, including, but not limited to, meeting rooms, restrooms, the kitchen and lobby.
- 1.6 "Building Design Program" means the scope, schedule and budget along with associated considerations and review requirements that shape the design and construction, providing general guidelines and values to be achieved as well as specific direction to the designer and those directly involved in the design and construction management.
- 1.7 "City Project Manager" means the individual(s) designated as such by the Superintendent to manage the Project for City.
- 1.8 "City Share of Project Costs" means the total sum of \$618,600.00.
- 1.9 "Construction Costs" means the sum stated in the line items for Construction Costs in the Project Budget for the Building and the Hatchery. The term Construction Costs includes costs incurred under any construction contract, City, and such other Project-related costs as are approved by Audubon and the Superintendent.
- 1.10 "Design" means the graphic and written description of the Project including the instructions/specifications to be followed by the construction contractor to construct all or any portion of the Project.
- 1.11 "Environmental Law(s)" means any federal, state and local laws (whether under common law, statute, ordinance, rule, regulation, code or otherwise), permits, orders, decrees, and other requirements of governmental authorities relating to the protection of human health or the environment, whether existing as of the date hereof, previously enforced, or subsequently enacted.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 1.12 "Force Majeure" means delays due to war, terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, weather or soils conditions that necessitate delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts or failure to act of any public or governmental entity or any other unforeseeable causes beyond the control or without the fault of either party.
- 1.13 "Hatchery" means the currently fenced facilities and ponds located in the eastern portion of Seward Park, depicted on Exhibit B hereto.
- 1.14 "Hazardous Material" means any element, compound, chemical, chemical mixture, or other substance that is identified as, or determined to be, a hazardous, toxic or dangerous substance, pollutant, contaminant, waste or material under, or is otherwise regulated under, any Environmental Law or other law relating to chemical management, environmental contamination, environmental cleanup or nuisances, including, without limitation, petroleum and petroleum products, asbestos, radon and other radioactive materials, bio-hazards and lead-based paint.
- 1.15 "Loaned Employee Agreement" means an agreement between the City and Audubon whereby a DPR naturalist is assigned to assist Audubon in the development and delivery of environmental programs at Seward Park.
- 1.16 "Premises" means that portion of the Building to be leased from the City to Audubon, pursuant to the Use and Occupancy Agreement, Exhibit E.
- 1.17 "Project" means renovation of the Building and the Hatchery for use as an environmental education center.
- 1.18 "Project Budget" means the cost of the Project, as last estimated by the parties hereto, which estimate is attached hereto, labeled "Exhibit C-n" (with "n" being the sequential number of the latest revision, if any, thereof); provided that, unless otherwise agreed by the parties, in no event shall the total Project Budget exceed \$1,991,469.
- 1.19 "Release", when used with respect to Hazardous Materials, includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about any part of the Premises, Building or any adjacent property of such materials.
- 1.20 "Remediation Activities" include, without limitation, activities in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material.
- 1.21 "TREC" means Teens for Recreation and Environmental Conservation, a DPR outdoor expedition-level program designed to expose multi-ethnic teens to environmental education,



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

urban conservation and stewardship, while creating an environment for community leadership and empowerment.

ARTICLE 2 PURPOSE; LONG TERM OCCUPANCY; INTERIM USE; CONSTRUCTION TIMING; APPROVALS

- 2.1 Purpose. The purpose of this Agreement is to memorialize the parties' understandings and objectives with regard to the renovation of the Building and the Hatchery and the use of each facility to deliver public environmental programs. Once the Building is renovated, it is anticipated that it will house a DPR naturalist assigned to Audubon pursuant to an employee loan agreement between the City and Audubon, DPR's TREC program and Audubon's nature programs based at Seward Park. It is the parties' intent that use of the Building and the Hatchery be consistent with DPR's education and conservation objectives. It is also the parties' intent that their respective programs at Seward Park will complement the other entities' programs and that they will coordinate the delivery of education and conservation objectives to avoid duplication within Seward Park.
- 2.2 Long Term Occupancy by Audubon. Contemporaneously with this Agreement, the parties shall execute the Use and Occupancy Agreement, Exhibit E, which will: (1) establish Audubon's right to use and occupy the Premises; (2) establish Audubon's right to use the Hatchery Program Areas and the Seward Park Common Areas; and (3) set parameters for the coordinated delivery by the parties of public environmental programs in Seward Park; all in accordance with the terms contained herein and in the Use and Occupancy Agreement. Upon issuance of the Certificate of Occupancy for the Building, the parties shall modify the Use and Occupancy Agreement to include the actual square footage of the Premises and Building Common Areas; the dollar amount of the annual rent, including offsets, as determined pursuant to the criteria set forth in Article V of the Use and Occupancy Agreement; and the date of the first Consumer Price Index adjustment, as those terms are defined in the Use and Occupancy Agreement.
- 2.3 Interim Use of Building. Prior to the completion of the Project, Audubon may use the Building's conference and activity rooms, subject to their availability. Audubon may also use Seward Park's established trails and shoreline for environmental programming purposes pursuant to a DPR Use Permit and subject to their availability, with authorized uses being in accordance with the then-current DPR fees and charges, if applicable. Audubon may also show the Building to prospective funding sources for the Project and may enter the Building for purposes of facilitating design and renovation of the Building; provided that, Audubon's interim use of the Building shall be coordinated with use of the Building by DPR's TREC and Naturalist Program staff and other scheduled uses of the Building and shall not disrupt activities occurring in the Building. Notwithstanding the foregoing, the City agrees that TREC and the Naturalist Program staff shall vacate the Building within ten (10) working days from the date that Audubon provides notice of the commencement of construction work pursuant to Article 6.8.1 of this Agreement and neither TREC nor the Naturalist Programs staff, nor any other party, shall have the right to enter the Building or the construction area until a Certificate of Final Completion has been issued for the Building, except for inspections as described in Article 6.4. DPR shall be solely responsible for removing all DPR and personal materials from the Building prior to the commencement of construction.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

2.4 Construction Timing. The parties agree that the following parameters shall govern the commencement and completion of construction:

2.4.1 Audubon acknowledges that the Project Budget is based upon construction commencing in 2004. To that end, Audubon agrees that it will diligently endeavor, but is not required, to cause construction of the Building portion of the Project to commence by the end of 2004. In the event that Audubon does not commence construction in 2004, and as a result of such delay, the cost of construction increases based upon the inflationary index or from deterioration of the Building's condition, Audubon agrees to be solely responsible for such cost increases unless such delay or cost increase is a direct result of any action or inaction of the City that was not caused by some action or inaction by Audubon.

The City similarly acknowledges that the Project Budget is based upon construction commencing in 2004. To that end, the City agrees that it will diligently endeavor, but is not required, to cause construction of the Hatchery portion of the Project to commence by the end of 2004; provided that the City agrees that it will not commence construction of the Hatchery until such time that Audubon commences construction of the Building. In the event that the City is unable to commence construction in 2004 solely a result of Audubon's failure to commence construction of the Building in 2004 Audubon shall be responsible for any cost increase in the Project Budget for the Hatchery which is attributable to inflation (as based upon the standard inflationary index). If the delay in the commencement of construction of the Hatchery is a the result of causes other than Audubon's failure to commence construction of the Building in 2004 or a direct result of any action or inaction by Audubon, the City shall be solely responsible for any attendant cost increases in the Project Budget for the Hatchery

2.4.2 Unless extended by the City, Audubon shall commence construction of the Building no later than December 31, 2006. In the event that Audubon has not commenced construction of the Building by this date, through no action of the City and barring Force Majeure events, the City may immediately terminate this Agreement pursuant to Article 11 of this Agreement.

2.4.3 Once construction of each component of the Project has commenced, the responsible party will proceed with diligence to cause such component to be renovated in accordance with all approved Project designs, specifications, and schedules, subject to delays for Force Majeure. Each party agrees that every reasonable effort will be made to complete its respective component of the Project by December 31, 2007, consistent with the terms of the Ordinance 120024; provided, that, as to Audubon, the following shall apply if construction of the Building is not complete by such date:

(a) The City shall use its best efforts to extend use of any remaining portion of the City Share of Project Costs beyond the end of 2007 or, in the alternative, to identify another source of public funds to replace the unspent levy proceeds.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

(b) In the event that the City is unable to extend the remaining portion of the City Share of Project Costs or to identify another source of public funds, Audubon shall be solely responsible for all costs necessary to complete the Building.

ARTICLE 3 AUDUBON'S FINANCIAL COMMITMENT

- 3.1 Funding Thresholds.** Prior to Audubon's execution of any contracts associated with the Project Budget (i.e. design or construction related contracts), Audubon must submit to DPR documentation (including actual receipts and pledges) of having raised the full amount of Audubon's required funding for that particular portion of the Project, *i.e.*,
- a) Prior to execution of the design contract for the Building, Audubon must submit to DPR documentation of having raised \$236,353.
 - b) Prior to execution of the construction contract for the Building, Audubon must submit to DPR documentation of having raised \$1,136,517 plus any additional sum as mutually agreed upon by both parties.
 - c) Audubon agrees to place such funds in Audubon-controlled restricted accounts; provided that, the interest earned on such accounts shall be unrestricted and the interest earned may be used by Audubon for any purpose, consistent with Audubon accounting practices and donor restrictions.
- 3.2 Usable Building Commitment.** Subject to Article 7 below (City Environmental Indemnity), following the commencement of construction, Audubon agrees and warrants that, if Audubon abandons the Project prior to the issuance of the Certificate of Occupancy, Audubon shall pay the amount required to make the Building usable, as reasonably determined by the Superintendent, and habitable as required by code, and shall reimburse the City for the City contributions to the Project planning, design and construction; provided that, in no event shall that amount exceed the unused portion of Audubon's \$1,372,869 total funding commitment plus any additional sum previously agreed upon by both parties. For purposes of this Article 3.20, the term "abandon" shall mean Audubon's failure to direct its construction contractor to finish the Building pursuant to the construction contract, unless due to a delay caused by the City's wrongful action or failure to act, or to cause, through failure to pay its construction contract, its contractor to physically and permanently abandon the Building.

ARTICLE 4 PROJECT BUDGET; COST SHARING

- 4.1 Project Budget.** The Project Budget, as most recently revised, is appended to this Agreement as Exhibit C-1 and incorporated herein by this reference.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

4.1.1 No change to the total Project Budget shall be made without the mutual Approval of the City Project Manager and Audubon, which approvals will not be unreasonably withheld.

4.1.2 Each Project Budget revision shall be effective when signed by the City Project Manager and Audubon. No further amendment of any portion of this Agreement shall be required. A signed copy of the latest revised Project Budget shall be appended to this Agreement in substitution of any other appended Project Budget, and each such attachment, by this reference, is and shall be incorporated herein.

4.2 Project Cost Sharing. The City and Audubon agree to share the total Project costs as set forth in the Project Budget as the same may be adjusted from time to time as provided in this Agreement as follows: for the renovation of the Building, Audubon shall pay \$1,372,869 and the City shall pay \$305,577. For the renovation of the Hatchery, the City shall pay \$313,023. Of the City's \$305,577 for the Building, approximately \$25,431 has already been spent or encumbered by the City for planning and design work.

4.2.1 The parties shall ensure that the bids for the Building and Hatchery portions of the Project are separately stated. If bids for either portion of the Project exceed the current estimate, the scope of that component of the Project shall be reduced as provided in Article 6.5, below.

4.2.2 If the Project costs are less than \$1,991,469, City and Audubon each shall pay a proportionate share of such Project Costs (*i.e.*, City's share shall be \$618,600/\$1,991,469 and Audubon's share shall be \$1,372,869/\$1,991,469). If actual construction costs for either portion of the Project are less than budgeted, the savings shall be used to offset cost overruns in the other portion of the Project.

4.3 Fundraising Assistance. It is anticipated that the Audubon Share of Project Costs will come from private donations and, potentially, public grant sources other than DPR. DPR will assist Audubon in its fundraising efforts by communicating DPR's support for the Project and making appropriate representatives available to provide information and answer questions at fundraising events whenever possible.

4.4 Present Fundraising Status. As of the date of this Agreement, Audubon has raised \$200,000 of the \$1,372,869 that it has committed toward the Building portion of the Project. Audubon agrees that, from time to time, upon request by the City, it shall provide the City with documentation of such funds; provided, however, that, Audubon shall not be required to provide any identifying information relating to private fundraising activities or private donor information.

ARTICLE 5 RENOVATION PROJECT; DESIGN



- 5.1 Management of Project Design.** Audubon shall contract for and manage the design for the Building renovation, in consultation with DPR and subject to its approval, which approval will not be unreasonably withheld. DPR shall contract for and manage the design for the Hatchery renovation, in consultation with Audubon. Design approvals shall be obtained from the non-managing entity at completion of the design program, early schematics, 100% schematics, 50% design development, 100% design development, 50% construction drawings and 99% construction drawings; provided that, unless otherwise agreed by the parties, the non-managing entity will complete its review and provide to the other party notice of its approval or disapproval thereof within seven (7) working days of receipt of such design. Each party shall ensure that the other, through the respective Project Representatives, is provided the opportunity to be involved and serve as a participant in on-going decision-making with respect to the design and construction of the Project, which participation shall include, without limitation, attending design team meetings, providing comments on design, attending meetings with the construction contractor(s), and providing comments on construction issues. Audubon shall pay for any additional DPR assistance it desires during the design phase at current DPR project management rates.
- 5.2 Design Values.** City and Audubon agree that the Project design shall comply with any requirements established by the City's Landmark's Board, with any other adopted City and Park standards, and the mutually agreed upon design programs for each component of the Project. To the extent feasible, the parties shall incorporate design elements such as would allow a structure to achieve the certified level of the United States Green Building Council Leadership in Energy and Environmental Design rating system. In addition, and to the extent feasible within the project budget, the design of the Hatchery portion of the project will incorporate methods for controlling vehicle access between the Building and the Hatchery.
- 5.3 Public Involvement in Project Design.** Audubon shall conduct a public meeting to develop consensus on the Building concept and scope prior to schematic design. It shall conduct a second public meeting after schematic design, and a third public meeting prior to completion of construction documents. If Audubon so requests, DPR shall attend and participate in such meetings, at Audubon's expense; otherwise, DPR staff may voluntarily attend any such meetings at their own expense.
- 5.4 Public Work.** The design contract for the Building shall be by Audubon pursuant to processes that: (a) satisfy all state and local laws for the solicitation of proposals or bids by contractors who are qualified to undertake design of the Building, and (b) fully comply with all other applicable federal, state and local requirements applicable to the Building, including those requirements related to the inclusion of required terms and conditions applicable to the Building in all such contracts. Among other requirements, such contracts will meet the following requirements for City public works projects utilizing City funding: (i) fair contracting practices (Chapter 14.10 SMC); and (ii) all applicable federal, state and local nondiscrimination requirements.
- 5.5 Changes in Approved Building Design and Specifications.** If Audubon proposes to change or amend the approved Building design or any specification(s) that would cause the Building to exceed the Project Budget for that portion of the Project or that would result in a change contrary to the requirements established by the City's Landmarks Board or any other adopted

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



City or DPR standards or the Building Design Program, such proposed change or amendment will be subject to the written approval of the City. The City will complete its review of any such proposed changes or amendments and provide to Audubon notice of its approval or disapproval thereof within ten (10) working days of receipt of any such proposed change or amendment.

- 5.6 No Representations or Liability. No City approval of any Building design or specification(s) (or amendments thereto) shall constitute an opinion or representation by the City as to their (i) compliance with any law, ordinance or standard, or (ii) suitability for any purpose other than those associated with the Building.
- 5.7 Americans with Disabilities Act. Audubon shall comply, and require its consultants and contractors to comply, with all applicable provisions of the Americans with Disabilities Act ("ADA") in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be considered a material breach of this Agreement.

ARTICLE 6 RENOVATION PROJECT; CONSTRUCTION

- 6.1 Management of Project Construction. Audubon shall contract for and manage construction of the Building improvements in consultation with DPR and DPR shall contract for and manage construction of the Hatchery improvements in consultation with Audubon. Audubon shall obtain a warranty from their construction contractor and name the City as a joint obligee.
- 6.2 Regulatory Approvals; Compliance. Each party shall be responsible for securing all necessary regulatory approvals related to the development and construction of its portion of the Project and each party shall be responsible for ensuring compliance during construction with any and all conditions or other requirements associated with such regulatory approvals. The parties agree to work cooperatively with one another, as necessary, to secure necessary regulatory approvals.
- 6.3 Public Work. The construction of the Project shall be a public work and Audubon shall comply with all laws with respect thereto. The construction contract for the Building shall be let by Audubon pursuant to processes that: (a) satisfy all state and local laws for the solicitation of proposals or bids by contractors who are qualified to undertake development or construction of the Building, and (b) fully comply with all other applicable federal, state and local requirements applicable to the Building, including those requirements related to the inclusion of required terms and conditions applicable to the Building in all such contracts. Among other requirements, such contracts will meet the following requirements for City public works projects utilizing City funding: (i) fair contracting practices (Chapter 14.10 SMC); (ii) all applicable federal, state and local nondiscrimination requirements; and (iii) the requirements set forth in RCW 35.22.650.
- 6.4 Site Visits and Inspections. Each party shall allow the other party, through the respective Project Managers, to visit its construction site to review and inspect the work; provided that, any such inspection shall be a cost borne solely by the inspecting party and shall not be deducted from the Construction Costs, unless the costs are included within the Project Budget. To the extent that official inspections are required by applicable City codes and



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

regulations, Audubon may employ a qualified inspector for such purpose; provided that, Audubon must obtain DPR's approval of such inspector prior to the required inspections, which approval will not be unreasonably withheld.

6.5 Options if Bids Exceed Total Construction Cost. If the bid received for either component of the Project from the lowest and best bidder exceeds the estimated construction cost for that Project component, the managing party may (i) reject all bids and re-bid that component of the Project; (ii) consult with the appropriate architect to identify design changes to the Building Design Program that would enable that component of the Project to be constructed within the budgeted amount; or (iii) voluntarily pay the increased amount and proceed with construction. In the event of a redesign, such design changes shall be implemented and the managing party shall again invite bids for the construction of that component of the Project or any portion thereof; provided that, if design changes are elected to reduce the cost of construction of a Project component, the non-managing party may, at its option, pay the difference in cost to retain the original or more costly design.

6.6 Cost Overruns. If, during construction, it becomes apparent that the actual construction costs for either component of the Project will exceed the estimated construction costs shown in the current Project Budget, including any contingency allowance, for that component of the Project, the party responsible for managing that component of the Project (the "managing party") shall be solely responsible for any cost overruns for the component of the Project; provided that, the parties may agree, if possible, that Project funds be reallocated so that the total Project cost remains within the Project Budget; provided further that, the managing party may seek a design modification to bring that component of the Project within the estimated construction costs, subject to the approval provisions contained in Article 6.8.2. If a design modification is made, the managing party shall be solely responsible for paying all costs associated therewith.

6.7 Additional Funding. If either of the events described in Article 6.5 (bids exceed the Project Budget) or Article 6.6 (cost overrun) occur, the City and Audubon, as an alternative or an additional remedy, may agree upon a collaborative plan to seek additional funding. Any such agreement or plan shall be set forth as an amendment to this Agreement and to the extent practicable, shall include provisions for both public and private funding sources.

6.8 Construction Phase Approvals and Control of Work; Substantial Completion and Final Completion.

6.8.1 Work Notification. Audubon shall notify DPR, in writing, at least ten (10) working days prior to the commencement of construction work on the Building. At that time or earlier, if possible, Audubon shall provide information on the areas that will be needed for staging of construction. DPR shall approve such areas, or identify alternate areas for staging if necessary to avoid disruption of community use of the park; provided that, DPR shall ensure that any alternative construction areas are convenient to the Building construction areas and will not add undue costs to construction of the Building. DPR shall thereafter, in a timely manner, issue construction license agreements for such staging areas.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



6.8.2 Construction Phase Approvals and Control of Work. In addition to its right to approve the Building design and specifications, the City shall have the right to approve, in advance and in writing, any proposed changes to the work during construction that would cause the Building to exceed the Project Budget for that portion of the Project or that would result in a change contrary to the requirements established by the City's Landmarks Board or any other adopted City or DPR standards or design program. The City's approval decision under this Article shall be delivered within five (5) working days. In addition, each party will invite the non-managing party to participate in their weekly construction meetings.

6.9 Substantial Completion. Audubon shall notify the City Project Manager in writing when the Building is substantially completed. As part of such notification, Audubon shall advise the City Project Manager of any items of work that remain incomplete and a schedule for their completion. Such notification shall include the signature of the inspector approved by the City pursuant to Article 6.4 above.

6.10 Final Completion Date; Certificate of Occupancy. Final completion of the Building will have been achieved when (i) a permanent Certificate of Occupancy for the Building has been issued, and (ii) all remaining work items, including "punch list" items, have been completed to the satisfaction of the City.

6.10.1 Audubon shall schedule a final inspection of the Building when it and its construction contractor believe construction of the Building has been finally completed. Following notice of same from Audubon, the City Project Manager will conduct an inspection of the Building with Audubon and its design consultant and construction contractor.

If, following such inspection, the City agrees that construction of the Building is finally complete, the City will so advise Audubon by written notice within five business days after the inspection. Such written notice will include a Final Completion Date for the Building, as determined by the City. However, if the City, following such inspection, does not reasonably consider the construction of the Building to be finally complete, the City will so advise AUDUBON by written notice within such five day period stating the reasons for the City's decision.

Upon receipt of any written notice from the City that the construction of the Building is not finally complete, Audubon shall diligently pursue the remaining work necessary to achieve final completion. Subsequent inspection(s) for purposes of determining whether construction of the Building is finally completed shall occur in the manner set forth above.

6.10.2 Once a permanent Certificate of Occupancy has been issued and a Final Completion Date for the Building has been established, a Certificate of Final Completion will be issued by the City; provided, however, that such date and certificate shall not constitute acceptance by the City of any unauthorized or defective work or materials.

6.11 Building Construction Closeout Phase. The Building Construction Closeout Phase will commence upon issuance of the Certificate of Final Completion for the Building.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Within 120 days from the date of the issuance of the Certificate of Final Completion, Audubon shall perform the following obligations ("Audubon's Closeout Obligations"):

- (a) To the extent separately assignable, assign to the City all manufacturers' guaranties and warranties and related to the materials and fixtures provided to Audubon and located in the Building;
- (b) Secure and deliver to the City unconditional lien releases related to the Building from the Building design consultant, construction contractor, subcontractors, suppliers, vendors, laborers and material men;
- (c) Furnish the City with one (1) original complete sets of Mylar drawings ("Record Drawings") reflecting the final "as built" condition of the Building (black background prints are not acceptable). The Record Drawings shall also be provided to the City on electronic media that is compatible with Auto Cad 2000 or later version;
- (d) Furnish the City with all contractor maintenance manuals related to the Building, including operating manuals, equipment brochures, paint schedules and material brochures;
- (e) Deliver to the City all other Building information such as operating manuals and warranties and in Audubon's possession that reasonably relate to the use and operation of the Building;
- (f) Deliver to the City all certificates of occupancy and other permits and approvals necessary for the use and operation of the Building ; and
- (g) Attend a warranty walk through meeting scheduled by the City within one year of the issuance of the Certificate of Final Completion.

6.12 Defective or Unauthorized Work or Materials. If, within one year after the issuance of the Certificate of Final Completion, the City notifies Audubon that it has discovered defective or unauthorized work or materials, Audubon shall cause the correction of the defective or unauthorized work or materials as covered by the bond described in Article 9.3.3 (b) or, at the City's discretion, assign the right for the City to pursue Audubon's contractor or supplier thereof. Any disputes between Audubon and the City regarding the defective or unauthorized work or materials will be addressed through Article 13 (Disputes).

ARTICLE 7 ENVIRONMENTAL INDEMNITY

7.1 Audubon's Environmental Indemnity. If, after the commencement of construction on the Building, any act, omission or negligence of Audubon or any of its agents results in any contamination of the Premises, the Building or the surrounding property or in the Release of Hazardous Material from, on, in, on or beneath the Premises, the Building or adjacent property, then Audubon shall indemnify the City from and against all losses (including, without limitation, the loss or restriction of the use of the Building or adjacent property and



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

sums paid in settlement of claims, fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) resulting from such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Building or adjacent property to its prior condition. Without limiting the foregoing, if Audubon or any of its agents or invitees causes or permits the Release of any Hazardous Materials on, about, in or beneath the Building or adjacent property, Audubon shall immediately, at no expense to the City, take any and all necessary actions to abate and remediate the Release in accordance with all Environmental Laws. Audubon shall afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material. This indemnity provision shall survive termination or expiration of this Agreement.

- 7.2 City's Environmental Indemnity. If any act, omission or negligence occurring prior to the commencement of Audubon's construction activities, and not as a result of any act, omission or negligence of Audubon or any of its agents, results or has resulted in any contamination of the Building or the surrounding property or in the Release of Hazardous Material from, on, in, or beneath the Building or adjacent property, then the City shall indemnify Audubon from and against all losses (including, without limitation, the loss or restriction of the use of the Building and delays in the construction of the Building and sums paid in fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) resulting from such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material and any increased costs of construction of the Building resulting from such Release. The City's indemnity under this Article shall be limited to any contamination of the Premises or adjacent property that results from activities occurring or causes originating prior to the commencement of Audubon's construction activities and not as a result of any act, omission or negligence of Audubon or any of its agents. This indemnity provision shall survive termination or expiration of this Agreement.

ARTICLE 8 REPORTS; APPLICATIONS FOR PAYMENT.

- 8.1 Invoicing. During the design phase of the Building portion of the Project, Audubon's Project representative shall invoice DPR's Project Manager for the City's portion of the Building's design contract. The total amount of the City's contribution to the Building's design contract is \$20,406 or approximately 12.6% of the total estimated design contract amount of \$161,642. As the City has already expended or encumbered \$4,063 of the Building's design costs, the remaining balance for which the City shall be responsible is \$16,343. Audubon shall bill the City at the rate of 12.6% of the Building's design contract costs as they are incurred by Audubon until the City's remaining funding obligation of \$16,342 is expended. Each invoice shall contain a general status report, the percent of each design phase completed and the balance of funds remaining for design.



During the construction phase for the Building, the City will be contributing \$248,230 (or 26.85%) of the budgeted construction contract costs. Audubon's Project Representative shall invoice the City at 26.85% of the construction contractor's costs as Audubon incurs such costs. Each invoice shall contain a general status report, the inspector's report and a statement of the balance of funds remaining for construction.

8.1.1 Audubon may submit monthly requests for payment (invoices) to the City based upon (and not in excess of) the percentage of work completed as a percentage of the City's contribution to the Building's construction, based on a mutually agreed upon schedule of values. Audubon shall withhold a retained percentage from their construction contractor and not bill the City for their portion of the retainage until Audubon pays the contractor for the retained amounts.

8.1.2 Payment requests shall be directed to the City at the Parks and Recreation Department, 800 Maynard Avenue South, Third Floor, Seattle, WA 98134-1336, and shall be signed by an authorized representative of Audubon. The Superintendent, or a designated representative, shall approve or disapprove the request, in writing, within ten (10) working days of receipt of all required documentation. If the payment request is disapproved, the notice thereof shall contain the reasons for the disapproval; Audubon may correct the reasons for disapproval and resubmit the request for disapproved items. Payment will be made to Audubon within thirty (30) days after notice of the Superintendent's approval. The City will use its best efforts to expedite this payment process so that payment can be made as quickly as possible to Audubon.

8.2 City Audits. Upon request, Audubon (including any assignees of rights or responsibilities under this Agreement) shall permit the City to inspect and audit all pertinent books and records of Audubon, its assignees, its consultants and contractors, any subcontractors, or any other person or entity that performed work in connection with or related to the Project, at any and all times deemed necessary by the City, including up to six years after the final payment has been made by the City under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City selects. Audubon shall supply the City with, or shall permit the City to make a copy of, any books and records or portion thereof. Audubon shall ensure that such inspection, audit and copying right of the City is a condition of any contract or agreement, subcontract, or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

8.3 DPR Reports to Audubon. During construction of the Hatchery improvements, DPR shall report to Audubon monthly on the general status of the project, the schedule and value statement provided by the contractor, the inspector's report, and the unexpended amount of City funds for that portion of the Project.

ARTICLE 9 INSURANCE



9.1 General Obligations. At all time hereunder, Audubon shall, at its own expense, obtain and continuously maintain, or cause to be obtained and continuously maintained, in full force and effect, insurance policy(ies) in conjunction with the following:

- (a) Audubon's activity on or use or occupation of the Project site;
- (b) the design, construction management, inspection, construction, reconstruction, operation, maintenance, use or existence of the Project, including the Annex; and
- (c) Any and all claims and risks in connection with the activities performed by Audubon under this Agreement.

9.2 Third Party Obligations. With respect to all consultants and contractors performing Project work on behalf of Audubon, Audubon shall:

- (a) Obtain from each consultant and contractor evidence that such contractor or consultant has obtained and maintained a policy or policies of insurance as required herein;
- (b) Submit evidence of insurance as required herein to the City for review and approval;
- (c) Require that all such policies name the City as an additional insured, including completed operations, on all liability policies per ISO form CG2026 or its equivalent; and
- (d) Include, in all contracts executed by Audubon with respect to the Project, provisions which extend to the City construction indemnities and warranties granted to Audubon.

9.3 Required Insurance. The following policies shall be obtained and continuously maintained at all times hereunder by Audubon.

9.3.1 Audubon shall obtain and continuously maintain the following policies of insurance:

- (a) A policy of **Commercial General Liability Insurance**, written on an insurance industry standard occurrence form (CG 00 01) including all the usual coverage known as:
 - Premises/Operations Liability;
 - Products/Completed Operations;
 - Personal/Advertising Injury;
 - Contractual Liability;
 - Explosion, Collapse and Underground Property Damage (XCU);
 - Independent Contractors Liability;
 - Stop Gap or Employers Contingent Liability; and
 - Per Project Coverage (CG2503 ISO), or equivalent.



Such policy(ies) shall provide the following minimum limits:

Bodily Injury and Property Damage:

\$ 1,000,000 General Aggregate
\$ 1,000,000 Products & Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence
\$ 100,000 Fire Damage

- (b) A policy of **Business Automobile Liability Insurance**, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto). If "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported, endorsement CA9948 & MCS 90 are required.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage

\$ 1,000,000 per accident

- (c) A policy of **Excess Liability Insurance** above the primary general liability and auto liability policies that will provide a total limit of insurance of \$5,000,000 per Occurrence/Aggregate/per Claim. The excess policy shall be, at a minimum, as broad as the primary policies.
- (d) A policy of **Worker's Compensation**: As respects Workers' Compensation insurance in the state of Washington, Audubon shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Audubon shall be responsible for Workers' Compensation Insurance for any and all contractors and subcontractors who provide services with respect to the Project. Additionally, if the any contractor or subcontractor is required to work on or around a navigable waterway, the Authority shall provide evidence of United States Longshoremen's and Harbor Workers' (USL&H) coverage and contingent coverage for Jones Act (Marine Employers Liability) in compliance with federal statutes. If Audubon is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Audubon shall so certify to the City by submitting a letter signed by a corporate officer, indicating that it is a qualified self-Insurer, and setting forth the limits of any policy of excess insurance covering its employees; or any similar coverage required.
- 9.3.2 Design, Construction Management or Inspection. In addition to standard insurance requirements set forth above, Audubon shall obtain or cause to be obtained the following additional insurance coverage:



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

(a) **Errors and Omissions Liability Insurance:** A policy of Errors and Omissions Liability Insurance appropriate to each consultant's profession. Coverage should be for a professional error, act or omission arising out of the scope of services shown in the contract. The policy shall not exclude any of the following:

- Claims arising out of pollution for environmental work[†]
- Construction Administration Services[†]
- Laboratory analysis[†]

[†]Only required when services are to be performed under this agreement.

The minimum limit of coverage shall be \$1,000,000 per Claim/Aggregate

9.3.3 **Construction, Reconstruction, Operations.** In addition to the standard insurance requirements set forth above, Audubon shall secure or cause to be secured, the following additional insurance coverage:

(a) **Builder's Risk Insurance:** Audubon shall purchase and maintain builders insurance on an "All Risk" basis, in an amount equal to 100% replacement cost thereof, against loss from the perils of fire and other risks of direct physical loss, including earthquake and flood damage. Audubon/Contractor shall be responsible for the policy deductible. The policy shall **include as Loss Payee the City**. The Authority shall provide the City with a duplicate original of said Policy.

Coverage shall include all materials, supplies, and equipment intended for specific installation in the Project while such materials, supplies and/or equipment are located at the Project site, in transit or while temporarily located away from the Project site. Coverage shall also include the value of site preparation work, the value of underground property, the cost of debris removal, and the cost of pollutant cleanup as well as removal.

In addition, the following coverage extensions shall be included: delayed opening, loss of earnings, operation of building codes, demolition, contingent liability and increased costs of construction. The policy shall not contain any coinsurance penalty provision or any occupancy clauses.

With respect to the Builder's Risk Policy described herein, the City and Audubon waive all subrogation rights against each other, any contractors and consultants, and any of their subcontractors or subconsultants, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the work, except such rights as they have to proceeds of such insurance held by the City as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly



or indirectly, and whether or not the person or entity had and insurance interest in the property damaged.

The City reserves the right to purchase this policy for the Project, adding Audubon/Contractor as an additional insured to any such policy. If the City does purchase such a policy, Audubon shall reimburse the City for all of its costs for such coverage.

- (b) **Warranty, Repair or Remedy of Defects.** Audubon shall obtain a bond from a surety company, acceptable to the City and which names the City as a joint obligee, which for a period of one year after Certification of Final Completion of the Building shall provide for payment for the repair or remedy of defects in the Annex which are due to faulty or unauthorized materials or workmanship and for damage to other work resulting from such faulty material and workmanship.

9.3.4 **Deductibles.** If any of the above required insurance contains a deductible (or self-insured retention amount) the Audubon/Consultant/Contractor shall:

- (a) Disclose such amount; and
- (b) Be responsible for payment of any claim equal to or less than the deductible (or self-insured retention amount).

The City reserves the right to reject insurance policies with a deductible (or self-insured retention amount) in excess of \$25,000 for which adequate financial strength of the Insured cannot be demonstrated to the satisfaction of the City.

9.4 **Conditions.** The insurance policy or policies, endorsements thereto, and subsequent renewals required under this Article 9 shall:

- (a) Be subject to approval by the City as to company, form and coverage. The insurance company shall be:
 - (i) Rated A-:VII or higher in the A.M. Best's Key Rating Guide; and
 - (ii) Licensed to do business in the State of Washington or be filed as surplus lines by a Washington broker.
- (b) Be primary as respects the City, and any other insurance maintained by the City shall be excess insurance and not contributing insurance with Audubon, and/or its consultants, contractors, inspectors, or other contractors of any kind;
- (c) Be maintained in full force and effect through the Agreement;
- (d) Protect the City within the policy limits from any and all losses, claims, actions, damages, and expenses arising out or resulting from Audubon's and/or any of its consultant's, contractor's, inspector's, or other contractor's performance or lack of performance;



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- (e) Name the City as an additional insured pursuant to the requirements of the provisions below related to "Evidence of Insurance"; and
- (f) Include a provision (whether by endorsement or otherwise) indicating that, except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, the insurance shall apply:
 - (i). As if each party insured thereunder (whether as a named insured, additional named insured, or additional insured) were the only party insured by such policy; and
 - (ii) Separately to each insured against whom a claim is made or a suit is brought.

9.5 Evidence of Insurance. In many cases, evidence of insurance may be demonstrated by submitting a copy (photocopy or facsimile acceptable) of the declarations pages of the policy and the additional insured endorsement. The declaration pages shall clearly show the policy effective dates, limits and schedule of forms and endorsements. Any reference to premiums may be blacked out. However at the option of the City, Audubon and/or its designated Contractors, Consultants and Inspectors, as outlined above, may be required to submit a copy of the insurance policy, all referenced endorsements, or both. Certificates of Insurance (ACORD forms) will not be accepted as evidence of insurance. Evidence of insurance for each policy shall:

- (a) Comply with one of the following requirements regarding naming the City as an additional insured, including Completed Operations:
 - (i) Insurance Services Office (ISO) Standard Endorsement: An additional insured endorsement issued on an ISO form CG 20 26 or its equivalent, shall name "The City of Seattle, its officers, elected officials, employees, agents, and volunteers" as an additional insured. The endorsement shall
 - (a) Be signed by an authorized representative of the insurance company; and
 - (b) Include the policy number and name of the insured on the endorsement.
 - (ii) Non-ISO Endorsements: For Non-ISO endorsements, any of the following options are acceptable:
 - (a) A blanket clause (in the policy or endorsement) adding, without undue restriction of coverage, as additional insured anyone for whom Audubon and/or its consultants, contractors, inspectors, or other contractors of any kind, are required to provide insurance under a contract or permit;



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- (b) An additional insured endorsement on a non-ISO endorsement form containing the following provision:

"The City of Seattle, its officers, elected officials, employees, agents, volunteers, are an additional insured for all coverage provided by this policy and shall be fully and completely protected to the extent provided in said policy for any and every injury, death, damage and loss of any sort sustained by any person, organization or corporation in connection with any activity performed by Audubon, and/or its consultants, contractors, inspectors, or other contractors of any kind, as outlined above by virtue of the provisions of this Agreement between The City of Seattle and Audubon."

The coverage provided by this policy to The City of Seattle shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to The City of Seattle."; or

- (ii) Any other additional insured endorsement form or clause approved by the City.

9.6 Consultants, Contractors, Inspectors or other Contractors of any Kind Performing Work, or Other Agreements – Additional Insured Provision Requirement of Authority. Audubon shall require that any and all of its consultants, contractors, inspectors, or other contractors of any kind, performing work, or other agreements with respect to the Project, shall name the City as an additional insured, including completed operations, on all liability policies as indicated herein, on ISO Form 20 26 or equivalent. Audubon shall further require in all contracts with respect to the Project, a provision which extends to the City, construction indemnities and warranties granted to Audubon.

ARTICLE 10 INDEMNIFICATION

10.1 Audubon Indemnity. Audubon agrees to defend, indemnify and hold City and its affiliates, directors, officers, employees, agents and independent contractors harmless from any and all damages, costs and expenses (including attorney's fees) incurred in connection with any third party claims arising from any use of donated funds for a purpose other than the purpose originally set forth by the donor, or for any other act or omission of Audubon in connection with fulfilling its obligations under this Agreement. These indemnification obligations shall survive the expiration or termination of this Agreement.

10.2 City Indemnity. City agrees to defend, indemnify and hold Audubon and its affiliates, directors, officers, employees, agents and independent contractors harmless from any and all damages, costs and expenses (including attorney's fees) incurred in connection with claims arising from any act or omission of City in connection with fulfilling its obligations under this Agreement. These indemnification obligations shall survive the expiration or termination of this Agreement.

ARTICLE 11 DEFAULT; TERMINATION



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 11.1 Defaults in Performance Constitute Material Breach. If either party defaults in performing of any of its obligations herein, in particular obligations relating to the payment of money, the non-defaulting party may declare this Agreement to have been materially breached.
- 11.2 Process for Termination of Agreement. Either party may terminate this Agreement if the other party has materially breached the Agreement and such breach has not been corrected to the reasonable satisfaction of the dissatisfied party within thirty (30) days after notice of breach has been given. If the nature of the breach is such that more than thirty (30) days are required to remedy the breach, then the breaching party shall not be in default if it commences to cure the breach within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the case of Audubon's monetary obligations, any nonpayment when due shall constitute a material breach that must be corrected within 30 days after notice of the breach has been given or the City may immediately terminate this Agreement.
- 11.3 Notice of Termination. Except for monetary defaults, notice of termination shall be given in writing by the party terminating this Agreement to the other party not less than five (5) days prior to the effective date of termination.
- 11.4 Responsibilities of Parties on Expiration or Termination of Agreement. If this Agreement is terminated due to Audubon's default prior to start of construction, then Audubon shall reimburse the City for one hundred percent (100%) of the City's expended financial contribution to the Project. If this Agreement is terminated due to the City's default prior to the start of construction, then the City will reimburse Audubon for Audubon's expended financial contribution to the Project. In either case, the parties shall be released from all continuing obligations under the Use and Occupancy Agreement. If this Agreement is terminated due to Audubon's default after construction begins, Audubon shall be obligated to satisfy its commitments as contained in Article 3.2 (Usable Building Commitment) of this Agreement. If this Agreement is terminated due to the City's default after construction begins but before the term of the Use and Occupancy Agreement has commenced, the City shall be obligated to reimburse Audubon for one hundred percent (100%) of Audubon's expended financial contribution to the design and construction of the Building and shall release Audubon from all continuing obligations under the Use and Occupancy Agreement. For purposes of this Article 11.4, the term "financial contribution" shall mean a party's paid or incurred expenses pursuant to the Project Budget as reflected in Exhibit C or as amended by mutual agreement.
- 11.5 Termination for Contamination or Release of Hazardous Substances. If, during either design or construction, Audubon discovers the existence of any contamination of the Building or the surrounding property or the existence of a Release of Hazardous Material from, on, in, on or beneath the Building or adjacent property, which is the result of any act or omission occurring prior to the commencement of Audubon's construction activities, and not as a result of any act, omission or negligence of Audubon or any of its agents, and such contamination or Release requires Remediation Activities or results in an increase in the Project Budget for the Building, Audubon shall have the right to immediately terminate this Agreement and the City shall be obligated to indemnify Audubon consistent with Article 7.2 above (City's Environmental Indemnity) and shall release Audubon from all continuing obligations under the Use and Occupancy Agreement.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

11.6 Voluntary Termination by Audubon. In the event that Audubon is no longer able to carry out the purposes of this Agreement because of (a) corporate incapacity, (b) lack of funds to design or construct the Building, (c) failure to obtain the necessary permits and licenses from applicable governmental authorities after the diligent pursuit of same, or (d) the discovery of Hazardous Materials in the Building that predate the Commencement Date (in which case, Article 11.5 applies), then Audubon shall have the right to terminate this Agreement upon thirty (30) days written notice to the City. If Audubon terminates this Agreement as provided for herein, the requirements of Article 11.4 above shall apply as applicable; provided that, Article 11.4 shall not be deemed to apply in the event that termination is necessary pursuant to item (c) of this Article 11.6. For the sole purpose of applying Article 11.4 to this Article 11.6, Audubon shall be deemed the "defaulting party".

ARTICLE 12 NOTICES

All notices or documents required by this Agreement shall be in writing and shall be sufficiently given if either personally 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 Audubon Washington P.O. Box 462 Olympia, WA 98057
With a copy to:	General Counsel National Audubon Society, Inc. 700 Broadway New York, New York 10003
If to the City:	The City of Seattle Department of Parks and Recreation Administrator Contract and Business Resources P.O. Box 3036 Seattle, WA 98114
With a copy to:	Herbye White, Director Recreation and Support Division Department of Parks and Recreation 100 Dexter North Seattle, WA 98109

or by such other means as the parties agree, or to such other address as either party hereto may specify for itself in a notice to the other.



NOTICE
IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

ARTICLE 13 DISPUTES

The parties shall make reasonable efforts to resolve disputes as expeditiously as possible through negotiations between the Audubon Center at Seward Park program director and the DPR Director of the Recreation and Support Division. If those negotiations are unsuccessful, the matter shall be referred to the Senior Vice President of Audubon Centers and the DPR Superintendent. If the parties cannot resolve any dispute arising under this Agreement, either party may submit the matter to a non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution ("ADR") procedures. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent ADR or legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available.

ARTICLE 14 MISCELLANEOUS

- 14.1 Time of Essence.** Time is of the essence in the performance of this Agreement.
- 14.2 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.
- 14.3 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.
- 14.4 Binding Effect.** The provisions, covenants, and conditions contained in this Agreement are personal to the parties hereto and are not assignable.
- 14.5 Applicable Law; Venue.** This Agreement shall be interpreted under the laws of the State of Washington. Any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be brought in the Superior Court of the State of Washington for King County.
- 14.6 No Partnership or Joint Venture Created.** 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.
- 14.7 Remedies Cumulative.** The parties' rights under this Agreement are cumulative; failure on the part of any party to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The parties 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.



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

14.9 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.

14.10 Effectiveness of Agreement. This Agreement shall become effective only upon approval by the Seattle City Council and its execution by an authorized representative of each party.

14.11 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.

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

- Exhibit "A": Legal Description of Seward Park
- Exhibit "B": Land and Building Map
- Exhibit "C": Project Budget
- Exhibit "D": Projected Project Schedule
- Exhibit "E": Use and Occupancy Agreement

14.13 Entire Agreement. This Agreement and all attachments and exhibits pertaining to it 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.

14.14 Non-Liability of Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to Audubon, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Audubon, its successors and assigns under this Agreement, or for any obligation of the City under the Use and Occupancy Agreement. Likewise, no board member, member, officer, employee or other agent of Audubon shall be personally liable to the City, its successors and assigns under this Agreement, or for any obligation of Audubon under the Use and Occupancy Agreement, in the event of any default or breach by Audubon or for any amount which may become due to the City, its successors and assigns, or for any obligation of Audubon under this Agreement.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

14.15 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

NATIONAL AUDUBON SOCIETY, INC.

President

Date

THE City OF SEATTLE

Kenneth R. Bounds, Superintendent
Department of Parks and Recreation

Date

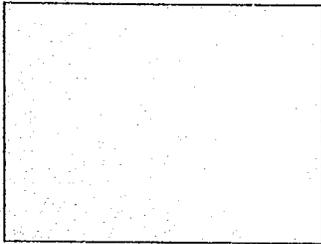
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2003.



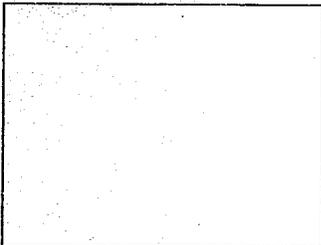
(Use this space for notarial stamp/seal)

Notary Public
Print/Type Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2003.



Notary Public
Print/Type Name _____
My commission expires _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



(Use this space for notarial stamp/seal)

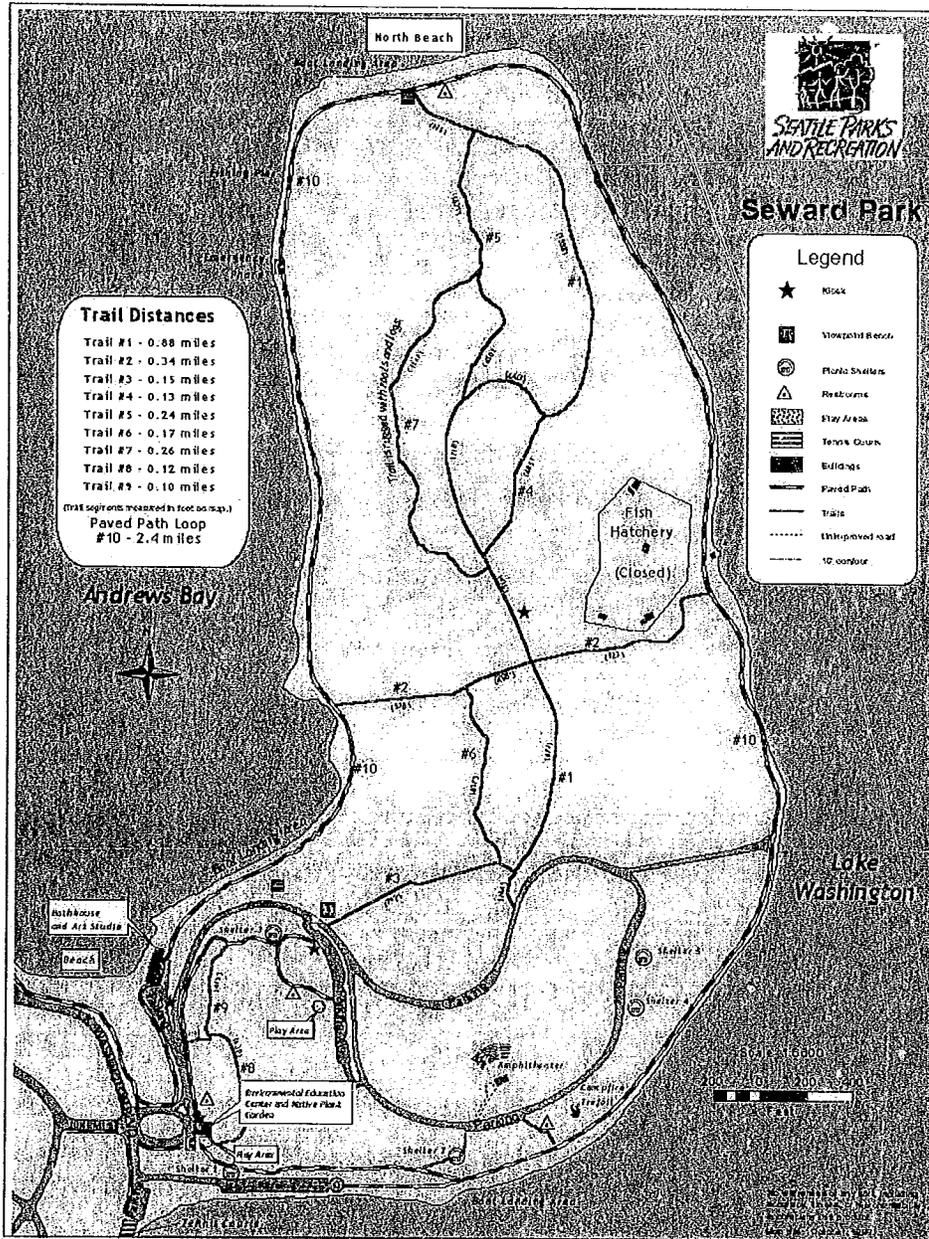
EXHIBIT A
LEGAL DESCRIPTION OF SEWARD PARK

GOVERNMENT LOT 3 IN SECTION 14; GOVERNMENT LOTS 1, 2, AND 3 IN SECTION 23; TRACTS 23, 24 AND 25 OF B. W. JOHN'S AND C. H. HANFORD'S 5 ACRE TRACTS, TOGETHER WITH THAT PORTION OF GOVERNMENT LOT 5 LYING SOUTHERLY OF THE SOUTH LINE OF SAID TRACT 23 IN SECTION 23; GOVERNMENTS LOTS 1, 2, AND 3 IN SECTION 24; ALL IN TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., TOGETHER WITH ALL ABUTTING LAKE WASHINGTON SHORELANDS AND INCLUDING ALL BOULEVARDS, STREETS, AND ALLEYS LYING WITHIN THE AFOREDESCRIBED LOTS, TRACTS, AND SHORELANDS.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



EXHIBIT B
LAND AND BUILDING MAP



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



**EXHIBIT C
Project Budget**

TOTAL PROJECT BUDGET - COSTS AND FUNDING SOURCE									
	Annex			Hatchery			Total Project		
	City	Audubon	Totals	City	Audubon	Totals	City	Audubon	Totals
Planning	\$17,399	\$6,847	\$24,246	\$7,419		\$7,419	\$24,818	\$6,847	\$31,665
Design	\$34,572	\$229,504	\$264,076	\$51,343		\$51,343	\$85,915	\$229,504	\$315,419
Construction	\$253,606	\$1,136,517	\$1,390,123	\$254,261		\$254,261	\$507,867	\$1,136,517	\$1,644,384
Totals	\$305,577	\$1,372,869	\$1,678,445	\$313,023	\$0	\$313,023	\$618,600	\$1,372,869	\$1,991,468

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



EXHIBIT D
Projected Project Schedule

Activity	2003 by Quarters				2004 by Quarters				2005
	1	2	3	4	1	2	3	4	1
Design Begins			X						
Preliminary Design			X						
Design Development Begins				X					
Construction Document Phase Begins					X				
Final Design					X				
Construction Begins						X	X		
Construction Completed								X	
Building and Hatchery Open									X

NOTICE IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Exhibit E

USE AND OCCUPANCY AGREEMENT

Between

**THE CITY OF SEATTLE,
a municipal corporation
of the State of Washington
and
NATIONAL AUDUBON SOCIETY, INC.,
a nonprofit corporation
of the State of New York**

**NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.**



TABLE OF CONTENTS

I. DEFINITIONS1

II. LEASE OF PREMISES, LICENSE FOR ACCESS; EFFECTIVE DATE3

A. LEASE3

B. NONEXCLUSIVE LICENSE TO USE COMMON AREAS4

C. EFFECTIVE DATE4

D. FORM OF AMENDMENT4

E. POSSESSION AND OCCUPANCY5

III. USE/PURPOSE5

IV. TERM5

V. RENT5

A. FIXED RENT5

B. ADJUSTED FIXED RENT6

C. RENTAL OFFSETS6

D. ANNUAL RENT7

VI. TAXES, UTILITIES AND OTHER SERVICES7

A. TAXES7

B. FIXED RENT REDUCTION AND OFFSET INAPPLICABLE TO TAXES7

C. UTILITIES7

D. TELEPHONE AND DATA TRANSMISSION7

E. NO CITY LIABILITY8

VII. PROCESS FOR PAYMENT OF RENT AND OTHER EXPENSES8

A. TIME FOR PAYMENT OF ANNUAL RENT8

B. UTILITY AND OTHER SERVICE CHARGES8

C. PROGRAM AND BUILDING USE RECEIPTS8

D. LATE AND REFUSED PAYMENTS8

E. PAYMENT PROCESS9

VIII. OPERATIONAL REQUIREMENTS9

A. PROGRAMS9

B. COORDINATION9

C. COMMUNITY OUTREACH10

D. ACCESS10

E. PUBLIC USE OF BUILDING COMMON AREAS10

F. SCHEDULING AND CLOSURES10

G. USE SCHEDULE11

H. STAFF11

I. SUPPLY STORAGE12

J. INTOXICATING BEVERAGES13

IX. FORCE MAJEURE13

X. ACCEPTANCE OF BUILDING "AS IS"13

XI. MAINTENANCE AND REPAIRS14

A. AUDUBON'S CLEANING AND MAINTENANCE OBLIGATIONS14

B. CITY'S MAINTENANCE OBLIGATIONS15

C. RECYCLING OF WASTE MATERIALS16

E.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



MODIFICATIONS, ALTERATIONS AND ADDITIONS	16
F. COORDINATION	18
G. CITY'S RIGHT TO STOP WORK	18
XII. SIGNS	19
A. NAME OF BUILDING AND USE OF NAME	19
B. AUDUBON SIGNS	20
XIII. KEYS	20
XIV. HAZARDOUS WASTE OR MATERIALS	20
A. RESTRICTION ON USE; RESPONSE PLAN; DEFINITION	20
B. COMPLIANCE	20
C. CITY'S RIGHTS	21
D. AUDUBON'S DUTY TO NOTIFY; RESPONSE TO RELEASE	21
E. REMOVAL UPON SURRENDER	21
F. AUDUBON'S ENVIRONMENTAL INDEMNITY	22
XV. COMPLIANCE WITH LAWS	23
A. GENERAL REQUIREMENT	23
B. LICENSES AND SIMILAR AUTHORIZATIONS	23
C. NONDISCRIMINATION AND AFFIRMATIVE ACTION	23
XVI. LIENS	23
XVII. LIABILITY AND INSURANCE	23
A. AUDUBON'S INDEMNITY	23
C. INSURANCE	24
XVIII. DAMAGE OR DESTRUCTION	25
A. DAMAGE; EXTENT OF OBLIGATION TO RESTORE. (THIS SECTION IS AWAITING CONVERSATION WITH THE RISK MANAGER)	25
B. NO OBLIGATION TO RESTORE PERSONAL PROPERTY	26
C. DAMAGE NEAR END OF TERM	26
XIX. CITY'S CONTROL OF BUILDING AND VICINITY	26
XX. DEFAULT; TERMINATION; REMEDIES	27
A. DEFAULT; CURE PERIODS	27
B. CITY DEFAULT	27
C. REMEDIES	28
D. REMEDIES CUMULATIVE	28
XXI. TERMINATION	28
A. TERMINATION FOR BONA FIDE PUBLIC PURPOSE	28
XXII. SUBLEASES AND ASSIGNMENTS	28
XXIII. SURRENDER	29
A. AUDUBON'S OBLIGATIONS	29
B. RE-ENTRY BY CITY	30
C. SURVIVAL OF LIABILITIES	30
XXIV. QUIET ENJOYMENT	30
XXV. DISPUTES	30

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



XXVI. CITY'S APPROVAL OR CONSENT30

A. CONSENT EXPRESSLY FOR USE AGREEMENT PURPOSES; DISCRETION OF CITY.....31

B. CONSENTS HEREUNDER NOT FOR REGULATORY PURPOSES.....31

XXVII. SUCCESSORS AND ASSIGNS31

XXVIII. NOTICE31

A. ADDRESSES31

B. EFFECTIVENESS OF NOTICE32

XXIX. TERMINOLOGY32

A. HEADINGS32

B. GENDER AND NUMBER32

XXX. SEVERABILITY32

XXXI. APPLICABLE LAW32

XXXII. NEGOTIATED AGREEMENT; MERGER.....32

XXXIII. AUDITS AND RECORDS33

A. PROGRAM AUDIT REPORT33

B. RECORDS33

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



DRAFT
USE AND OCCUPANCY AGREEMENT

Between

THE CITY OF SEATTLE,
a municipal corporation
of the State of Washington
and
NATIONAL AUDUBON SOCIETY, INC.,
a nonprofit corporation
of the State of New York

This Use and Occupancy Agreement (the "Use Agreement") is entered into as of the day of _____, 200_, by The City of Seattle ("City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR") and the Superintendent thereof, and National Audubon Society, Inc. ("Audubon"), a nonprofit corporation of the State of New York.

I. DEFINITIONS

The following capitalized terms used in this Use Agreement shall have the following meanings:

"Approval" (or "Approved") means the prior written consent of the party whose consent is required or that party's designee.

"Audubon Center Director" means the director of the Audubon programs and activities at Seward Park.

"Building" means the the Seward Park Music Annex Building, located at 5902 Lake Washington Boulevard, and situated on the real property described on Exhibit A hereto and depicted on Exhibit B.

"Building Common Areas" means those portions of the Building not used exclusively for DPR programming nor within the exclusive control of any tenant, licensee or concessionaire. The Building Common Areas shall include but not be limited to, meeting rooms, restrooms, any kitchen areas and lobbies.

"Center" means the use of the Building and the Hatchery as an enviromental education center.

"Certificate of Occupancy" means a temporary certificate of occupancy issued by the City's Department of Construction and Land Use after the renovation of the Building or, if no temporary certificate of occupancy is issued, then a permanenet certificate of occupancy.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

"Codes" include all land use, building, housing, fire, electrical, mechanical, plumbing and other codes applicable under City ordinances or State law, and all valid interpretations thereof issued by the agencies responsible for the administration thereof.

"Development Agreement" means the agreement entered into between the parties which sets for the development parameters and funding commitments related to the Project.

"Effective Date" means the date when this Use Agreement is fully executed by the parties pursuant to Article II.C.

"Environmental Law(s)" means any federal, state and local laws (whether under common law, statute, ordinance, rule, regulation, code or otherwise), permits, orders, decrees, and other requirements of governmental authorities relating to the protection of human health or the environment, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Certificate of Final Completion" shall mean the Superintendent's reasonable determination that: (1) Audubon has obtained the Certificate of Occupancy for the Project; (ii) the Building meets adopted DPR standards; and (iii) there are no outstanding Audubon liabilities associated with the design and construction contracts for the Building. For the purpose of this definition, "outstanding liabilities" shall mean those liabilities that have not been bonded or addressed through other means to the reasonable satisfaction of the Superintendent.

"Fixed Rent" means the fair market rental value of the Premises and one-half (1/2) of the fair market rental value of the Building Common Areas and one-third (1/3) of the fair market value of the Hatchery Program Areas, which will not exceed a cost of \$1.35 per square foot cost per month, escalated annually by the Consumer Price Index for all Urban Consumers as defined in Article VB which shall be no more than 4% each year from 2003 until the date of execution of the Form of Amendment. The determinants of the fair market rental value of the Premises and the Hatchery Program Areas will consider all applicable restrictions on the use of the Building and the Hatchery Program areas.

"Hatchery" means the currently fenced facilities and ponds located in the eastern portion of Seward Park, as depicted on Exhibit B hereto.

"Hatchery Program Areas" means those portions of the Hatchery being renovated for environmental programs under the Development Agreement

"Hazardous Material" means any element, compound, chemical, chemical mixture, or other substance that is identified as, or determined to be, a hazardous, toxic or dangerous substance, pollutant, contaminant, waste or material under, or is otherwise regulated under, any Environmental Law or other law relating to chemical management, environmental contamination, environmental cleanup or nuisances, including, without limitation, petroleum and petroleum products, asbestos, radon and other radioactive materials, bio-hazards and lead-based paint.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

"Improvement Expenditure Offset" means the offset against the Adjusted Fixed Rent for the total amount of Audubon's capital expenditures consistent with the agreed upon Project Budget in Exhibit C of the Development Agreement for improvements that benefit the Building as a whole.

"Loaned Employee Agreement" means the agreement between the City and Audubon whereby the City loans a DPR naturalist to Audubon to assist in the development and delivery of environmental programs in Seward Park..

"Occupancy Date" means the date when the Form of Amendment is executed for the Building.

"Personal Property" means any personal property, equipment or fixtures placed or installed by Audubon on the Premises.

"Premises" means that portion of the Building, excluding common areas and space reserved for TREC and the DPR Naturalist should the Loaned Employee Loan Agreement not be excuted or terminated

"Project" means renovation of the Building and the Hatchery for use as an environmental education center.

"Release", when used with respect to Hazardous Materials, includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about any part of the Premises, Building or any adjacent property of such materials.

"Seward Park Common Areas" means any portion of Seward Park designated by the City as being for the general use of tenants, licensees, concessionaires, patrons, employees, and invitees of the City and not within the exclusive control of any tenant, licensee, or concessionaire, and shall include but not be limited to parking areas, landscaped areas, roads, walks, corridors, public toilets, public stairs, ramps, elevators, and shelters.

"Superintendent" means the Superintendent of the City of Seattle Department of Parks and Recreation.

"TREC" means Teens for Recreation and Environmental Conservation, a DPR outdoor expedition-level program designed to expose multi-ethnic teens to environmental education, urban conservation and stewardship, while creating an environment for community leadership and empowerment.

II. LEASE OF PREMISES, LICENSE FOR ACCESS; EFFECTIVE DATE

A. Lease.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

In consideration of the rents to be paid and the covenants and agreements hereinafter provided which the City and Audubon hereby agree to keep and perform, the City hereby leases to Audubon and Audubon hereby leases from the City, the Premises. In addition, the City grants to Audubon the exclusive first right and option to lease additional square footage in the Building as such square footage becomes available for lease. Audubon shall be required to exercise such option within thirty (30) days of the formal offer and any additional property leased pursuant to such exercise shall be subject to the same terms and conditions contained herein.

B. Nonexclusive License to Use Common Areas.

Subject to the terms and conditions of this Use Agreement, the City hereby grants to Audubon, and its officers, employees, agents, and invitees, the nonexclusive right during the Term of this Use Agreement to use the Building Common Areas and the Hatchery Program Areas. In addition, throughout the Term, Audubon may use the Seward Park Common Areas as from time to time constituted, in common with all other visitors and users of Seward Park and subject to such rules and regulations as the Superintendent may promulgate. Notwithstanding the foregoing, if Audubon desires to conduct programs on established trails in Seward Park as shown in Exhibit B, or along the shoreline, it shall not do so within 200 feet of eagle nesting trees. In addition, if Audubon desires to use any picnic shelters, it shall reserve the same through DPR's use and permit process, pay the then-current fees therefor and comply with all applicable requirements in connection with such use.

C. Effective Date.

This Use Agreement shall not become effective until all of the following conditions have been satisfied:

1. the Development Agreement has been fully executed by the City and Audubon; and
2. the Use Agreement has been signed by an authorized representative of Audubon and returned to the Superintendent at the address set forth below, accompanied by the required policies of insurance; and
3. the Use Agreement has been signed by the Superintendent or his designee, which shall occur no later than one week following DPR's receipt of the signed Use Agreement from Audubon.

The City shall immediately notify Audubon in writing when all conditions of this Article have been satisfied. Such notice shall expressly state the Effective Date of this Use Agreement.

D. Form of Amendment.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

When the Certificate of Occupancy is issued for the Building and the Superintendent has issued the Certificate of Final Completion, the parties shall execute the Form of Amendment attached hereto as Exhibit F, which shall specify the precise values related to the following:

1. the square footage of the Premises, the Building Common Areas, and the Hatchery Program Area, including a depiction of the same; and
2. the amount of the Fixed Rent and the Improvement Expenditure Offset; and
3. the date of the first Consumer Price Index Adjustment.

E. Possession and Occupancy.

Audubon shall have possession of the Premises at the time the Form of Amendment is executed, subject to the rights reserved by the City herein. Prior to that time, Audubon may use portions of the Building and the Park per Article 2.3 of the Development Agreement.

III. USE/PURPOSE

Audubon agrees that its use of the Premises and the Hatchery shall be solely to develop and provide a variety of environmental education, conservation, outdoor recreation, and stewardship programs for children and adults as described in Article VIII, below; provided that, the Premises may also be used for purposes incidental thereto, including office space, limited retail transactions, storage, exhibits, and fundraising events.

IV. TERM

This Use Agreement shall commence on the Effective Date, subject to the Form of Amendment. The term of occupancy ("Term") shall commence upon execution of the Form of Amendment ("Occupancy Date") and shall terminate 10 years thereafter, as set forth in the Form of Amendment, unless sooner terminated as provided herein. If Audubon is not in default with respect to any material provision of this Use Agreement, Audubon shall have the right to extend the Term for up to ten (10) additional years upon the same terms and conditions contained herein except that the Fixed Rent shall be adjusted based on the then-current fair rental value of the Premises as determined by an MAI-certified appraiser hired by the City at its expense and in consideration of any adjustment thereto as specified in Article V. In no event, however, shall the Fixed Rent for the first year of the extended term be less than the Fixed Rent paid during the last year of the original Use Agreement Term.

V. RENT

A. Fixed Rent.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Prior to executing the Form of Amendment, the City shall set a fair market rental value for the Premises and for use of the Building Common Areas and the Hatchery Program Areas based on the fair market rental value of the Premises plus one-half (1/2) of the fair market rental value of the Building Common Areas and one-third (1/3) of the fair market rental value of the Hatchery Program Areas, which will not exceed a cost of \$1.35 per square foot per month, escalated by the Consumer Price Index for all Urban Consumers as defined in Article VB which shall be no more than 4% each year from 2003 until the date of execution of the Form of Amendment. The determinants for the fair market rental value shall include all applicable restrictions on the use of the Building and the Hatchery Program Area (the "Fixed Rent").

B. Adjusted Fixed Rent.

Commencing on the anniversary date of the execution of the Form of Amendment, the annual Fixed Rent shall be adjusted each year by the percentage increase that occurred during the preceding calendar year ("Adjustment Percentage") in the Consumer Price Index for all Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle-Tacoma-Bremerton Metropolitan Area ("Index"), using the base 1982-84 = 100, as published by the Bureau of Labor Statistics, United States Department of Labor, or its successor (the "CPI Increase") provided that the percentage increase does not exceed 4% each year. The result shall be known as the "Adjusted Fixed Rent". Should any year's CPI percentage change be less than zero, the change to the Fixed Rent for that year shall be set at zero percent (0%). Therefore, in no case shall any year's Fixed Rent be less than the prior year's amount. In the event of any change in the Index base (1982-84=100) or other modification of the CPI Index, or in the event the CPI is discontinued, the Superintendent shall select a similar index of comparable statistics on the cost of living for King County as shall be computed by an agency of the United States or by a responsible financial periodical or other recognized authority.

C. Rental Offsets.

1. Improvement Expenditure Offset. For the duration of this Use Agreement, including any extended term, Audubon shall be entitled to an offset against the Adjusted Fixed Rent for the total amount of Audubon's capital expenditures for the design and construction of the Building pursuant to the Project Budget in Exhibit C of the Development Agreement. The offset shall be credited against the Adjusted Fixed Rent over the term of this Use Agreement. The parties agree that to the extent that Audubon's capital expenditures exceed the amount of the Adjusted Fixed Rent, the excess shall be a gift to the City.

2. Public Benefit Offset. For the duration of this Use Agreement, including any extended term, Audubon shall be entitled to an offset against the Adjusted Fixed Rent for the value of the Public Benefit Components of Audubon's program at Seward Park, as described in Article VIII, below. The offset shall be credited against the



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Adjusted Fixed Rent over the term of this Use Agreement, with the value being determined each year by the value of Audubon's fee discounts, scholarships, programming, and stewardship activities, all as reported in Audubon's Program Audit Report described in Article XXXIII.

D. Annual Rent.

The Annual Rent shall be determined based upon the Adjusted Fixed Rent less any Improvement Expenditure Offset credit and less any Public Benefit Offset credit.

VI. TAXES, UTILITIES AND OTHER SERVICES

A. Taxes.

Audubon shall pay, before delinquency, all applicable taxes, levies, and assessments arising from its activities on or occupancy of the Premises, including, but not limited to any taxes arising out of the activity or business conducted on the Premises such as the rental or sale of goods or services; taxes levied on its property, equipment, and improvements on the Premises; and taxes on Audubon's interest under this Use Agreement and any leasehold interest deemed to have been created thereby under Ch. 82.29A RCW (collectively, "Taxes"). If the State of Washington makes any demand upon the City as City for payment of leasehold excise taxes resulting from Audubon's occupation of the Premises or withholds funds due to the City to enforce collection of leasehold excise taxes Audubon shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums reasonably expended by, or withheld by the State of Washington from the City, in connection with such taxes.

B. Fixed Rent Reduction and Offset Inapplicable to Taxes.

The reduction and offsetting of any Fixed Rent pursuant to Article V.C. shall have no effect on the amount of any leasehold excise tax due and payable to the City or any other tax obligation of Audubon. Unless Audubon is exempt from the payment of Leasehold excise taxes, all such taxes shall be paid only in cash.

C. Utilities.

Audubon shall pay the costs of all utilities provided to the Building. Utility charges shall include but not be limited to, elevator service, if any, electricity, gas, water, sewer, garbage and recycling, heating, Building Common Area janitorial, and security alarm costs. DPR shall pay the costs of all utilities to the Hatchery. Audubon shall not install additional utilities without the City's Approval, which shall not be unreasonably withheld.

D. Telephone and Data Transmission.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

With the Superintendent's Approval, Audubon may install customary telephone and data communication systems to secure service to the Premises for Audubon's use. Audubon shall pay for such services directly to the appropriate telephone or data processing company or other service provider.

E. No City Liability.

The City shall not be liable for any injury, loss or damage caused by or resulting from any interruption or failure of utility services due to any causes whatsoever, other than the City's gross negligence. Audubon shall not be entitled to an offset, reduction, or return of Fixed Rent as a result of any interruption or failure of said services.

VII. PROCESS FOR PAYMENT OF RENT AND OTHER EXPENSES

A. Time for Payment of Annual Rent.

Annual Rent shall be paid annually, commencing on the Occupancy Date and on each anniversary of the Occupancy Date thereafter within thirty days from the date of an invoice from the City setting forth the Annual Rent amount and the calculation thereof. Prior to the City's calculation of the Annual Rent, Audubon shall submit an estimate of the projected value of the Public Benefit Offset for the forthcoming year. This estimate will be evaluated against the Program Audit provided by Audubon at the end of the year and any required adjustments in the rent shall be made retroactively.

B. Utility and Other Service Charges.

The City shall invoice Audubon monthly for utilities and other services provided hereunder. Audubon shall pay such invoices within thirty (30) days of the date of each invoice.

C. Program and Building Use Receipts.

All funds collected by Audubon from third parties on behalf of the City shall be remitted to the City within forty-eight (48) hours of Audubon's receipt, together with a summary report indicating the program name, date and total receipts and any other required documents. Any funds collected by DPR staff from third parties on behalf of Audubon shall be remitted to Audubon within forty-eight (48) hours of DPR staff's receipt, together with a summary report indicating the program name, ate and total receipts and any other required documents.

D. Late and Refused Payments.

If Audubon fails to pay any sum after such amount is due to the City, Audubon shall also pay to the City a rate of interest to be charged on delinquent accounts as established by



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

Ordinance 117969 or any successor ordinance, the provisions of which are incorporated herein by reference. Audubon shall pay the City Twenty Dollars (\$20.00) for each check refused payment for insufficient funds or any other reason.

E. Payment Process.

All payments due to the City under this Use Agreement shall be shall be remitted by mail to the Department of Parks and Recreation, Attention: Contract and Business Resources, 800 Maynard Avenue S., Room 210, Seattle, WA 98134, or to such other place as the City may hereafter designate.

VIII. OPERATIONAL REQUIREMENTS

A. Programs.

Consistent with Audubon's mission, Audubon's programs shall be community-responsive, particularly to South 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 Seward Park and all living things;
- (iv) designed to sustain the natural resources at Seward Park;
- (v) compatible with and supportive of the City's environmental stewardship programs, particularly the TREC and Naturalist programs;
- (vi) action and result-oriented; and
- (vii) designed to minimize the need for vehicle access to the Hatchery.

B. Coordination.

The City and Audubon shall coordinate their environmental education programs and other activities within the Building and other areas of Seward Park to avoid overuse and conflicts in scheduling through monthly meetings or other mutually agreed means of coordination between relevant personnel of Audubon and DPR. Audubon shall meet with representative of DPR's TREC program and reach consensus on the scheduling of

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Audubon activities in a manner that is compatible with the on-going activities of that program.

C. Community Outreach.

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 City on these outreach activities on an annual basis through the audit process described in Article XXXIII.

D. Access.

Audubon agrees to operate its programs and activities at Seward 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 Seward 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 City fees for programs of similar scope and quality, and a schedule of Audubon program fees shall be submitted to the City annually along with an annual plan that outlines how Audubon shall ensure affordability (i.e., level of scholarships and fees) for the City's review. At the end of the year, Audubon shall report on the actual level of affordability in the Program Audit report described in Article XXXIII.

E. Public Use of Building Common Areas.

Without displacing DPR's TREC and Naturalist programs, and ensuring continued community use of the Building, Audubon shall be the central user of the Building Common Areas for purposes of implementing an environmental education center. Subject to availability, the public may rent meeting rooms and other Building Common Areas. Audubon shall coordinate the scheduling and collect rental fees in accordance with the then current DPR rental policies. Audubon will retain rental fees as compensation for scheduling the Building's use and payment of all the Building's utilities as described in Article VII.B. Audubon shall report to DPR on a quarterly basis the number of rentals and associated fees collected by Audubon. Audubon will work to maximize opportunities for the public to use the Building Common Areas, particularly during evenings and weekends. If a conflict in scheduling arises, the Center Director shall work cooperatively with the interested parties to negotiate a solution; provided that, an aggrieved party may appeal any such determination directly to the Superintendent.

F. Scheduling and Closures.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



If Audubon intends to use any part of the Premises or other parts of the Building or Seward Park during the hours the park is closed to the public, it must obtain DPR's Approval and notify DPR security.

The City reserves and retains the right to close the Building for major maintenance or repairs, or to implement public safety measures, at reasonable times upon not less than seven (7) days' written notice to Audubon or, in case of emergency, without notice or liability of any kind; provided that no non-emergency major maintenance or repair or non-emergency implementation of public safety measures shall commence unless and until the parties have agreed upon a coordination plan addressing the hours, terms and conditions under which such action may occur. The City agrees that Audubon shall not be charged for any rent attributable to the dates when the Building is closed for such purposes unless Audubon is responsible for the repairs or maintenance that necessitate the closure.

G. Use Schedule.

Thirty (30) days before the end of each quarter, Audubon shall provide DPR, for its Approval, a list of Audubon's proposed use dates for the Hatchery and other areas in Seward 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.

Thirty (30) days before the end of each quarter, DPR shall provide Audubon, for its approval, a list of DPR's proposed use dates for the Building Common Areas 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. DPR may make changes to this schedule as needed and as space and scheduling permits, to accommodate its programming needs and other permitted uses.

H. Staff.

1. Loaned Naturalist. The City shall "loan" a DPR naturalist to Audubon to assist in the development and delivery of environmental programs in Seward Park, consistent with the terms of this Use Agreement. The loaned employee shall remain a City employee, with all the commensurate rights, responsibilities and privileges and the City shall pay the salary and all required or selected employer's benefits contribution for the loaned employee for up to two years, beginning on the Occupancy Date. Audubon will reimburse DPR for one-half of the employee's salary and benefit costs on a monthly basis. Audubon shall pay such invoices within 30 days of the date of each invoice. A manager from DPR's Recreation and Support Division shall provide supervisory support to the employee, but daily operations will be managed by the Audubon Center Director.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Either party may cancel this loan arrangement at any time, provided a sixty (60) day notice of such intention is provided to the other party or the parties may agree to extend the arrangement at the end of the two-year period stated above.

2. Audubon Staffing. Audubon shall employ personnel or assign volunteers in numbers that it reasonably deems appropriate and necessary to conduct its environmental education and other program staffing needs for its programs at Seward Park and to protect the safety of program participants and the public. Audubon may provide for operation of these programs through its existing or contracted staff. At Audubon's expense, Audubon shall have the Washington State Patrol conduct criminal history background checks of all potential staff members before they are employed; provided that, if acceptable to the Washington State Patrol, Audubon may use an independent entity to provide such background checks and shall provide DPR with the results of same. Audubon shall provide DPR with a written list of its state board and center staff, with telephone numbers, at the beginning of each fiscal year and shall promptly notify DPR of any changes.

3. Employee Conduct. The following shall govern employee conduct at the Center:

(a) If a complaint is filed by an Audubon employee at the Center against a City employee at the Center for harassment as defined in Audubon's adopted harassment policies and after investigation of such complaint by Audubon, Audubon determines that a basis for such complaint exists, Audubon will notify the Superintendent within 24 hours after the complaint is filed and the Superintendent will commence an investigation and take appropriate action pursuant to appropriate City ordinance and regulations.

(b) If a complaint is filed by a City employee at the Center against an Audubon employee at the Center for harassment as defined in the City's adopted harassment policy and after investigation of such complaint by the Superintendent, the Superintendent determines that a basis for such complaint exists, the Superintendent within 24 hours will notify Audubon, and Audubon shall commence an investigation and take appropriate action pursuant to appropriate Audubon practices and procedures.

(c) If any employee at the Center is not adequately performing his or her job at the Center or has other performance related issues, the Center Director and the Superintendent or their designees agree to discuss and resolve such issues in good faith through each entities' appropriate employee review mechanisms

I. Supply Storage.

Audubon shall ensure that all of its supplies and materials are appropriately stored and secured in such a way as to not unreasonably inconvenience or conflict with other uses and users of the Building.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

J. Intoxicating Beverages.

Audubon shall not permit intoxicating beverages of any kind to be used, sold, consumed or dispensed in the Building or the Premises unless the Superintendent has Approved such use, sale, consumption or dispensation, in writing, and Audubon complies with all applicable laws, ordinances, rules and regulations in connection therewith, as now or hereafter amended. The City acknowledges that Audubon may host special events, including fundraising events, in the Building and may request the Superintendent to approve the consumption or dispensation of alcoholic beverages at such events, which approval shall not be unreasonably withheld in connection therewith. Prior to conducting any event at which alcoholic beverages are served, Audubon shall obtain insurance acceptable to the City's Risk Management Department for liquor/host liability.

IX. FORCE MAJEURE

With the exception of monetary obligations, which shall not be excused, Audubon shall not be in breach of its obligations under this Use Agreement due to delays in the performance of its obligations caused by events beyond Audubon's reasonable control and without its negligence, including but not restricted to, any delays compelled by court order, acts of God, acts of the public enemy, unforeseeable acts of a unit of local state or federal government, unforeseeable acts or omissions by other parties, fires, floods, strikes, embargoes, delays in essential utility services and unusually severe weather or delays of contractors or subcontractors due to such causes. The time for the performance of the obligation shall be extended for the period of the delay if Audubon promptly requests an extension of time in writing from City, but in any event, within thirty (30) days after Audubon becomes aware, or reasonably should have been aware, of the event resulting in any such delay.

X. ACCEPTANCE OF BUILDING "AS IS"

Audubon is fully familiar with the condition of the Building and the Premises and accepts the Premises AS IS, subject to the environmental indemnity provisions contained in Article 7 of the Development Agreement and subject to the City's environmental indemnity contained in Article XIV(G). The City makes no warranties or representations of any kind with respect to the condition of the Building or the Premises or their suitability for Audubon's purposes. Audubon agrees that any express or implied representations or warranties made by or on behalf of the City prior to the date hereof, unless expressly set forth in this Use Agreement, are hereby revoked and canceled and shall have no force or effect. Audubon further agrees that no representations or warranties are implied by any provision of this Use Agreement or any other words or conduct in connection with this transaction.

Audubon agrees that the City shall have no liability or obligation as a result of any defect or condition of the Building or Premises, including without limitation latent defects. The City shall have no obligation to undertake any repairs, maintenance or other work of any kind except as expressly set forth in this Use Agreement.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Audubon and the City acknowledge that this Article has been specifically bargained for and that the City would not be willing to Lease the Premises on the terms and conditions set forth herein without Audubon's agreement to the terms of this Article.

XI. MAINTENANCE AND REPAIRS

A. Audubon's Cleaning and Maintenance Obligations.

1. Audubon shall at all times keep the Premises and Building Common Areas in a neat, clean, safe and sanitary condition, with normal wear and tear and damage and destruction by fire and other extraordinary casualty excepted, and shall use and maintain the Premises and Building Common Areas in accordance with all codes, the laws of the State of Washington and the Charter and ordinances of The City of Seattle, and in accordance with all valid directives, rules and regulations issued by any authorized City or State officer. Audubon shall not cause or permit any waste, damage, or injury to the Building or the Premises; use or permit on or in the Building or the Premises anything that will increase the rate of fire insurance thereon; maintain anything on or in the Building or the Premises that may be dangerous to life or limb; overload the floors; permit any objectionable noise or odor to escape or to be emitted from the Building or the Premises; or permit anything to be done in or around the Building or the Premises that in any way will tend to create a nuisance, or interfere with access to and from Seward Park or any part thereof. If the Superintendent has a good faith belief that any activity occurring on the Premises presents an imminent threat to public health or safety, then after consultation with the Audubon Center Director, the Superintendent may order such activity to immediately cease, without liability to the City for such interruption, until such threat has been adequately evaluated or remedied, as the case may be.
2. If requested by Audubon, the City may maintain, clean and repair the Premises to the ordinary standards provided to other DPR tenants occupying similar facilities, or as otherwise agreed upon by the parties, and shall keep the same in good condition normal wear and tear and damage and destruction by fire and other extraordinary casualty excepted. Audubon shall pay the cost of maintaining, cleaning and repairing the Premises as well any extraordinary costs of cleaning, repairing or maintaining the Building Common Areas or the Building, occasioned by Audubon's use and occupancy thereof, within 30 days after receipt of an invoice therefor.
3. Audubon shall implement, at no cost or expense to the City, a preventive maintenance custodial care program that is consistent with other similar DPR facilities and operations and as determined by the Superintendent. Audubon shall be informed of such preventative maintenance custodial care obligations prior to Audubon's occupancy of the Premises.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Audubon shall participate in an annual inspection of the Building and the Premises with the Maintenance Services division of DPR and be responsible, except where the City is obligated under the terms of this Use Agreement to be so responsible, for taking any and all action that may be reasonably required to maintain and operate the Premises in accordance with the then current DPR standards, a current example of such standards is attached hereto as Exhibit v, and Audubon's obligations under this Use Agreement. DPR shall notify Audubon ninety (90) days in advance of any proposed DPR standards changes that may impact Audubon's obligations under this Use Agreement.

4. The City reserves for itself, its officers, employees, agents and contractors, free access to the Premises, at all reasonable times upon reasonable notice for purposes of inspecting, cleaning, or making repairs, to the Premises or any other property owned by or under the control of the City, including additions or alterations to City property other than the Premises, but this right shall not be construed as an agreement on the part of the City to make inspections, clean or make repairs, additions or alterations except as specifically provided elsewhere in this Use Agreement. Audubon shall reimburse City on demand for the cost of any such repairs or alterations resulting from Audubon's activities, reasonable wear and tear excepted; provided that, the City shall provide notice to Audubon of the need for such repairs or alterations and shall afford Audubon the option of performing such repairs or alterations. The City also reserves the right to make alterations to the Building Common Areas at no cost to Audubon where such alterations will not unreasonably interfere with Audubon's ordinary operation of the Premises or use of the Building Common Areas.

B. City's Maintenance Obligations

The City shall maintain the Building, including but not limited to electrical and mechanical systems (heating, plumbing, ventilation), the roof, exterior shell, and exterior doors, all at no cost or expense to Audubon. The City shall be responsible for the ordinary maintenance of the grounds surrounding the Building, including the Seward Park areas, including lawn mowing, trimming or removal of plants when required, control of noxious weeds, clearing of leaves and other natural debris, and street, parking area and general access maintenance. Such maintenance shall be to the same standard, and generally with the same frequency, as maintenance of other grounds and general access at City parks (not including park natural areas). Unless otherwise agreed in writing by the parties, the City shall not be responsible for clearing snow, ice, obstructions and hazards from sidewalks, driveways, parking areas, walkways, steps, ramps and other paved surfaces in Seward Park, or for repair of holes, cracks, or other defects in such surfaces. With regard to the streets serving the Building and the Premises, the City shall have only such obligations as the City has generally for all streets, and shall have no special obligations under this Use Agreement. The City shall



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

also be responsible for maintaining the natural resource areas of Seward Park consistent with, at a minimum, the policies for Park Management and Environmental Stewardship as contained in the adopted Parks and Recreation Comprehensive Plan 2000.

C. Recycling of Waste Materials.

Audubon shall adhere to any recycling program employed by DPR at the Building, and shall collect, sort and separate all solid waste products and deposit the same in receptacles provided by the City.

D. Modifications, Alterations and Additions.

1. Throughout the Term of this Use Agreement, Audubon shall have the right, at its own expense and without the prior consent of the Superintendent, to install such of its own machinery and equipment, to make such minor improvements and additions, and to attach such removable fixtures in or upon the Premises as may be necessary to conduct its permitted operations, and to remove same at any time prior to the expiration or termination hereof. As used in this Use Agreement, "minor improvements and additions" means (a) ordinary repairs and non-structural alterations of any portion of the Premises that, individually, cost less than \$5,000 or together with all other items of a similar or related nature during the calendar year, cost less than \$15,000.00, and (b) emergency repairs immediately necessary for the usual and customary usage of the Premises. The foregoing figures shall be adjusted to reflect changes in the CPI in accordance with the methodology described in Article V.B. Audubon agrees that it will not divide any project into units of work to circumvent the dollar restrictions stated above.

2. Audubon shall make no modifications, alterations, additions or improvements to the Premises or any part thereof the estimated cost of which exceeds the limitations set forth in Article XID (i) (a "Major Alteration"), without first obtaining the Approval of the Superintendent, which consent shall not be unreasonably withheld. In exercising discretion, the Superintendent shall take into account any proposed alteration or improvement that affects (a) any structural portions of the Building including exterior walls, roof, foundation and core of the Building; (b) the exterior of the Building or which are visible from outside the Building or which are likely to increase insurance costs (unless Audubon agrees to pay such increased insurance costs); or (c) any of the Building systems, including elevator, plumbing, air conditioning, heating, electrical, security, life safety and power. In seeking the Superintendent's Approval, Audubon shall provide the Superintendent with interim plans and specifications at the end of the design development and at the 50% construction document stage. Prior to any Major Alteration other than an emergency repair, Audubon shall provide the Superintendent final plans and specifications to which architects and engineers have affixed their professional seals and signatures and such other information



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

concerning the nature and cost of the alterations as may be reasonably requested by the Superintendent. As a condition to giving such consent, the Superintendent may require Audubon, among other things, to undertake the work in a manner determined by the Superintendent to reasonably minimize disruption to other tenants, occupants, employees and users of the Building or Seward Park, to remove, if reasonably possible, any such modification, alteration, improvement or addition at the expiration of the Use Agreement Term and to restore the Premises to its prior condition. All such modifications, alterations, additions and/or improvements shall be constructed at Audubon's sole cost and expense and shall be performed in a good and workmanlike manner in accordance with Superintendent-approved plans and specifications and by a contractor and under a construction contract, the terms and conditions of which have been approved by the Superintendent (such approval not to be unreasonably withheld). Once approved, no material changes shall be made to any plans and specifications without the Superintendent's consent. If the Superintendent consents to any proposed modification, alteration, addition or improvement to the Premises, the same shall not be a warranty as to the adequacy of the design, workmanship or quality of materials and the City hereby expressly disclaims any responsibility or liability for the same. If any improvement is constructed in violation of this paragraph, Audubon shall either promptly make it consistent with approved plans and specifications, or cease using the improvement and remove it from the Premises. Except as expressly agreed by the parties, the City shall under no circumstances have any obligation to repair, maintain or replace all or any portion of such modifications, alterations, additions or improvements to the Premises. Audubon agrees to pay as Additional Rent a reasonable sum for project management costs necessarily incurred by the City with respect to Major Alterations, such sum to be agreed upon by the parties as part of any approval of the Major Alteration.

3. Before commencing any work under this Article XI, Audubon, regardless of whether Superintendent consent is required or not, shall notify the Superintendent in writing of the expected date of commencement thereof and shall require its contractor to secure, at no cost to the City, a payment and performance bond as required by statute, naming the City as joint obligee and insurance at least equivalent to that required pursuant to Exhibit iii. The City shall then have the right at any time and from time to time to post and maintain on the Premises such notices as the City reasonably deems necessary to protect the Premises and the City from mechanics' liens, materialmen's liens or any other liens. Any such modification, alteration, improvement or addition shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable laws and regulations and the requirements of all insurance policies applicable to the Premises. Audubon shall provide the Superintendent with "as-built" plans showing any Major Alteration in the Premises or the Building. Audubon shall require its contractors to maintain a safe working environment at all times, including the continuation of all fire and security protection devices,



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

including fire sprinkler systems and availability and operation of fire water supply lines during any such construction. All damage or injury done to the Premises, the Building, or any private property in the vicinity of the Building during the construction of such work by Audubon or by any persons who may be in or upon the Premises or the Building with the express or implied consent of Audubon and which is caused by acts or omissions of Audubon or Audubon's officers, contractors, subcontractors, agents, invitees, licensees, employees, successors or assigns shall be paid by Audubon. Audubon shall pay, when due, all claims for labor or materials furnished to or for Audubon at or for use in the Premises.

4. All such modifications, alterations, additions or improvements shall at the expiration or earlier termination of the Use Agreement become the property of the City and remain upon and be surrendered with the Premises.

5. All articles of personal property, furniture and movable partitions owned or installed by Audubon at its expense in the Premises shall be and remain the property of Audubon and may be removed by Audubon at any time during the Term of this Use Agreement provided that Audubon shall, at its sole cost and expense, repair any damage to the Premises caused by such removal.

6. In undertaking any repairs, modifications, alterations, additions or improvements, Audubon shall ensure that it and each of its contractors and agents protects from damage or destruction private and public property on or in the vicinity of the Premises that is not scheduled for repair, replacement or removal. Any property damaged by Audubon or its contractors or agents in the course of any repair, modification, alteration, addition or improvement shall be promptly repaired or replaced at Audubon's expense.

7. No change shall be made to electrical wiring or plumbing in the Premises or to and from the Premises other than by a properly licensed electrician or plumber.

E. Coordination.

The parties shall cooperate to the maximum extent possible to ensure that all construction work undertaken by or on behalf of Audubon is coordinated with the work of other contractors working at Seward Park, Seward Park tenants and with routinely scheduled events and activities. No construction work of any kind shall commence unless and until the parties have agreed upon a coordination plan addressing the hours, terms and conditions under which such construction may occur. Audubon shall work closely with the Superintendent or his/her designee to schedule construction activity to minimize construction impacts such as noise, dust and fumes.

F. City's Right to Stop Work.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Throughout the course of any construction, DPR and Audubon shall consult regarding any adverse impact on Seward Park events that may result from construction-related activity. If, after consultation between the Superintendent and Audubon regarding the adverse impact that construction-related activity is likely to have or is actually having on one or more Seward Park events and their joint effort to modify or reschedule such construction-related activity so as to minimize such adverse effect, the Superintendent determines, in the exercise of such official's reasonable discretion, that a material adverse impact is still likely to occur or is occurring, Audubon, upon notice from the Superintendent, shall order the immediate suspension or cessation of the construction-related activity specified in such notice for the duration identified in such notice.

If, after consultation with Audubon, the Superintendent determines that any work being performed upon the Premises is materially inconsistent with approved construction documents or any other required plan, program or rule, the Superintendent shall so notify Audubon, in writing, and the parties shall endeavor to resolve the situation. If the parties are unable to devise a plan to resolve the inconsistency, Audubon, upon notice from Superintendent shall order the immediate suspension of the affected portion of the work until the matter has been corrected. The notice shall state the required action to cure the nonconformity. Except in cases affecting public health and safety, the Superintendent will provide Audubon with at least 72 hours' advance written notice that it intends to issue a suspension notice and provide Audubon an opportunity to cure the nonconformity. Audubon shall not be entitled to damages from the City as a consequence of any increased cost or time of performance attributable to any such suspension, unless it is determined that the Superintendent issued a suspension notice without a reasonable basis.

XII. SIGNS

A. Name of Building and Use of Name.

For the term of the Use Agreement, the Building will be named "Seward Park Environmental and Audubon Center" to reflect the partnership and the programs housed in the Building. Such name will be used on signs identifying the Building and, to the extent practicable, in promotional and other marketing materials specifically relating to Audubon's or the City's activities or events at the Building. The Audubon Center will be operated solely by Audubon, will identify itself as an Audubon Center consistent with the branding and identity program of other Audubon Centers around the country, and will use as its symbol a logo that is a trademark of Audubon and used by Audubon. The City acknowledges Audubon's exclusive right, title and interest in and to the trade and corporate name "National Audubon Society" and the trademarks "Audubon" and "Audubon Center" ("Audubon Marks"), and acknowledges that any use of the Audubon Marks without the benefit of a license agreement is an infringement of Audubon's rights and constitutes unfair competition. While this Use Agreement is in effect and thereafter, the City will not in any manner represent that it has any interest in the Audubon Marks; will not contest Audubon's exclusive right, title and interest in and to, or the validity of,



the Audubon Marks; and will not act in any manner inconsistent with Audubon's indivisible ownership of the Audubon Marks.

B. Audubon Signs.

Audubon may, upon Approval from DPR, which consent shall not be unreasonably withheld, install bulletin boards and other signs or postings within the Building Common Areas and display community-related notices, posters, and similar materials related to Audubon's operations within the Building. 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 Seward Park; provided that, any such postings shall be subject to the City's Ethics Commission prohibitions on certain signage in public buildings. Audubon shall not, without the Superintendent's Approval, install any signs on the exterior of the Building.

XIII. KEYS

In accordance with DPR Administrative Policy 2.71, attached hereto as Exhibit iv, Audubon will obtain, account for and collect keys from DPR to the exterior door(s) of the Building at the time of occupancy and after any change in the locks of the exterior doors. Any change in locks for the Premises shall be at Audubon's expense. If a lock change is made to any exterior door of the Premises, Audubon shall provide the Superintendent with one (1) key for each lock changed immediately after such change has been completed. Audubon shall account for and collect keys in accordance with Exhibit iv.

XIV. HAZARDOUS WASTE OR MATERIALS

A. Restriction on Use; Response Plan; Definition.

Audubon shall not cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Building, or any adjacent property. Audubon represents, warrants and agrees that Audubon's uses of the Premises, the Building and the Seward Park Common Areas (including uses by invitees or licensees) shall not involve the use, production, or disposal of any hazardous substances, except for cleaning and maintenance supplies normally used in the operation of similar buildings that shall be used, stored and disposed of in compliance with all applicable laws, regulations and prudent practices. If Audubon is granted permission to bring any Hazardous Material (other than such cleaning and maintenance supplies) into the Building or the Premises, then before doing so, Audubon shall prepare and submit to the City a hazardous materials response plan acceptable to the City. Audubon shall comply fully with such plan, at Audubon's sole expense.

B. Compliance.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Audubon, at its sole expense, shall promptly comply with all Environmental Laws relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of Hazardous Materials either

- (i) in, on, around or under the Building if resulting from a Release caused by the act or omission of Audubon or any of its employees, agents, contractors, licensees or invitees.
- (ii) in, on or under any other part of the Building or any adjacent property or area within Seward Park if resulting from a Release caused by the act or omission of Audubon or any of its employees, agents, contractors, licensees or invitees.

C. City's Rights.

After notice to Audubon and a reasonable opportunity for Audubon to effect such compliance as identified in Article XIV.B, the City may, but is not obligated to, enter the Premises or Building and take such actions and incur such costs and expenses to comply with any Environmental Laws regarding Hazardous Material as the City deems advisable to protect its interests, *provided*, however, that the City shall not be obligated to give Audubon notice and an opportunity to effect such compliance if (i) such delay might result in material harm, (ii) Audubon has actual knowledge of the situation and has had a reasonable opportunity to effect such compliance, or (iii) an emergency exists. Whether or not Audubon has actual knowledge of the presence or Release of a Hazardous Material, Audubon shall reimburse the City on demand for the full amount of all costs and expenses incurred by the City in connection with compliance activities, and such obligation shall continue even after the termination of this Use Agreement.

D. Audubon's Duty to Notify; Response to Release.

Audubon shall notify the City immediately of the presence or Release of any Hazardous Material (other than Hazardous Material permitted under this Article that are stored, used, handled and disposed of in compliance herewith) and shall take timely and appropriate steps to protect persons and property from, and remedy the effects of, any such Hazardous Material, which steps shall include immediate action in the case of any Release of a Hazardous Material.

E. Removal Upon Surrender.

Upon surrender of the Premises to the City, whether upon expiration or earlier termination of this Use Agreement, Audubon shall remove and properly dispose of any Hazardous Material brought into the Building or the Premises at any time during Audubon's occupancy of the Premises, or introduced onto any part of the Building or Premises, or Released on or under the Building or Premises by Audubon or any of its employees, agents, contractors, licensees or invitees.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

F. Audubon's Environmental Indemnity.

If Audubon breaches any of its obligations contained in this Article, or, if any act, omission or negligence of Audubon or any of its agents or invitees results in any contamination of the Building, Premises or any other part of the adjacent property or area in Seward Park or in the Release of Hazardous Material from, on, about, in, on or beneath the Premises, then Audubon shall indemnify the City from and against all losses (including, without limitation, the loss or restriction of the use of the Premises or adjacent property and sums paid in settlement of claims, fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Use Agreement and relating to such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Building or adjacent property or area in Seward Park to its prior condition. Without limiting the foregoing, if Audubon or any of its agents or invitees causes or permits the Release of any Hazardous Materials on, about, in or beneath the Premises or adjacent property, Audubon shall immediately, at no expense to the City, take any and all necessary actions to abate and remediate the Release in accordance with all Environmental Laws. Audubon shall afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material. This indemnity provision shall survive termination or expiration of this Use Agreement.

G. City's Environmental Indemnity.

If any act, omission or negligence of the City or any of its agents (other than Audubon) results or has resulted in any contamination of the Premises or adjacent property or in the Release of Hazardous Material from, on, in, on or beneath the Premises or adjacent property, then the City shall indemnify Audubon from and against all losses (including, without limitation, the loss or restriction of the use of the Premises or the Building and sums paid in fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Use Agreement and resulting from such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Premises to its prior condition. The City's indemnity under this Article shall include, without limitation, any contamination of the Premises or adjacent property that results from activities occurring or causes originating prior to the initial term of this Use Agreement; provided that the City shall not be required to indemnify Audubon for any contamination that is the result of any act, omission or negligence of Audubon or any of its agents. This indemnification shall survive the termination or expiration of this Use Agreement.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

XV. COMPLIANCE WITH LAWS

A. General Requirement.

Audubon, at its sole cost and expense, shall comply with all applicable laws and regulations, rules and orders of the United States, the State of Washington and the City of Seattle that may from time to time be put into effect relating to, controlling or limiting Audubon's use and operation of the Premises.

B. Licenses and Similar Authorizations.

Audubon, at its sole cost and expense, shall secure and maintain in full force and effect during the Term of this Use Agreement, all licenses, permits, and similar legal authorizations required for its use of the Premises, and comply with all requirements thereof.

C. Nondiscrimination and Affirmative Action.

Audubon shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including the Seattle Municipal Code ("SMC"), notably SMC Ch. 20.44, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

D. Americans with Disabilities Act.

Audubon acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Audubon further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Audubon warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Use Agreement.

XVI. LIENS

If, because of any act or omission of Audubon, any mechanic or other lien or order for payment of money shall be filed against the Building or the Premises, Audubon shall at its sole expense cause the same to be discharged or bonded within thirty (30) days after the date of such filing.

XVII. LIABILITY AND INSURANCE.

A. Audubon's Indemnity.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Audubon shall protect, defend, indemnify and hold the City harmless from and against any and all claims (including, but not limited to employee claims) and from any costs, reasonable attorneys' fees, expenses and liabilities incurred in connection with such claim, arising from Audubon's use of the Premises, the Building or Seward Park (including any use of the Building, Premises or Park by Audubon's agents, contractors or employees) or the conduct of its business, and shall further protect, defend, indemnify and hold the City harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Audubon's part to be performed under the terms of this Use Agreement. Audubon, upon notice from the City, shall defend the same at Audubon's expense. Notwithstanding the foregoing, if RCW 4.24.115 (or any successor provision) applies, this indemnity shall apply only to the extent of Audubon's negligence or that of its agents, servants or employees.

Solely with respect to claims for indemnification under this Use Agreement, Audubon waives its immunity under Title 51 RCW, the Industrial Insurance Act, or any other employee benefit act. This indemnification provision is the result of mutual negotiation and shall survive the termination of this Agreement.

B. City's Indemnity

The City shall protect, defend, indemnify and hold Audubon harmless from and against any and all claims (including, but not limited to employee claims) and from any costs, reasonable attorneys' fees, expenses and liabilities incurred in connection with such claim, arising from the City's negligent use of the Premises, the Building, the Hatchery, or Seward Park (including any use of the Building, Premises, Hatchery, or Seward Park by the City's agents, contractors or employees) or the conduct of its business therein, and shall further protect, defend, indemnify and hold Audubon harmless from and against any and all claims arising from any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Use Agreement. The City, upon notice from Audubon, shall defend the same at the City's expense. Notwithstanding the foregoing, if RCW 4.24.115 (or any successor provision) applies, this indemnity shall apply only to the extent of the City's negligence or that of its agents, servants or employees.

Solely with respect to claims for indemnification under this Use Agreement, the City waives its immunity under Title 51 RCW, the Industrial Insurance Act, or any other employee benefit act. This indemnification provision is the result of mutual negotiation and shall survive the termination of this Agreement.

C. Insurance.

- (i) Audubon shall, at all times during the term of this Use Agreement, obtain and maintain continuously, at its own expense, insurance as described in Exhibit iii, and shall file with the Superintendent and the City's



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Department of Risk Management, evidence of a policy or policies of insurance as enumerated therein.

- (ii) The City shall cause its Master Use Policy to extend to the Building. The parties understand that the standard deductible for such insurance is \$500,000.00; however, the parties hereby agree to equally share the costs for reducing the deductible to \$50,000.

XVIII. DAMAGE OR DESTRUCTION

A. If there is any material damage or destruction to the Building or the Hatchery Program areas resulting from the fault of either party, then the responsible party shall be solely responsible for any necessary repairs or replacements.

B. Damage; Extent of Obligation to Restore. If there is any material damage or destruction to the Building (for purposes of this Use Agreement, material damage or destruction shall mean damage or destruction resulting from no fault of either party to this Use and Occupancy Agreement which costs \$50,000 or more to repair or replace), then if the City decides not to repair or replace the damaged portion of the Building and the Premises thereby become unusable, either party shall have the option, upon written notice to the other, which option shall be exercised within thirty (30) days of the date of such damage or destruction, to terminate this Use Agreement; provided that, if applicable insurance proceeds (including the City's payment of any deductible as described in Article XVII(C) above) are or would have been sufficient to pay the cost of reconstruction or restoration, the insured party shall reconstruct or restore the damage within two (2) years of the destruction. If the Use Agreement is not terminated, it shall continue in full force and effect and the City shall proceed as promptly as is practicable to restore the Building to an architectural unit as nearly comparable in form, fit and function as is reasonable to the unit existing just prior to such damage. If either party elects to terminate the Use Agreement, such notice of termination shall specify the date for termination, which date shall not be more than thirty (30) days after the giving of such notice, and upon the date so specified the Term of this Use Agreement shall expire as fully and completely as if such date were the date hereinabove set forth for the end of the Term of this Use Agreement and Audubon shall thereupon vacate the Premises, without prejudice to any rights and remedies accrued to the City under this Use Agreement prior to such termination. Any rent paid or payable by Audubon shall be adjusted as of the date of such termination. Should the City elect to rebuild and be delayed or prevented from completing the repairs or restoration of the damage to the Building after the occurrence of such damage or destruction by reason of force majeure, the time for the City to commence or complete repairs shall be extended for the period of force majeure. In the event of repair, reconstruction and restoration as herein provided, the Annual Rent provided to be paid under this Use Agreement shall be abated proportionately based upon the extent to which Audubon's use of the Premises is impaired during the period of such repair, reconstruction or restoration.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



C. If there is any minor damage or destruction to the Building (for purposes of this Use Agreement, minor damage or destruction shall mean damage or destruction which costs less than \$50,000 to repair or replace and is from no fault of either party), then the City shall proceed as promptly as is practicable to restore the Building to as nearly comparable form, fit and function as is reasonable to the unit existing just prior to such damage.

Each party shall be solely responsible for the repair of any damage or destruction (other than normal wear and tear) caused by that party. For purposes of this Article XVIII, damage or destruction caused by public use of the Building, including the Building Common Areas, shall be attributable to the City; provided that, Audubon shall have the obligation to mitigate such damage to the extent possible.

D. No Obligation to Restore Personal Property.

If the City is required or elects to restore the Building or such portion thereof which has been destroyed as provided in this Article XVIII, the City shall not be required to restore Audubon's personal property, machinery, furniture or equipment, such excluded items being Audubon's sole responsibility to restore. Audubon shall not be entitled to any compensation or damages from the City for the loss of the use of the whole or any part of the Premises, its tenant improvements, alterations, modifications or additions made to the Premises or Audubon's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration, except as may be otherwise provided in Article XVIII A, above.

E. Damage Near End of Term.

Notwithstanding anything to the contrary contained in this Article XVIII, the City shall not have any obligation whatsoever to repair, reconstruct or restore the Premises (a) when the damage occurs during the last twelve (12) months of the Term, (b) to the extent that insurance proceeds are not available therefore, or (c) to the extent the City is unable to obtain necessary permits for the construction thereof.

XIX. CITY'S CONTROL OF BUILDING AND VICINITY

All common and other facilities provided by the City, except for the Building Common Areas, including parking areas, are subject to the exclusive control and management by the City. Accordingly, the City may 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; provided that, the City shall not act in a manner that would unreasonably interfere or displace Audubon's operations at Seward Park :

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



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- (ii) Traffic Regulation. Regulate all traffic within and adjacent to the Building, including the operation and parking of Audubon's vehicles and those of its invitees, employees, and patrons;
- (iii) Display of Promotional Materials. Erect, display and remove promotional exhibits and materials and permit special events on or adjacent to the Building;
- (iv) Promulgation of Rules. Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any City property including but not limited to the Building; and
- (v) Change of Businesses. Change the size, number, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken in the vicinity of the Building.

XX. DEFAULT; TERMINATION; REMEDIES

A. Default; Cure Periods.

The occurrence of any of the following shall constitute a material default and breach of this Use Agreement by Audubon:

- (i) Audubon's failure to pay Annual Rent or any other monetary sums required to be paid hereunder within ten (10) days after notice;
- (ii) Audubon's abandonment or vacation of the Premises for a period of sixty (60) days unless such vacation has been required by the City pursuant to the terms of this Agreement;
- (iii) Audubon's failure to observe or perform any material covenant, condition or provision of this Use Agreement not already specifically mentioned in this Article XX, where such failure continues for thirty (30) days after written notice thereof from the City to Audubon; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, Audubon shall not be deemed to be in default if Audubon shall within such period commence such cure and thereafter diligently prosecute the same to completion; or
- (iv) a material breach of the Development Agreement.

B. City Default.

The City's failure to observe or perform any material covenant, condition or provision of this Use Agreement or the Development Agreement, where such failure continues for thirty (30) days after written notice thereof from Audubon to the City shall be a default;

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, the City shall not be deemed to be in default if the City shall within such period commence such cure and thereafter diligently prosecute the same to completion.

C. Remedies.

If a default occurs, the party not in default may terminate this Use Agreement, or any extension of it, by giving written notice thereof to the party in default at least ninety (90) days prior to the effective date of termination. Upon the expiration of the date and time fixed in the notice of termination, Audubon shall immediately surrender the Premises and all improvements thereon, to the City.

D. Remedies Cumulative.

The remedies under this Article XX are in addition to, and not in limitation of, any other remedies available to the City or Audubon in law or equity.

XXI. TERMINATION

A. Termination for Bona Fide Public Purpose.

In addition to any other provision contained herein, the City may terminate this Use Agreement at any time, in whole or in part, by written notice, for a bona fide public purpose as determined by the Seattle City Council; provided that, in such event, the City shall be obligated to repay Audubon for the unamortized value of Audubon's initial investment in the development and construction of the Building or the portion thereof as to which this Use Agreement has been terminated, pursuant to the Project Budget in Exhibit iii of the Development Agreement, as depreciated, and less any amount previously credited as an offset toward the Adjusted Fixed Rent.

B. Voluntary Termination by Audubon. In the event that Audubon is no longer able to carry out the purposes of this Use Agreement because of (a) corporate incapacity, (b) lack of funds to maintain and operate the Building, (c) inability to obtain the necessary permits and licenses from applicable governmental authorities, or (d) the discovery of Hazardous Materials on the Premises that predate the Commencement Date, then Audubon shall have the right to terminate this Lease upon one hundred twenty (120) days written notice to DPR. If Audubon shall terminate this Lease as provided above, then Audubon shall surrender the Premises pursuant to the City consistent with Article XXIII (Surrender) hereof and shall not look to the City for financial compensation except as may be provided by Article XIV. G.

XXII. SUBLEASES AND ASSIGNMENTS



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Audubon shall not sublease, transfer, assign, mortgage, hypothecate or convey this Use Agreement or any interest therein, in whole or in part without the Superintendent's Approval which Approval may be granted, withheld, or conditioned in each instance in the Superintendent's sole discretion. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. Any assignee Approved by the Superintendent must accept and assume in writing all the terms and conditions of this Use Agreement to be kept and performed by Audubon. Any transfer of this Use Agreement from Audubon by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment for purposes of this Use Agreement. The Superintendent's 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 Building or the Premises by, under, or through Audubon.

XXIII. SURRENDER

A. Audubon's Obligations.

Subject to the terms of Article XVIII relating to damage and destruction, upon expiration or earlier termination of the Term of this Use Agreement whether by lapse of time or otherwise (including any holdover period), Audubon, at its expense, shall: (a) deliver to the City all keys to the Building, the Premises or any Personal Property that the City has agreed may remain in or on the Premises or accessory thereto; (b) except as otherwise agreed by the parties, remove all of Audubon's moveable Personal Property, goods and effects and those of all persons claiming under Audubon from the Premises; (c) remove all telecommunications and computer network wiring and cabling, to the extent required by the City, (d) remove all signs, symbols, advertising and printed material, and (e) promptly and peacefully surrender the Premises (including surrender of all Audubon improvements and other attached equipment and/or other alterations, additions or improvements installed in the Premises by the City or Audubon) in a reasonably clean condition together with all Approved alterations, changes and additions thereto, in good repair, good order and safe condition. Any property left on the Premises more than thirty (30) days after the expiration or termination of the Use Agreement Term shall be deemed to have been abandoned and to have become the property of the City to dispose of as the City deems expedient and Audubon shall be liable for all costs associated with the disposal of such property.

Audubon agrees to repair any damage to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, signs or advertising, machinery, equipment, furniture or movable partitions including, without limitation thereto, repairing the floor and patching and painting the walls where required by the City to the City's reasonable satisfaction all at Audubon's sole cost and expense. Audubon shall indemnify the City against any loss or liability resulting from delay by Audubon in so surrendering the Premises, including, without limitation, any claims made by any tenant succeeding Audubon based on such delay.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

B. Re-entry by City.

If the Premises are vacated or abandoned by Audubon, or in the event of the termination of this Use Agreement under any provision hereof, the City may re-enter the Premises in such manner as the City deems necessary in its sole discretion, and the City may repossess the Premises by force, summary proceedings or by any other procedure provided by law or equity. Audubon hereby waives all claims for damages that may be caused by the City re-entering and taking possession of the Premises or removing and storing Audubon's property as herein provided, and Audubon shall indemnify and hold the City harmless therefrom. No such reentry shall be considered or construed to be a forcible entry.

C. Survival of Liabilities.

Any liability of Audubon or the City hereunder for negligent or intentional acts or omissions occurring during the Term of this Use Agreement, or arising under the indemnity provisions of this Use Agreement, shall survive termination and surrender (whether or not any claim giving rise to such liability shall have accrued).

XXIV. QUIET ENJOYMENT

The City covenants that, subject to the express provisions of this Use Agreement, if and so long as Audubon pays the Annual Rent and other charges required by this Use Agreement, and performs all of its obligations pursuant to the terms, covenants and conditions of this Use Agreement, Audubon shall quietly enjoy the Premises.

XXV. DISPUTES

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations between the Seward Park Audubon Center Director and the DPR Director of Recreation and Support Division. If those negotiations are unsuccessful, the matter shall be referred to the Senior Vice President of Audubon Centers and the DPR Superintendent. If the parties cannot resolve any dispute arising under this Use Agreement, either party may submit the matter to a non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution ("ADR") procedures. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent ADR or legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available.

XXVI. CITY'S APPROVAL OR CONSENT



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

A. Consent Expressly for Use Agreement Purposes: Discretion of City.

Whenever the City's Approval is required under this Use Agreement (a) Audubon must obtain such Approval expressly for purposes of this Use Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such Approval may be withheld in the City's reasonable discretion.

B. Consents Hereunder Not for Regulatory Purposes.

Any permission, consent, or Approval of the City contained herein or given pursuant to this Use Agreement is or shall be granted solely in the City's capacity of lessor of the Premises, and not in its regulatory or public utility capacity. No such consent or Approval shall be construed as any representation or assurance that the matter consented to or Approved complies with applicable laws, regulations, ordinances or Codes, nor shall any such consent or Approval be construed to authorize any failure to comply with any of the foregoing.

XXVII. SUCCESSORS AND ASSIGNS

The terms, covenants and conditions contained in the Use Agreement and in the Exhibits annexed thereto shall bind Audubon and its successors, assigns, and sublessees, and shall inure to the benefit of City and its successors and assigns.

XXVIII. NOTICE

A. Addresses.

Any notice called for in this Use Agreement shall be in writing and shall be hand-delivered to the respective parties at the addresses below, or deposited in the United States mail, postage prepaid, addressed as follows:

If to City: Department of Parks and Recreation
Administrator
Contract and Business Resources
P.O. Box 3036
Seattle, WA 98114

With a copy to: Director of Recreation and Support Division
Department of Parks and Recreation
100 Dexter Building
Seattle, WA 98109

If to Audubon: : Executive Director
Audubon Washington



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

P.O. Box 462
Olympia, WA 98057

With a copy to: General Counsel
National Audubon Society, Inc.
700 Broadway
New York, New York 10003

B. Effectiveness of Notice.

Notices shall be deemed to have been received by the parties two (2) working days after mailing or upon actual delivery or receipt by facsimile during normal business hours, whichever first occurs. The parties, by notice given may designate any further or different addresses to which some or all notices, certificates or other communications shall be sent.

XXIX. TERMINOLOGY

A. Headings.

The headings of the various Articles of this Use Agreement have been inserted for convenience only and shall not be construed as modifying, amending or affecting the express terms and provisions herein.

B. Gender and Number.

Words of any gender used in this Use Agreement shall be held to include any other gender and words in singular numbers shall be held to include the plural when the context so requires.

XXX. SEVERABILITY

If any provision of this Use Agreement, or its application to particular circumstances, is held invalid, this Use Agreement shall be construed as if the invalid part were never included or were expressly made inapplicable to such circumstances, as the case may be, and this Use Agreement shall remain valid and in force to the fullest extent permitted by law.

XXXI. APPLICABLE LAW

This Use Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any legal action under this Use Agreement shall be King County Superior Court.

XXXII. NEGOTIATED AGREEMENT; MERGER

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



The parties to this Use Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Use Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Use Agreement are not to be construed against any party on the basis of such party's draftmanship thereof.

This Use Agreement, and the terms and provisions herein, contain the entire agreement and understanding between the parties with respect to the leasing of the Premises. Any other negotiations, agreements, or understandings with respect to the leasing of the Premises are hereby expressly merged and assumed within the terms and provisions of this Use Agreement. No negotiations, communications, agreements or understanding with respect to the Use Agreement shall have any effect in the construction, application or enforcement of this Use Agreement.

XXXIII. AUDITS AND RECORDS

A. Program Audit Report.

Audubon will furnish to City a written program audit report, performed by Audubon staff. If so required by the City after any breach or default by Audubon hereunder (whether or not such breach or default shall have been cured), the program audit shall be performed by a qualified independent consultant. The program audits will be provided to the City annually, within 30 days after the end of each calendar year, unless otherwise Approved by the City. If any annual audit report indicates noncompliance with the provisions of this Use Agreement or if the Superintendent reasonably believes that problems exist, the City may, by written notice to Audubon, require that semiannual audit reports be provided. Program audits shall include but not be limited to: compliance with contract terms; maintenance of records; program delivery; property maintenance; liaison with community and outreach efforts, program fees; value of fee discounts and scholarships, finances; and any other topic agreed between the City and Audubon to be a proper component of a program audit. At the Superintendent's request, the Audubon Center Director shall meet with a DPR representative within sixty (60) days of submission of the annual Audit report for the purpose of evaluating Audubon's programmatic performance under this Agreement. To the extent practicable, Audubon shall incorporate all reasonable suggestions made by the DPR representative into its programs.

B. Records.

In addition to the foregoing, the City shall have the right, at the City's cost and expense, to perform, or to commission a consultant to perform, audits or reviews of Audubon's activities at Seward Park at any time. Audubon shall prepare and maintain in good order, accurate and up-to-date records demonstrating compliance with the terms of this Use Agreement and documenting the operation of the Premises, and shall make all such records available for inspection and copying promptly upon the City's request; provided, that, Audubon reserves the right to redact information related to private fundraising



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

activities and private donor information. The provisions of this Article and the rights of the City hereunder shall be included in any Approved sublease.

XXXIII. Non-Liability of Officials, Employees and Agents.

No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to Audubon, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Audubon, its successors and assigns under this Use Agreement, or for any obligation of the City under this Use Agreement. Likewise, no board member, member, officer, employee or other agent of Audubon shall be personally liable to the City, its successors and assigns under this Use Agreement, in the event of any default or breach by Audubon or for any amount which may become due to the City, its successors and assigns, or for any obligation of Audubon under this Use Agreement.

XXXIV. Counterparts.

This Use Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Signed:

THE CITY OF SEATTLE

NATIONAL AUDUBON SOCIETY, INC.

By: _____
Signature
Kenneth Bounds
Superintendent, Department of Parks
and Recreation of The City of Seattle

By: _____
Signature
Print Name: _____

Date: _____

Date: _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



CITY ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this ____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared KENNETH BOUNDS, to me known to be the Superintendent of the Department of Parks and Recreation of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____
Print Name: _____

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of National Audubon Society, Inc., a New York nonprofit corporation, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____
Print Name: _____



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

List of Exhibits:

- i. Legal Description of Seward Park
- ii. Map of Seward Park
- iii. Insurance Requirements
- iv. DPR's Key Control Policy
- v. DPR's Cleaner Facilities Inspection Guide
- vi. Form of Amendment

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



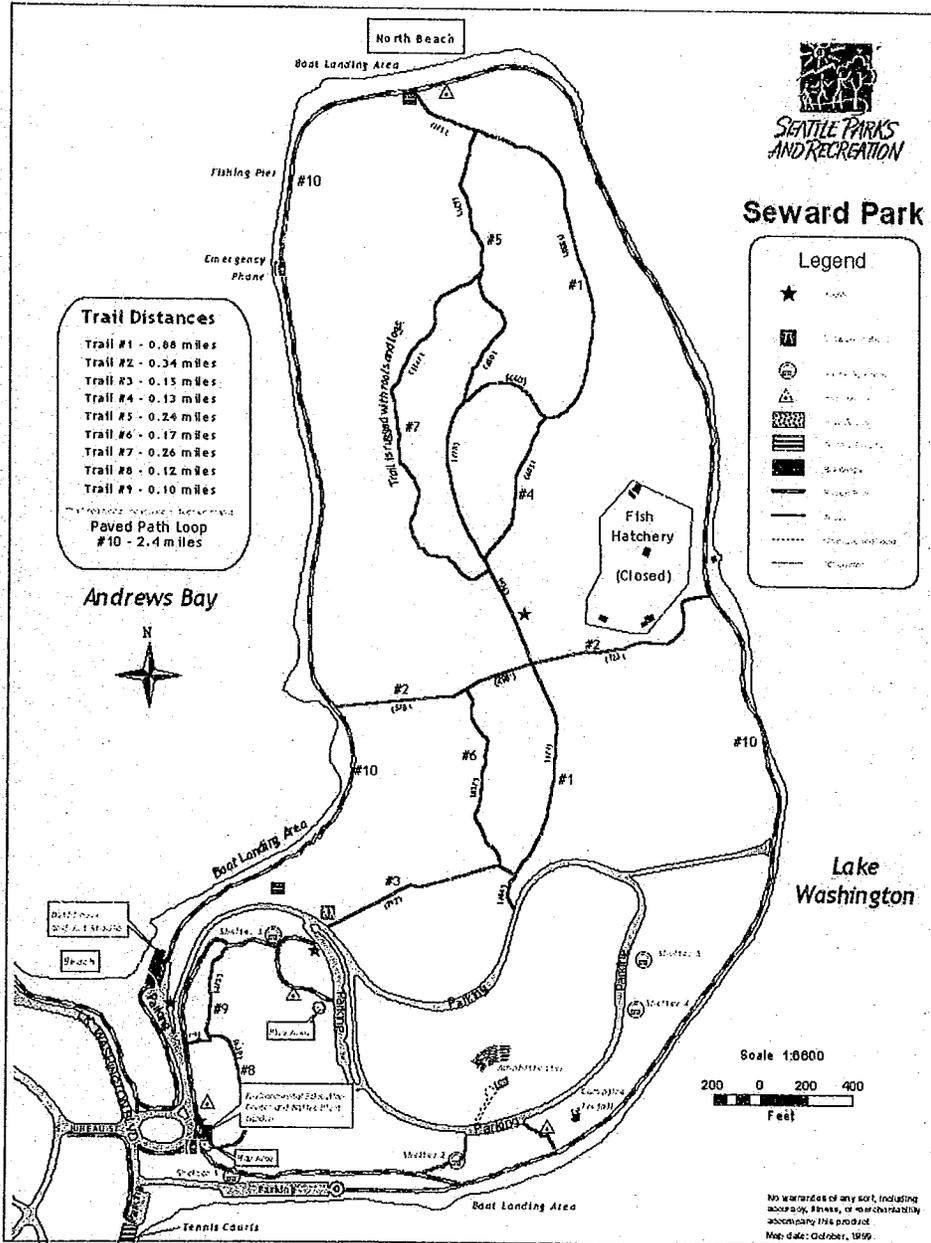
EXHIBIT i
LEGAL DESCRIPTION OF SEWARD PARK

GOVERNMENT LOT 3 IN SECTION 14;; GOVERNMENT LOTS 1, 2, AND 3 IN SECTION 23; TRACTS 23, 24 AND 25 OF B. W. JOHN'S AND C. H. HANFORD'S 5 ACRE TRACTS, TOGETHER WITH THAT PORTION OF GOVERNMENT LOT 5 LYING SOUTHERLY OF THE SOUTH LINE OF SAID TRACT 23 IN SECTION 23; GOVERNMENTS LOTS 1, 2, AND 3 IN SECTION 24; ALL IN TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., TOGETHER WITH ALL ABUTTING LAKE WASHINGTON SHORELANDS AND INCLUDING ALL BOULEVARDS, STREETS, AND ALLEYS LYING WITHIN THE AFOREDESCRIBED LOTS, TRACTS, AND SHORELANDS.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



EXHIBIT ii
MAP OF SEWARD PARK



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



EXHIBIT iii

Insurance Requirements

(1) Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01) or equivalent, including all the usual coverages known as:

- Premises/Operations Liability
- Products/Completed Operations
- Personal/Advertising Injury, to include
 - Sexual Molestation
 - Discrimination
 - Sexual Harassment
- Contractual Liability
- Independent Contractors Liability
- Stop Gap or Employers Contingent Liability
- Explosion, Collapse, or Underground (XCU), (as applicable)*
- Liquor Liability/Host Liquor Liability (as applicable)*
- Fire Damage Legal
- Per Location Aggregate CG2504

*These coverages are required only when the operations on the Premises may include exposures to which these specified coverages respond.

Such policy(ies) must provide the following minimum limits:

Bodily Injury and Property Damage -
\$ 1,000,000 General Aggregate
\$ 1,000,000 Products & Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence
\$ 100,000 Fire Damage

Stop Gap Employers Liability
\$ 1,000,000 Each Accident
\$ 1,000,000 Disease - Policy Limit
\$ 1,000,000 Disease - Each Employee

There shall be no deductible or self-insured retention except as expressly Approved in writing by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be Audubon's responsibility.

(2) Business Automobile Liability, including coverage for owned, non-owned, Leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -
\$ 1,000,000 per accident

The insurance required under items (1), above, shall be endorsed to include The City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insureds, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City's Risk Manager, except for cases of nonpayment of premiums, in which case notice shall be ten (10) days. In addition, Audubon's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with Audubon's insurance.

(3) Workers' Compensation in accordance with the provisions of Title 51 of the Revised Code of Washington. If Audubon is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Audubon shall so certify by a letter signed by a corporate officer and setting forth the limits of any policy of excess insurance covering its employees.

(4) Property Insurance for the Premises and for Audubon's personal property, for their full replacement value, with the City named as an additional insured, and covering the following hazards:

- (a) loss or damage by fire and such other risks as the City shall require (including earthquake and flood damage);
- (b) loss or damage from leakage or sprinkler systems now or hereafter installed in any Building;
- (c) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed in the Building.
- (d) Business Interruption with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of Audubon's business because of fire or other cause.

City and Audubon waive all subrogation rights against each other for damages caused by fire or other perils to the extent covered by property insurance obtained hereunder or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by any person as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity had an insured interest in the property damaged.

(5) Evidence of Insurance

The following documents must be provided as evidence of insurance coverage prior to the



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

commencement date of this Use Agreement and, with respect to any renewal or substitute policy, promptly upon issuance thereof, but in any event no later than ten (10) days before the expiration or termination of any previous policy:

- (a) A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
- (b) A copy of the endorsement naming The City of Seattle as an additional insured, showing the policy number, and signed by an authorized representative of the insurance company on a form CG2026 (ISO), or such other form as the City's Risk Manager may require or deem acceptable.
- (c) A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including full copies of any company-specific or manuscript endorsements.
- (d) A copy of an endorsement stating that the coverages provided by the policy to City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City, (except for cases of nonpayment of premiums).
- (e) A copy of a "Separation of Insureds" or "Severability of Interests" clause, indicating, essentially, that except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (for Commercial General Liability and Business Automobile Liability Insurance).

In addition, within five (5) days of any request by City, Audubon shall provide full copies of all insurance policies, together with all amendments and endorsements and proof of premiums paid.

(6) Approval of Risk Manager; Adjustments

All policies shall be subject to Approval by the City's Risk Manager as to company (must be issued by a company rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and shall be primary to all other insurance. If the City determine that the required limits set forth above are not reasonably adequate for any reason, including without limitation inflation or changes in the nature or scope of activities on the Premises, then Audubon shall procure such increases in policy limits as the City shall require, within sixty (60) days of written notice from City.

(7) Definitions

Capitalized terms used in this Exhibit and not otherwise defined in this Use Agreement shall have the meanings commonly ascribed to such terms in the insurance industry.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



(8) Assumption of Risk. The placement and storage of personal property in the Premises shall be the responsibility, and at the sole risk, of Audubon.

(9) Adjustments of Claims. Audubon shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of Audubon's activities of under this Use Agreement.

(10) Compliance by Audubon. Audubon shall not violate or permit to be violated any of the conditions or provisions of any insurance policies affecting the Building or the Premises.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT



EXHIBIT iv
DPR KEY CONTROL POLICY



Department Policy & Procedure

City of Seattle

Subject: Key Control	Number 060-P 2.7.1	
	Effective July 1, 1999	
	Supersedes September 20, 1993	
Approved:	Department: Parks and Recreation	Page 1 of 13

1.0 PURPOSE

1.0 To provide for the security of Department employees, facilities and equipment by managing the Key and Lock Control System.

2.0 ORGANIZATIONS AFFECTED

- 2.1 Department of Parks and Recreation
- 2.2 Seattle School District

3.0 REFERENCES None

4.0 POLICY

- 4.1 The Security Program Specialist, in coordination with the FMDD Customer Support Manager, Customer Support Administrative Staff and Carpenter Shop personnel shall manage the key and lock control system. Facility staff shall be managed by facility managers and the Security Program Specialist shall manage the policy to protect the integrity of the Park Department Key and Lock Control System.
- 4.2 Keys to Department-owned or operated facilities are issued to Department employees as needed in their jobs.
- 4.3 First line supervisors are responsible for all keys issued to their employees.
- 4.4 Key holders are responsible for the keys issued to them and are forbidden to loan or give their Department-issued keys to anyone else.
- 4.5 Outside duplication of Department keys is not allowed.
- 4.6 Non-employees are issued operational key(s) only with the express permission of the appropriate program facility manager, and their Section Manager. The Security Program Specialist retains the right to review each request for appropriateness.
 - 4.6.1 Non-employees will be required to make a cash deposit before being issued keys, except as in paragraph 7.3.4



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 4.6.2 Non-employees will normally not be reissued keys after having lost keys.
- 4.6.3 Associated Recreation Council (ARC), Woodland Park Zoological Society and Aquarium Society employees will be treated the same as Department employees when issuing keys and for other provisions of this policy and procedure.
- 4.7 A responsible individual will sign for each key issued. A supervisor (or designee) may sign as the recipient for line staff. Certain keys, such as for toilet paper holders, towel dispensers, etc. will not be part of Key Control.
- 4.8 Because of the value of the stock of certain non-Department tenants of Department facilities, such tenants will use their own lock cores and issue their own keys (e.g., Seattle Art Museum, Museum of History and Industry, Golf Pro Shops) except for roadway gates and bollards which require Police, Fire, and Parks Department access. Concessionaires will supply locks and keys in accordance with the conditions of their contracts with the Department.
- 4.9 Supervisors may not permanently retain, reissue or otherwise change assignment of employees' keys except through the Key Control Policy. Any transfer of keys from one individual to another will not be done within the organization unit but will be accomplished by turning the keys in to the Key Control Office.
- 4.10 Locks will not be changed or re-cored without the written Approval of the Security Program Specialist.
- 4.10.1 Program facility managers will submit re-coring requests in writing to the Security Program Specialist, clearly stating the reason(s) for the request.
- 4.10.2 The Security Program Specialist will evaluate the recoring request. A key audit is required unless waived by Security.
- 4.10.3 If the recoring request is Approved, a job order will be called into the Consolidated Work Order System (CWOS) for the Carpenter Shop, (who shall be responsible for keying of cores and changing the cores in buildings. They will decide which cores are appropriate for a given need and then submit a recoring plan to the Security Program Specialist for Approval).
- 4.10.4 The Carpenter Shop will not change key cores or issue keys without an Approved work order except in an emergency with the Approval of the Security Program Specialist or Parks Duty Officer, as appropriate.
- 4.10.5 Written notification of recoring shall be done by the Security Program Specialist and new keys will be provided by the Key Control Office.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



- 4.10.6 Zoo management will be able to recore without obtaining prior permission, but Zoo staff will send a record of permanent recoring of facilities to the Security Program Specialist (who will forward it to the CWOS Administrative Specialists for entry into the Key control Data Base).
- 4.11 Forced entry (entry without the proper key) may be authorized only in emergencies and in consultation of the Security Program Specialist or Park Duty Officer, as appropriate. (See paragraph 7.6)

5.0 DEFINITIONS

- 5.1 The Key and Lock Control System is defined as the keys and door cores that secure buildings and equipment. Vehicle, desk, cash register, toilet paper holders, paper towel dispensers, and other minor work-related keys are not within the scope of this system and their issuance, use and disposition are exempt from the provisions of the Key Control Policy.
- 5.2 As delegated by the Customer Support Manager, a trained member(s) of the Facilities Maintenance Customer Support/Jobline staff shall be designated Key Control Officer and assigned the duties of issuing keys and keeping key and lock related records. The Key Control Office shall maintain Sonitrol records, issue and delete Sonitrol numbers, and maintain the Parks Duty Officer (PDO) schedule and perform other related duties as assigned. The Customer Support Manager shall assign members of the Customer Support Services staff to backfill and "cover" the Key Control Officer position as appropriate.

6.0 RESPONSIBILITY

- 6.1 First Line Supervisors - It shall be the responsibility of first line supervisors to identify the key needs of their personnel, to requisition appropriate keys promptly for those personnel, to instruct the employees in proper key safeguard methods during orientation and to ensure the prompt return of keys by individuals leaving the Department. Each supervisor signing Separation Report Forms must ensure the keys have been turned in to the Key Control Office BEFORE he or she signs and processes the form.
 - 6.1.1 A responsible supervisor may sign as the recipient for the employee (e.g. John Doe, supervisor for Jane Smith).
 - 6.1.2 Each supervisor shall instruct his/her subordinates in key control procedures during new employee orientation and thereafter annually.
 - 6.1.3 As a regular part of the annual employee evaluation process, it is recommended that the supervisor perform, a key audit. This consists of writing out a list of keys carried by the employee. Return this list and any keys no longer needed to the Key Control Office. Each supervisor may also audit keys of employees as needed, or as requested by the Security Program Specialist.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

- 6.1.4 Each supervisor shall promptly report all losses of keys by persons in his/her organization. The supervisors shall make a phone report to the Security Program Specialist within the first three hours of the next working day, and written follow-up reports to the Division Director, with copies to the Security Program Specialist and Key Control Office, within a week.
- 6.1.5 Each supervisor is responsible for the key security performance of his/her employees.
- 6.1.6 Persons returning keys shall verify that keys have been signed off/on the key control signature card each time keys are returned to the Key Control Office. An employee is responsible for his or her keys until they are returned and signed off.
- 6.1.7 It is the responsibility of the first line supervisor to return keys when they are no longer needed. If an employee transfers to a different work unit, the outgoing supervisor is responsible for collecting and returning the employee's keys. The new supervisor is responsible for obtaining and issuing the appropriate keys to the transferred employee.
- 6.1.7.1 Punitive action may be taken if 6.1.7 is not complied with (see 7.5).
- 6.2 Security Program Specialist - The Security Program Specialist shall (via appropriate staff):
- 6.2.1 Maintain key assignment cards for all individuals holding Department and joint use public school keys, and shall require a signature for each key issued. Upon return of each key, the Key Control Office shall sign and write "returned" on the card.
- 6.2.2 Maintain a cross file for each key designation, listing persons having corresponding keys.
- 6.2.3 Maintain an up-to-date file of lost keys and of the names of individuals and the organizations which they represent who have been careless with keys or have lost keys.
- 6.2.4 Maintain a list of door core assignments.
- 6.2.5 Issue only authorized keys that are the lowest security key required to do the job.
- 6.2.6 Maintain a date "tickler" file indicating when temporary key issues are due to be returned.
- 6.2.7 Ask for key audits on occasion, with or without specific cause.
- 6.2.8 Issue keys only with appropriate authorization, except in emergencies and security related matters.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



- 6.3 Human Resources Unit - The Human Resources Unit shall advise the Key Control Office when personnel are being separated from employment.
- 6.4 The Security Program Specialist is responsible for insuring the integrity of the key and lock policy. He or she also has the authority to coordinate with all Parks Department employees and vendors as necessary to implement this policy. The Security Program Specialist shall be the administrator of the key and lock policy, with the understanding that normal operational functions shall be under the direct supervision of the appropriate manager or crew lead.
- 6.5 Initiators of a Key Request for non-Department persons - A "sponsor" recommending that a key be issued to a non-Parks person shall be responsible for seeing that the issued key is returned promptly at the date the Use Agreement is up, the contract is completed, the sport season is over, or the special event is finished and clean-up is completed. Such a sponsor will normally be the person with the Department function most closely related to the reason for the key issue (e.g., Project Manager sponsors contractor; Grants and Contracts Manager sponsors concessionaire; Community Center Coordinator sponsors Day Care Center programs).

7.0 PROCEDURE

7.1 Issuing Keys to Employees

- 7.1.1 Initiation of request - Employee's supervisor initiates a request for the employee on a Key Requisition Form.
- 7.1.2 Approval routing - The employee sends the request through his or her supervisor and Section Manager, for Approval.
- 7.1.3 The Section Manager sends the request to the Key Control Office for processing. Key control Officer will only forward 'master' key requests and any problematic requests to the Security Program Specialist for review and Approval.
 - 7.1.3.1 The requestor shall be notified when the keys are ready to be picked up. If the key requests are hand-carried, it will be up to the discretion of the Key Control Office when the key can be issued. The Key Control Office shall make every effort to issue keys in a timely manner.
- 7.1.4 The Section Manager can Approve keys within his or her area of supervision. A Director and the Security Program Specialist needs to Approve the Key Request only if the employee has lost keys, a discipline issue is involved, a grand master is being requested, a key is being issued to a non-employee, or is complicated by other factors.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



7.1.5 The Section Manager can limit employees access to facilities under his or her direct supervision.

7.1.6 Key assignment cards- The Key Control Office issues the Approved key(s) in exchange for a signature for each key (one key - one signature). A name card thereby keeps listings of keys held by each person. There shall be a dual record keeping system, (i.e. key assignment cards and a key control database) until paper key assignment cards are replaced by electronic key assignment database. Then a written addendum shall explain the changes in the policy.

7.2 Issuing Keys to Contractors

7.2.1 General - for minor jobs, it is permissible to issue a specific key to the contractor upon Approval of the Project Manager and Supervisor. The Project Manager will initiate the key requisition and route for Approval via the procedure outlined above in 7.1.2.

7.2.2 Major construction - In case of new construction or major building overhaul, the Project Development Section will specify vendor installation of a "contractor's core" and vendor return to the proper Department core, at the contractor's expense.

7.3 Issuing Keys to Non-Employees - Keys are sometimes issued to non-employees when the public benefits significantly from keys being issued to particular individuals. These cases are often associated with children's or other programs operated by a non-profit organization, or by a concession operation on a city-owned facility (Pratt Fine Arts is an example). In justified cases, keys are issued in the following manner:

7.3.1 Initiation of request - The program organization with operational responsibility for the service, or for the facility involved, initiates the request on a Key Requisition Form (B-65). The initiator notes on the form the need or benefits involved and recommends Approval. (See Responsibility section 6.5.)

7.3.2 See 7.1.3

7.3.3 A key deposit of \$50 is required for all non-Department persons, for each key.

7.3.3.1 The appropriate Division Director may waive or reduce the fifty dollar deposit per key only in exceptional cases:

- the key user is under contract to the Department relative to the service that necessitates the key.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



- the key user is doing the Department a service in providing the assistance that necessitates the key.
- A contractor will normally pay the key deposit.

7.3.3.2 The Department encourages key deposits in the form of checks to the "Parks and Recreation Department" rather than cash, but in either case the Key Control officers or appropriate management staff, via chain of supervision, shall issue receipts for the key deposits. A due date will be determined at the time of issue. The deposits are forwarded to the Accounting and Payroll Unit (with names, organizations, addresses, and phone numbers) for placement in a guaranteed deposit fund.

7.3.4 Keys will not be issued to private citizens to restrict the use of or to secure public property. The securing of Parks facilities is the exclusive responsibility of Department employees, Police and Fire Department staff, and specifically hired security personnel. The Department, not being in direct control of the circumstances under which a private citizen may use a key, would set up conditions for misuse and could be negligent and possibly liable.

7.3.5 Key and deposit returns - Upon return of each key from a non-employee, the Key Control Office will take the following actions:

7.3.5.1 Sign an appropriate entry(s) on the signature card.

7.3.5.2 A return receipt will be given, if requested

7.3.5.3 Notify the Accounting Unit that the key(s) has been returned and that the deposit is to be refunded.

7.4 Safeguarding Keys and Restrictive Considerations

7.4.1 Persons having keys are to take conscientious care in the safeguarding of those keys. Keys will normally be kept on the person or in locked cabinets - not in desks, vehicles, or other unsecured places.

7.4.2 Keys are not to be loaned between co-workers except in emergencies, and then not for more than 24 hours. Such loans are only to be made with a specific Approval of line supervisors, within their line responsibility, and upon notification of the Security Program Specialist. If keys are loaned between co-workers, a receipt will be issued to the employee giving up his or her keys.

7.4.3 Keys to the exterior doors of Parks buildings will be provided only to persons working there and who arrive early, leave late, or work weekends.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 7.4.4 Each supervisor will promptly notify the Security Program Specialist in writing of all key procedure violations and lost keys for review by management to determine corrective measures needed, such as recoring locks, changing procedures, and charging for costs incurred. The notification will clearly state the circumstances surrounding the loss of the keys (date, time, approximate location) and whether or not the loss poses a security problem.
- 7.4.5 Employees going on leave-of-absence, or "zero" timesheets, or extended sick leave MUST return all keys to the Key Control Office. (Keys then will be tagged and locked in the key control file for safekeeping.)
- 7.4.6 Any employee may return any keys to the (Key Control Office) for safekeeping while on vacation. Losing keys in activities like skiing or while on vacation will be considered evidence of direct violation of these instructions.
- 7.4.7 Day Care Center employees, SPICE Program employees, and other non-Parks personnel may not pass keys to each other, and instruction and enforcement is a responsibility of appropriate Parks employees with assignments related to the non-Parks function (see 7.3).

7.5 Disciplinary and Corrective Measures

7.5.1 Violations of the provision of this policy and procedure by Department employees will be handled in accordance with the Policy and Procedure on "Coaching and Corrective Action" (060- P 4.4.3).

7.5.1.1 The supervisor or (manager) who can recommend appropriate coaching or corrective action will review key procedure violations.

7.5.1.2 The supervisor or manager will consider the following factors when evaluating a key procedure violation.

- The extent of employee carelessness
- Where and when a key was lost
- The level of security affected
- Whether an employee took sufficient care to safeguard the key(s)
- Whether the violation is a second offense
- The loss of a "grandmaster" or other "master" key (those keys which open more than one facility) will be considered to be a more serious infraction than the loss of other keys.



7.5.1.3 The supervisor or manager must check with the Security Program Specialist to determine the potential effect on the security of the employee's facilities or equipment from the key policy violation.

7.5.1.4 The Security Program Specialist will notify the appropriate Division Director of certain key policy violations:

- The second loss of keys within one year
- Extreme carelessness in safeguarding keys
- Apparent uncorrected key policy violations
- Duplication of Department keys

7.5.1.5 The loss of a "grandmaster" or other "master" key, (those keys that open more than one facility) will be considered to be a more serious infraction of the Policy and Procedure and may be treated as such when discipline is given. The loss of a "master" key may result in suspension, demotion or dismissal depending upon the severity of the loss of security. Security cores J and K series shall be included and considered "masters".

7.5.2 Any non-employee who loses a key(s) will lose his or her key deposit and will also be billed for any necessary or desirable recoring if there is any indication of not having taken conscientious care of the key(s).

7.6 Forced Entry without a Key

7.6.1 When time permits, a person may force entry only after telephoning and coordinating with the Security Program Specialist during working hours, or with the Parks Duty Officer during off-hours.

7.6.2 When time does not permit this coordination, any person cutting a lock or otherwise forcing entry must report by telephone to the Security Program Specialist or Parks Duty Officer immediately thereafter, and follow-up in 24 hours with a written report to the Security Program Specialist via line management. The report must clearly state the necessity, the Approving authority, the persons involved, and the resecuring action taken.

8.0 APPENDICES

8.1 Key Requisition Form

8.2 Key Assignment Card

8.3 School/Parks Agreement: Procedure for Issuing School District Facility Keys and Procedure for Issuing Parks Department Facility Keys

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT



*** \$50 deposit required for each key issued, unless reduced or waived by the appropriate Superintendent.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



EXHIBIT v
DPR's Cleaner Facilities Inspection Guide

NOTICE IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Exhibit v





SEATTLE PARKS
AND RECREATION

Cleaner Facilities Inspection Guide



April 2002

Photos by Marilyn Gary

Exhibit 1



**SEATTLE PARKS
AND RECREATION**

Mission Statement

Seattle Parks and Recreation will work with all citizens to be good stewards of our environment and to provide safe and welcoming opportunities to play, learn, contemplate and build community.

Our Maintenance Commitment for Parks and Recreation Facilities:

We commit to achieving the Department's mission by welcoming the public with litter-free parking lots, well-tended landscapes, and facilities that are clean, safe, and attractive. We will provide well-organized information areas, including an easel or board with a program schedule updated daily. We will greet each person who enters the facility in a friendly, professional, courteous and helpful manner.

We will provide safe, sanitary facilities where surfaces are cleaned frequently and trip and slip hazards are marked with caution signs until the problem can be quickly eliminated. We will remove unpleasant odors by cleaning our facilities with environmentally safe, fragrance-free, Department-approved products.

Facility Inspection Program:

This guide is a tool to help manage our facilities and to measure our success in accomplishing our mission and commitment to the public we serve. A Rating Form has been developed for use with this Facility Inspection Guide. An 80% pass score is rated Satisfactory, 85% pass score is rated Successful and a 95% pass score is rated Excellent. Random inspections will be done routinely. We will use the results to direct maintenance efforts and to raise the overall level of cleanliness at our facilities. Supervisors, managers and directors will conduct inspections.

"You Get What You Inspect."

Facilities Maintenance Advisory Committee:

This guide was developed through efforts of the Facilities Maintenance Advisory committee (FMAC): Debie Belt, Willie Mae Malbrough, Mary Jo Rossmann, Roosevelt Straw, Robert Verdecias and Pat Elder and Peggy Pullen, co-chairs. Special appreciation to Michele Finnegan, Marlyn Gary, and Vicki Lord for helping to complete this guide.



Inspection Guides for Community Center

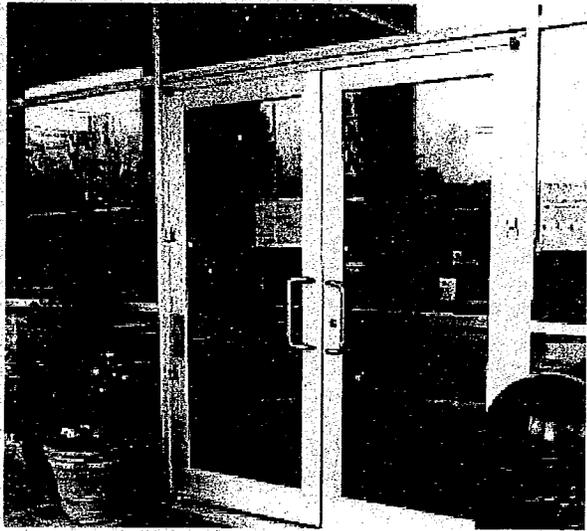


Mission Statement & Maintenance Commitment	
Facility Entrance	Page 1
Lobby and Reception Area.....	Page 3
Facility Restroom.....	Page 5
Facility Kitchen.....	Page 7
Recreation Staff Offices and Computer Room	Page 9
Multi-Purpose Rooms	Page 10
Children's Place.....	Page 11
Gym.....	Page 12
Weight Room.....	Page 13
Game Room/Recreation Storage/Mechanical Room/Hallways	Page 14
Custodial Storage.....	Page 15
Inspection Form Sample.....	Page 16

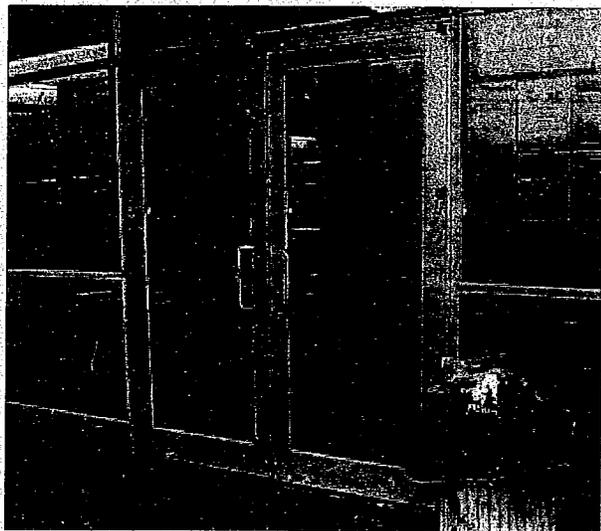


Facility Entrance

The entry to each Parks' facility should be an example of the care we give our facilities and our customers. Entry landscaping should be professionally designed, able to withstand high pedestrian traffic and well maintained. This is where Parks Maintenance and Custodial staff join efforts to provide a positive and welcoming experience for our visitors.



Pass



Fail



Facility Entrance

Please rate and inspect each element, pass or fail according to inspection sheet guidelines.

Plant Design



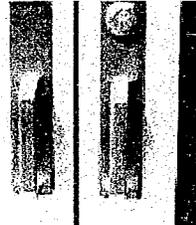
Note: Plant health, weed-free, litter-free, attractive

Windows/Door



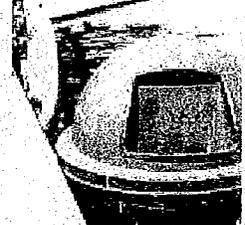
Note: Windows and frame clean

Door Handles



Note: No dirt or grime on handles

Trash Cans



Note: Dome condition clean and serviced

Ash Tray



Note: Clean, serviced

Litter



Note: Large and small debris removed

Hard Surface



Note: Stains and gum removed

Parking Lot



Note: Litter removed, surface safe and signs and markings in good condition

Public Signage



Note: Updated, easy to read, emergency phone number, professional appearance



Lobby/Reception

Each Lobby serves as a foyer, staff access area, information center, waiting area and even as a game room. The recreation and custodial staff work together to provide a safe, clean, welcoming lobby for each citizen who walks through the doors. Staff are available to answer questions in a friendly, professional manner. A complete schedule of the day's activities and events is attractively displayed on an easel. Art, organization, and cleanliness add up to a friendly, professional looking lobby.



Pass

Fail



Lobby/Reception

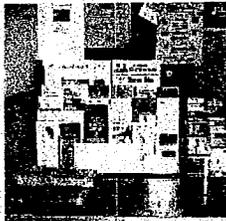
Please rate and inspect each element pass or fail according to inspection sheet guidelines.

Reception



Note: Organized, informative and friendly

Information Display



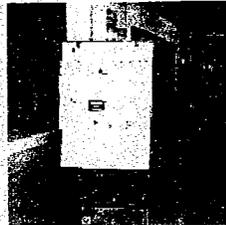
Note: Organized and attractive

Staff Presentation



Note: Present, friendly, courteous, knowledgeable and professional

Activity Easel



Note: Updated and cheerful

Tile Floor



Note: Hazard-free, clean and polished

Furniture



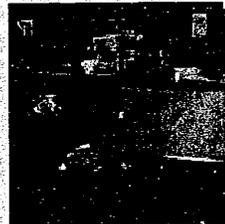
Note: Clean, safe, no stains or tears

Carpet



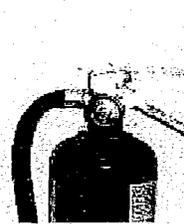
Note: No ripples (trip hazards), no gum, no stains, vacuumed and safe

Trash Cans



Note: Clean and serviced

Fire Extinguisher



Note: Up-to-date inspection, signed for easy location

Drinking Fountain

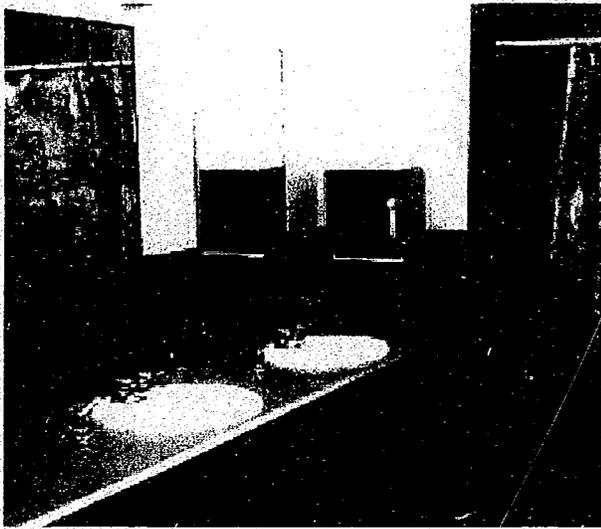


Note: Clean and polished



Facility Restrooms

Each restroom or shower room is available to a hundred-plus users each day. It is easy to tell if the floors, walls, sinks and mirrors have been cleaned regularly, or just messed up by the last user. Look in corners and along edges to see if a thorough cleaning has been done. Check paper supplies and check fixtures. Are vents dusty? Are door handles clean? Does it smell clean, not masked by fragrances that may harm sensitive users? Remember, cleaning is in the details.



Pass

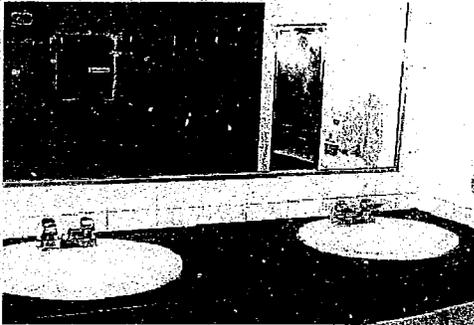
Fail



Restrooms

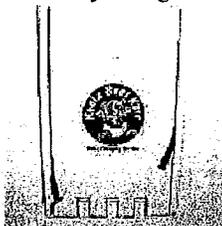
Please rate and inspect each element, pass or fail according to inspection sheet guidelines.

Counters, Mirrors and Sinks



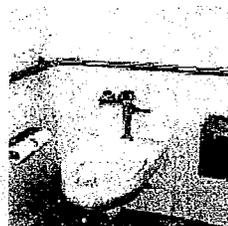
Note: Sanitary and polished

Baby Change



Note: Sanitary equipment in working order with paper

Toilets / Urinals



Note: Sanitary and odor free conditions

Paper Stock



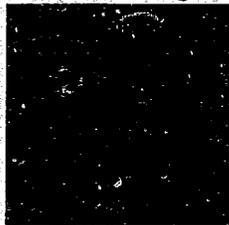
Note: Well stocked, checked frequently

Seat Covers



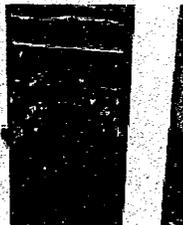
Note: Well stocked, checked frequently

Walls & Ceiling



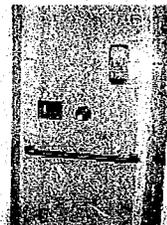
Note: Stickers removed, toilet paper wads removed

Trash Cans



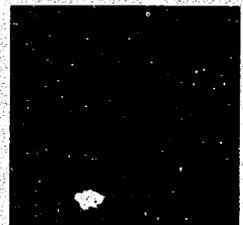
Note: Clean and serviced, polished, if stainless steel

Shower



Note: Tiles and drain clean, no mildew and no odors

Floor



Note: Clean, including around partitions and drain clean



Facility Kitchen

The kitchen is used for childcare snacks, late night teen cooking classes, overnight treat making, and large rentals. The kitchen must have a Health Department Permit and well displayed hand washing instructions posted, and an updated fire extinguisher present. All counters and surfaces must be free of crumbs, grime and grease. Sinks, stoves, refrigerators, floors and walls all must be clean.



Pass



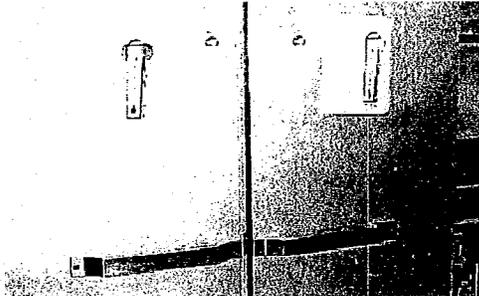
Fail



Kitchens

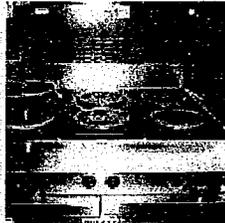
Please inspect and rate each detail.

Refrigerator Exterior



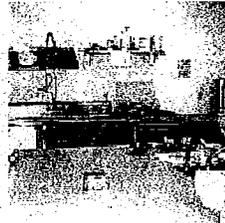
Note: Old stickers removed and handles and surface polished and clean

Stove Top



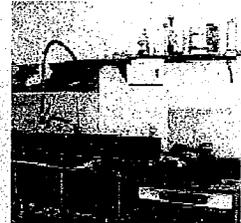
Note: Clean, grime and grease removed

Counters



Note: Organized and sanitary

Sinks



Note: Clean, including drains, floor area and pipes

Health Hand Wash Station

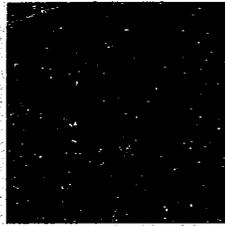


Note: Permit, fire extinguisher and soap and all surfaces clean



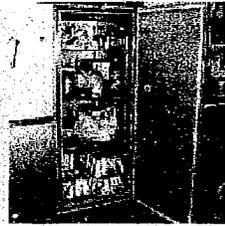
**SEATTLE PARKS
AND RECREATION**

Floor



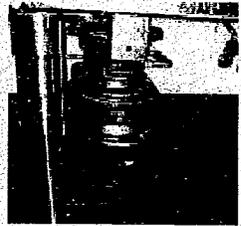
Note: Floor edges and drain clean

Fridge Interior



Note: refrigerator interior is recreation staff responsibility. Clean and old food removed

Grease Trap



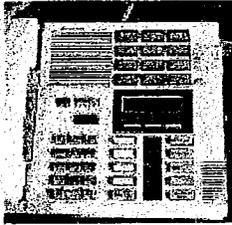
Note: Custodian's responsibility; should be cleaned twice annually



Recreation Staff Offices

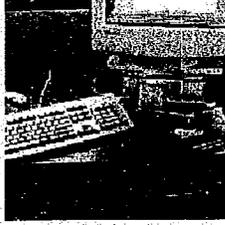
Staff offices should be orderly, clean, welcoming and professional so that employees and citizens feel that staff are organized and that sanitary conditions are important in all areas of the center.

Phones



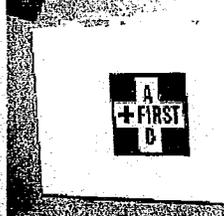
Note: Clean

Computer Keyboard



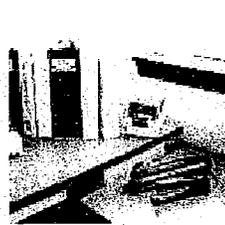
Note: Clean

First Aid Kit



Note: Public location, well stocked containing all supplies

Organized



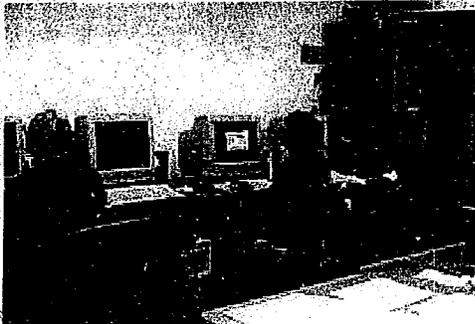
Note: Orderly work space, required references available

Recycling



Note: Labeled and serviced

Computer Rooms



Desks and Monitors



Note: Clean

Computer Keyboard



Note: Clean

Welcoming



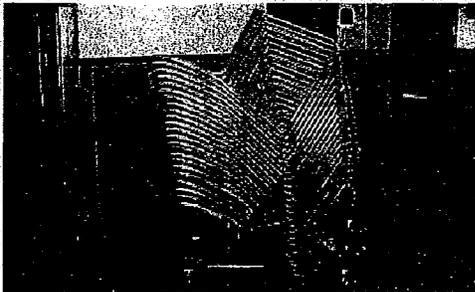
Note: Organized and attractive



Multi-Purpose Room

As one of the most-used rooms in the facility, this room must be well organized, sanitary, and free of all safety hazards. Floors receive a high level of maintenance to ensure they are free of scuff marks, gum, dust, spills, dirt and wax buildup in the corners and thresholds. Floors should be routinely maintained by custodians and program staff as required.

Chairs



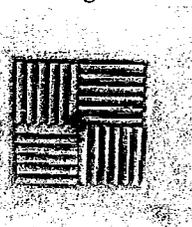
Note: All seats and legs clean

Mirrors



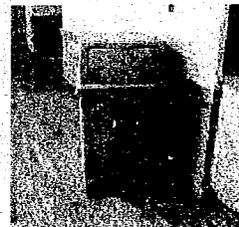
Note: No smudges or grime

Ceiling Vents



Note: Dust-free

Trash Cans



Note: Surfaces clean, inside and out, no odors, serviced

Doorway Thresholds

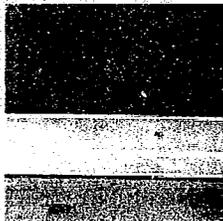


Note: Gum and grime removed



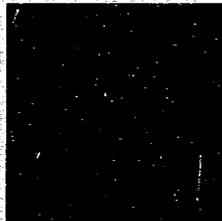
**SEATTLE PARKS
AND RECREATION**

Base Board



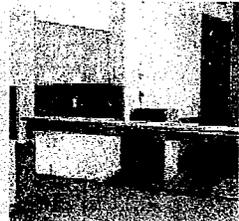
Note: Clean

Carpet or Tiles



Note: Clean, stain free, no trip hazards

Floor



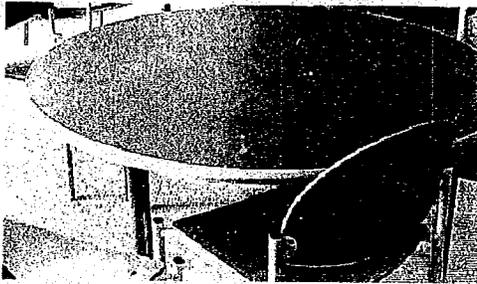
Note: Clean and slip free



Children's Place

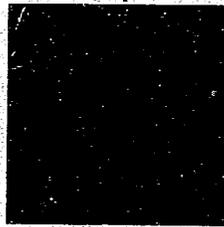
Chairs, tables, counters, and games should all be cleaned to DSHS specifications. Floors are for walking and fun. Handwashing instructions must be posted. Bright, cheerful and welcoming.

Kids' Tables



Note: Clean, neat, no dirt, grime, removable marks on legs, seats or edges and sanitized

Carpet



Note: Clean, no trip hazards, no stains, no gum

Kids Sink



Note: Clean, signed, soap stocked

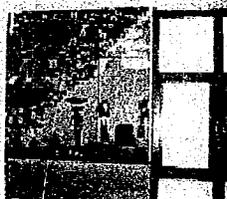


Caretaker's Sink



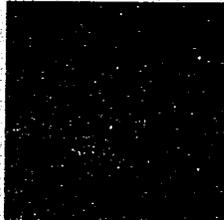
Note: Health Department hand wash protocol present, soap and towel stocked

Cheerful Art



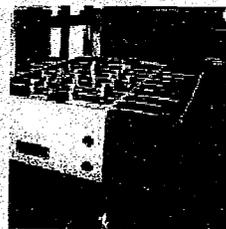
Note: Cheerful, diverse representation of children

Tile Floor



Note: Clean, no stains, no gum

Games

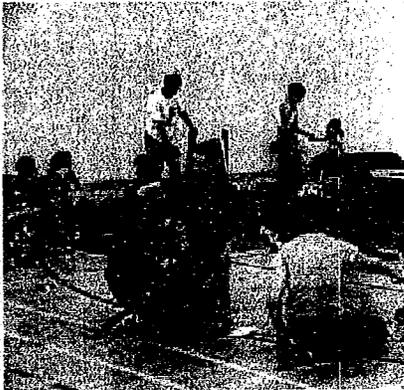


Note: Handles and all surfaces clean

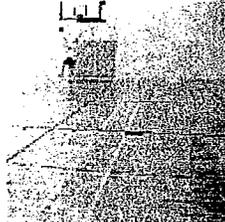


Gym

The floor and walls surfaces should be routinely dusted and cleaned, particular attention to corners and edges. All surfaces free of spills, dirt, bodily fluids, graffiti and gum.



Floor



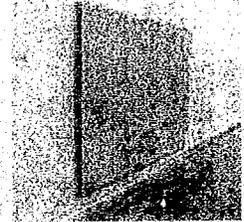
Note: Gum and spill-free

Bleachers



Note: Clean and no gum

Walls and Pads



Note: Clean

Hoops & Boards



Note: Clean and nets in good repair

Lights



Note: All in working order

Dividers

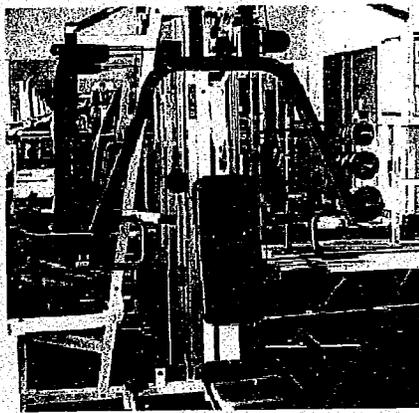


Note: Clean



Weight Room

All "touch surfaces" in this room must be cleaned to prevent the spread of germs. Cleaning solution and paper towels should be provided for customers too. Safe lifting techniques must be posted. Floors are clean, spill and free of trip hazards.



Floor



Note: Clean and trip free

**Machine Handles/
Seats**



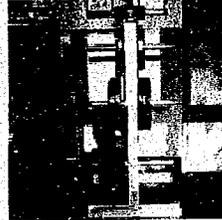
Note: Clean, sanitized, dust and grime-free

Mirrors



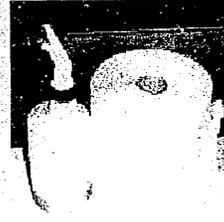
Note: No smudges or handprints

Weights Organized



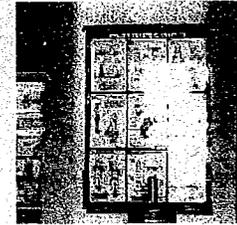
Note: Orderly

Cleaning Product



Note: Available, Department approved, well stocked

Posters



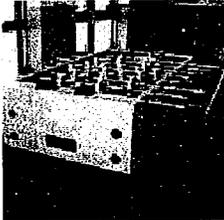
Note: Organized

Game Room

These rooms receive heavy use and should be well organized, neat and welcoming. Special attention is required to keep walls and floors free of marks, dirt and grime. Equipment such as large-screen TVs, pool and ping-pong tables and furniture all require special care.

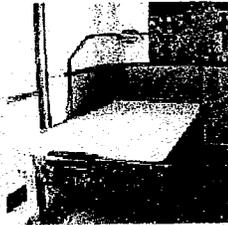


Game #1



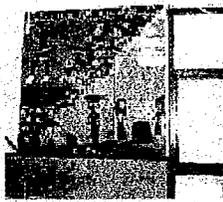
Note: Surface and handles clean

Game #2



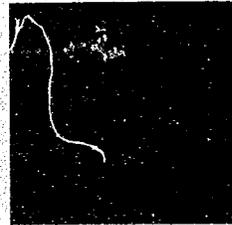
Note: Surface and handles clean

Welcoming



Note: Diverse and friendly

Floor

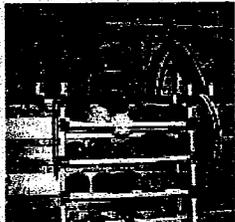


Note: Clean

Recreation Storage/Mechanical Room/Hallways

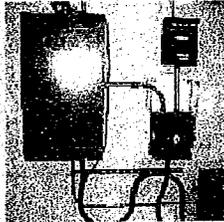
Clean and up to codes.

Recreation Storage



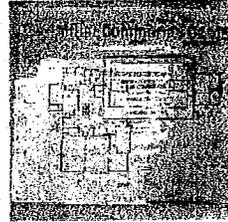
Note: Organized, stored safely

Electric Panel



Note: Clear 36" in front of panel

Escape Plan



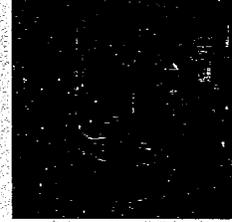
Note: Posted

Hallways



Note: Clean, safe and hazard free

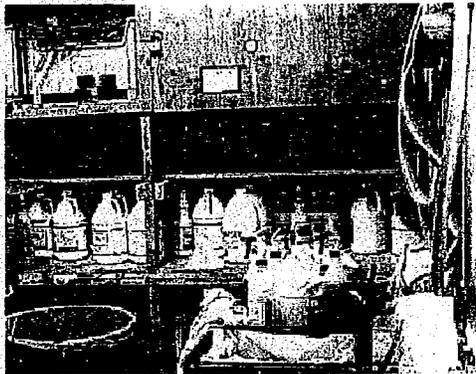
Mechanical Room



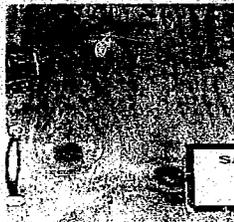
Note: Clean and no storage

Custodial Storage

This is where all the cleaning supplies are kept, neatly and safely stored away from the public. No containers are missing labels. No opened containers are above shoulder level. Toxic chemicals are locked up and so is the room. Material Safety Data Sheets (MSDS) are prominently displayed for easy emergency reference.



Toxics/Storage Locked

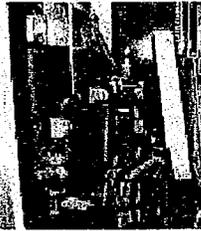


Note: Hazardous chemicals locked up



SEATTLE PARKS AND RECREATION

Room



Note: Tools and products organized



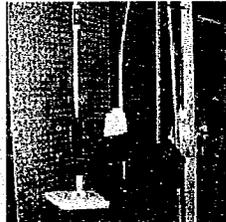
SEATTLE PARKS AND RECREATION

MSDS Sheets



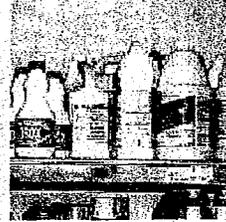
Note: Sheets prominently displayed

Tools



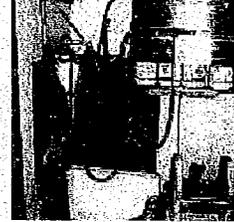
Note: Well maintained, organized and properly stored

Supplies Organized



Note: Organized according to safety protocols

Mop/Sink



Note: Sink, drain, mop and bucket clean

Park Facility Inspection Guide: Rating Form

SITE: _____
DATE: _____

TOTAL SCORE: This tool has a total of 100 components. Facilities receiving an 80% pass score receive an overall **Satisfactory** rating. Facilities can earn a **Successful** rating by earning an 85% pass score or an **Excellent** rating by earning 95% or better. [If certain components are not applicable to your site, calculate a percentage by dividing the total "passes" by the total number of applicable components.]
PASS: Meets Department expectations as illustrated in the Park Facilities Inspection Guide. For example, for a door to be clean, the windows, handles and door jam, are each clean. To ensure high standards, detailed cleaning should be part of routine maintenance.
FAIL: Does not meet Department expectations. For example, if the carpet is vacuumed, but removable stains remain, then the rating is Fail; or if a game is grimy and dirty, then it will receive a Fail.

Entrance Way	Plant Design	Public Signage	Windows	Doors and Door Handles	Litter Free	Ash Tray	Hard Surfaces	Parking Lot	Trash Cans		Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F									
Lobby	Fire Extinguisher	Info Display	Activity Easel	Welcoming Counter Area & Staff	Clean Vending Machines	Furniture	Floors	Phones	Drinking Fountain	Trash Cans	Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F									
Rest Rooms	Counters/Sinks	Mirrors	Toilets/Urinals	Paper/Seat Covers Stocked	Odor Free	Walls/Ceilings	Baby Change Station	Shower Area	Floors	Trash Cans	Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F									
Kitchen	Fridge Exterior	Fridge Interior	Stove	Counters	Odor Free	Sinks/Hand Wash Area	Grease Trap	Floors	Walls/Windows	Trash Cans	Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F									



Park Facility Inspection Guide: Rating Form

SITE: _____
DATE: _____

Recreation Staff Offices	Organized/ Welcoming	First Aid Kit	Recycling	Phone Surfaces	Computers/ Keyboards							Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F										
Computer Room	Organized/ Welcoming	Desks and Monitors	Computers/ Keyboards									Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F	<input type="checkbox"/> P <input type="checkbox"/> F									
Multi-Purpose Room	Mirrors	Ceilings/ Vents	Counters	Doors and Thresholds	Base Boards	Floors	Walls/ Windows/ Dividers	Tables/ Chairs	Trash Cans			Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F										
Children's Place	Walls/ Windows	Floors	Tables/ Chairs	Sinks	Counters	Welcoming Art Display	Games	Trash Cans				Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F										
Gym	Floors	Walls/ Windows	Dividers	Bleachers	Hoops/ Boards	Doors	Safety Pads					Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F										
Weight Room	Floors	Walls/ Windows/ Mirrors	Cleaning Products Available	Machines/ Handles/ Seats	Weights Organized	Safety Info/ Posters						Total Passes



Park Facility Inspection Guide: Rating Form

SITE: _____
DATE: _____

Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F									
Game Room	Welcoming Displays	No Safety Hazards	Games	Floors	Walls/Windows	Doors	Ceilings				Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F									
Storage Rm/ Mechanical Rm/ and Hallways	Recreation Storage	Electric Panel Access	Mechanical Room	Hallways	Escape Plan						Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F									
Custodial Storage	Equipment Organized/ Cleaned	All Containers Labelled	MSDS Sheets Complete	All Toxics: Locked	All Toxics: below shoulder height	Supplies and Tools Organized	Clean Mop Sink				Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F									
Dumpster Area	Clean/ Organized	No Safety Hazards	Odor Free	Recycling Bins Clean							Total Passes
Rate each category:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail	<input type="checkbox"/> P <input type="checkbox"/> F	<input type="checkbox"/> P <input type="checkbox"/> F	<input type="checkbox"/> P <input type="checkbox"/> F							
										TOTAL SCORE:	



Park Facility Inspection Guide: Rating Form

SITE: _____
DATE: _____

COMMENTS:



EXHIBIT vi
Form of Amendment

TO THE USE AND OCCUPANCY AGREEMENT

Between
THE CITY OF SEATTLE,
a municipal corporation
of the State of Washington
and
NATIONAL AUDUBON SOCIETY, INC.,
a nonprofit corporation
of the State of New York

FORM OF AMENDMENT

This Amendment to the Use and Occupancy Agreement executed on _____, 20____, is made between the City of Seattle ("City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR") and the Superintendent thereof, and National Audubon Society, Inc. ("Audubon"), a nonprofit corporation of the State of New York.

1. The following capitalized terms shall have the meanings set forth below.

a. "Building Common Areas" shall mean those portions of the Building not used exclusively for DPR programming nor within the exclusive control of any tenant, licensee or concessionaire, including, but not limited to, meeting rooms, restrooms, any kitchen areas and lobby, consisting of _____ square feet, and depicted on Exhibit _____ to this Amendment.

b. "Fixed Rent" shall be \$ _____.

c. "Hatchery Program Areas" shall mean those portions of the Hatchery not used exclusively for DPR programming, consisting of _____ square feet, and depicted on Exhibit _____ to this Amendment.

d. "Improvement Expenditure Offset" shall be \$ _____.

e. "Premises" shall mean that portion of the Building, excluding common areas and space required for TREC, consisting of _____ square feet, and depicted on Exhibit _____ to this Amendment.

2. Consumer Price Index Adjustment. For purposes of determining the annual rent adjustment pursuant to Article V of the Use Agreement, the date of the first consumer price index adjustment shall be set as of January 1, 20____.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



3. Date. This Amendment to the Use and Occupancy Agreement is made this ____ day of _____, 20__.

THE CITY OF SEATTLE

NATIONAL AUDUBON SOCIETY, INC.

By: _____
Signature
Kenneth Bounds
Superintendent, Department of Parks
and Recreation of The City of Seattle

By: _____
Signature
Print Name: _____

Date: _____

Date: _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



CITY ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this ___ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared KEVINETH BOUNDS, to me known to be the Superintendent of the Department of Parks and Recreation of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____
Print Name: _____

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of National Audubon Society, Inc., a New York nonprofit corporation, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____
Print Name: _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

May 27, 2003

Honorable Peter Steinbrueck
President
Seattle City Council
Municipal Building, 11th Floor

Dear Council President Steinbrueck:

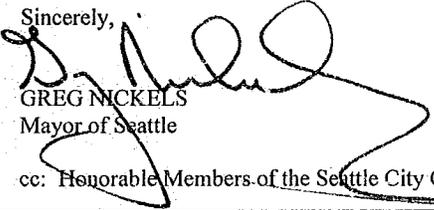
The attached ordinance authorizes a Development Agreement with the National Audubon Society, Inc. to renovate the Seward Park Annex (CIP Project #K733120) and the nearby Hatchery for environmental education programs. The proposed ordinance responds to Resolution 30339 which authorized the creation of an agreement between the Department of Parks and Recreation (DPR) and the National Audubon Society (Audubon) to jointly fund the renovation of the Annex Building and to establish the terms and conditions for Audubon's use and occupancy of a portion of this facility. During the negotiation of the agreement, it was determined that the Annex alone did not provide sufficient program space. A classroom lab space and a shelter for covered, but outdoor programming, is proposed in the currently closed hatchery facility. These additional improvements will be consolidated with CIP Project # K733120. The additional overall project costs associated with the added hatchery element are to be funded by Audubon.

The Development Agreement establishes the conditions under which the Annex Building and Hatchery facilities will be designed, constructed, and funded by both parties. The renovation is estimated to cost \$1,991,469. The City's contribution of \$618,600 is funded through the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy (2000 Parks Levy). Audubon is committed to raising the balance of project funding totaling \$1,372,869. Work will not commence on any phase of the project until the private funding is secured.

The Development Agreement also includes a Use and Occupancy Agreement (Exhibit E) which establishes the conditions for Audubon's use and occupancy of a portion of the Annex facility for a period of ten years, with a ten year renewal option to commence upon completion of the renovation. The fair market rent charged Audubon for use and occupancy of the building will be offset by the organization's capital contribution and the public benefit of its programs, with any excess of these contributions to be deemed a gift to the City.

Thank you for your consideration of this legislation. Should you have questions, please contact Cindi Shiota at 206-390-3520.

Sincerely,


GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 12th Floor, Seattle, WA 98104-1873

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360. E-mail: mayors.office@ci.seattle.wa.us

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Form revised January 17, 2003

Fiscal Note

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Cindi Shiota 390-3520 Charles Ng 684-8001	Marilynne Gardner 233-5109

Legislation Title:

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to execute an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs; and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years with an option to continue said use and occupancy for an additional ten years.

Summary of the Legislation:

The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years and exercise an option to continue to use and occupy a portion of the named facilities for an additional ten years. No new appropriation authority is required. The Agreement memorializes the parties' understandings and objectives pertaining to the provision of environmental education programs, building renovation, budget, design, construction, project management, and Audubon fund-raising requirements. DPR's financial contribution to this project is capped at \$618,600 and Audubon has pledged to contribute the remaining \$1,372,869 required to complete the project as mutually agreed and designed.

Appropriations (in \$1,000's): Not applicable.

Fund Name and Number	Department	Budget Control Level*	2003 Appropriation	2004 Anticipated Appropriation
TOTAL	N/A	N/A	N/A	N/A

** This is line of business for operating budgets, and program or project for capital improvements*

Funds for this project have already been appropriated in the 2002 and 2003 Capital Improvement Programs under CIP Program # K723003 and CIP Project # K733120. No additional appropriation results from this legislation.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Expenditures (in \$1,000's): Not applicable.

Fund Name and Number	Department	Budget Control Level*	2003 Expenditures	2004 Anticipated Expenditures
TOTAL	N/A	N/A	N/A	N/A

**This is line of business for operating budgets, and program or project for capital improvements*

Anticipated Revenue/Reimbursement (in \$1,000's): Not applicable.

Fund Name and Number	Department	Revenue Source	2003 Revenue	2004 Revenue
TOTAL	N/A	N/A	N/A	N/A

Notes:

As conditions such as the square footage to be leased by Audubon cannot be identified until the renovation is completed, a "Form of Amendment" will be executed when this information is available (Exhibit F of the Use and Occupancy Agreement).

Rent will be based on the fair market value of the space to be occupied by Audubon plus 50% of the fair rental value of the Building's common areas and 33% of the Hatchery program areas, with annual adjustments based on the Consumer Price Index for all Urban Consumers, limited to 4% each year. For the duration of the lease, Audubon shall be entitled to an offset against its rent for the total amount of Audubon's capital contributions to the renovation project and for the value of the public benefit of Audubon's environmental programs to under-served communities. Should Audubon's contributions exceed the amount of offset, the excess shall be a gift to the City.

Total Permanent Positions Created Or Abrogated Through Legislation, Including FTE Impact; Estimated FTE Impact for Temporary Positions: Not applicable.

Fund Name and Number	Department	Position Title*	2003 FTE	2004 FTE
TOTAL	N/A	N/A	N/A	N/A

- List each position separately

New positions will be requested in the 2005 Budget (see Operations & Maintenance section below). No positions will be abrogated as a result of this legislation.

Do positions sunset in the future? (If yes, identify sunset date):

N/A

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota

Date: April 8, 2003

Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
Version #2.

Background (Include brief description which states the purpose and context of legislation and include record of previous legislation and funding history, if applicable):

Renovation of the Annex Building into an environmental education center was one of the initiatives identified by DPR as a priority in the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy to further its commitment to environmental stewardship. City funding of \$618,000 was identified for this purpose in Ordinance 120024 authorizing the Levy, which was subsequently approved by the voters on November 7, 2000. DPR intends to revise the Proposed 2004-2009 CIP to reflect the addition of the hatchery element and the additional Audubon funding commitment, to the Department's Seward Park Annex project (CIP Project K733120).

This agreement is consistent with Ordinance 120024 which reads, in part, "Whereas the City will seek to leverage funds through collaboration with County, State and Federal sources and with private and non-profit organizations...through the development of partnerships for the purpose of enhancing projects and programs funded through the levy lid lift..."

In July 2001, the City passed Resolution 30339 authorizing a Memorandum of Understanding between DPR and Audubon, which established a framework for the development of this agreement.

The financial cost of not implementing the legislation (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented):

This project was specifically approved by the voters as part of the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy on November 7, 2000.

Possible alternatives to the legislation which could achieve the same or similar objectives (Include any potential alternatives to the proposed legislation, including using an existing facility to fulfill the uses envisioned by the proposed project, adding components to or subtracting components from the total proposed project, contracting with an outside organization to provide the services the proposed project would fill, or other alternatives):

N/A

Is the legislation subject to public hearing requirements (If yes, what public hearings have been held to date):

Public meetings were conducted on March 6, June 5, 2002; and March 25, 2003. A Park Board Hearing was conducted on April 10, 2003.

Other Issues (including long-term implications of the legislation):

If Audubon fails to successfully raise its required funding, it will reimburse DPR for its capital contributions to the Project and DPR will use its funding to do small improvements to the

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Annex Building. This will result in the continuation of the current, limited environmental programming at Seward Park

FOR CAPITAL PROJECTS ONLY

Background (Include brief description that states the purpose and context of legislation, the expected useful life, anticipated customers/users, assumed level of LEED or other sustainable design elements. Also include record of previous legislation and funding history, if applicable):

Not applicable.

Spending Plan and Future Appropriations for Capital Projects (Estimate cost of legislation over time; list timing of anticipated appropriation authority requests and expected spending plan. Please identify your cost estimate methodology including inflation assumptions and key assumptions related to the timing of appropriation requests and expected expenditures. In addition, include the projected costs of meeting the LEED Silver standard in all facilities and buildings with over 5,000 gross square feet of occupied space. Also, be sure to include percent for art and percent for design as appropriate):

Spending Plan and Budget	2003	2004	2005	2006	2007	2008	Total
Planning	\$31,665						\$31,665
Design	\$210,279	\$105,141					\$315,420
Construction		\$1,644,384					\$1,644,384
Total	\$241,944	\$1,749,525					\$1,991,469

Key Assumptions:

The above spending plan is based upon the following planned project schedule:

- Planning and Design: 3rd Quarter 2003 – 1st Quarter 2004
- Construction: 1st Quarter 2004 – 4th Quarter 2004
- Building and Hatchery Opens: 1st Quarter 2005

Funding source (Identify funding sources including revenue generated from the project and the expected level of funding from each source):

Funding Source	2003	2004	2005	2006	2007	2008	Total
2000 Parks Levy Fund (33850)	\$124,000	\$494,600					\$618,600
Audubon Funding	\$236,352	\$1,136,517					\$1,372,869
TOTAL	\$360,352	\$1,631,117					\$1,991,469

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota

Date: April 8, 2003

Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.

Version #2.

Bond Financing Required: Not applicable.

Type	Amount	Assumed Interest Rate	Term	Timing	Expected Annual Debt Service/Payment
TOTAL	N/A	N/A	N/A	N/A	N/A

Uses and Sources for Operation and Maintenance Costs for the Project:

O&M	2003	2004	2005	2006	2007	2008	Total
Uses							
Start Up							
On-going			36	37	38	39	150
Sources (itemize)							
2000 Parks Levy Fund			364.5	375	385.5	396	15021
Audubon Society			31.5	32	32.5	33	129

Key Assumptions:

Audubon will pay all the costs of utilities, custodial service, and security alarm costs at the Annex Building. DPR will pay the same costs at the Hatchery with existing base budget funding allocated to the Annex Building. New O&M costs expected to come online in 2005 are funded by the 2000 Parks Levy Fund and include gardening supplies, a 0.02 Utility Laborer, a 0.02 Gardener, and major maintenance work related to the Seward Park Annex - Renovation project.

Periodic Major Maintenance costs for the project (Estimate capital cost of performing periodic maintenance over life of facility. Please identify major work items, frequency):

Major Maintenance Item	Frequency	Cost	Likely Funding Source
TOTAL			

Funding sources for replacement of project (Identify possible and/or recommended method of financing the project replacement costs):

Not applicable.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

ORDINANCE

1
2
3 AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the
4 Superintendent to execute an agreement with the National Audubon Society, Inc. to
5 renovate the Seward Park Music Annex Building and the Hatchery for environmental
6 education programs; and establishing the conditions under which Audubon may use and
occupy a portion of the named facilities for a period of ten years with an option to
continue said use and occupancy for an additional ten years.

7 WHEREAS, the City owns and the Department of Parks and Recreation (DPR) has jurisdiction
8 over and manages Seward Park and the Seward Park Music Annex Building and the
Hatchery located within Seward Park; and

9 WHEREAS, on November 7, 2000, the voters of the City of Seattle approved Ordinance 120024,
10 the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy, which identified the sum
11 of \$618,600.00 to partially fund renovation of the Seward Park Music Annex Building for
use as an Environmental Education Center; and

12 WHEREAS, the Department's 2002 Adopted Capital Improvement Program appropriated
13 funding in the amount of \$124,000 and the Department's 2003 Adopted Capital
14 Improvement Program appropriated funding in the amount of \$494,000; and

15 WHEREAS, Ordinance 120024 expresses the City's intention to leverage levy funds through
16 collaboration with public and private organizations to enhance the projects and the
programs funded through the levy lid lift; and

17 WHEREAS, Audubon and the Department desire to collaborate financially and
18 programmatically to achieve their shared long-term vision and goals with respect to the
19 renovation of the buildings and the development and delivery of complementary
20 community-based environmental educational programs and conservation initiatives to a
diverse audience; and

21 WHEREAS, the Audubon Society is willing to contribute \$1,372,869 toward the renovation of
22 the Seward Park Music Annex Building to accomplish this project; and

23 WHEREAS, Audubon and the Department concur that the renovation of the buildings is an
24 appropriate project for a joint public agency and private sector venture; NOW,
THEREFORE,

25 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**
26
27
28

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

1 Section 1. As requested by the Superintendent of Parks and Recreation and
2 recommended by the Mayor, the Superintendent is authorized to execute, deliver and perform for
3 and on behalf of the City of Seattle, a "Development Agreement between The City of Seattle
4 Department of Parks and Recreation and National Audubon Society, Inc." and the associated
5 "Use and Occupancy Agreement" substantially in the form of Exhibit A.
6

7 Section 2. Any act consistent with the authority and prior to the effective date of this
8 ordinance is hereby ratified and confirmed.
9

10 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after
11 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
12 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

13 Passed by the City Council the ___ day of _____, 2003, and signed by me in open
14 session in authentication of its passage this ___ day of _____, 2003.
15

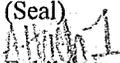
16
17 _____
18 President _____ of the City Council

19 Approved by me this ___ day of _____, 2003.

20 _____
21 Gregory J. Nickels, Mayor

22 Filed by me this ___ day of _____, 2003.

23 _____
24 City Clerk

25 (Seal)
26 

27 Exhibit A: "Development Agreement between The City of Seattle Department of Parks and
28 Recreation and National Audubon Society, Inc." and "Use and Occupancy Agreement"

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Exhibit A
DRAFT
DEVELOPMENT AGREEMENT
Between
THE CITY OF SEATTLE
Department of Parks and Recreation
and
NATIONAL AUDUBON SOCIETY, INC.

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into by and between THE CITY OF SEATTLE ("City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR"), and NATIONAL Audubon SOCIETY, INC. ("Audubon"), a not-for-profit corporation organized in 1905 under the laws of the State of New York.

RECITALS

WHEREAS, the City owns and DPR has jurisdiction over and manages Seward Park including the Seward Park Music Annex Building (the "Building") and the Hatchery located within Seward Park; and

WHEREAS, on November 7, 2000, the voters of the City of Seattle approved Ordinance 120024, the Parks and Green Spaces Levy, which identified the sum of \$618,600.00 to partially fund renovation of the Building and the Hatchery for use as an Environmental Education Center (the "Project"); and

WHEREAS, Ordinance 120024 expresses the City's intention to leverage said funds through collaborations with public and private organizations to enhance the projects and programs funded through the levy lid lift; and

WHEREAS, Audubon is a private non-profit conservation organization, whose mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity. The organization is named after naturalist and wildlife painter John James Audubon, a renowned conservationist of Haitian and French parentage; and

WHEREAS, Audubon has established a state office in Washington, Audubon Washington, to carry out its mission and oversee its activities in the State of Washington; and

WHEREAS, DPR has established an Environmental Stewardship Commitment Statement, which reads, in part,

Seattle Parks and Recreation will be a role model for environmentally friendly practices. The Department will provide opportunities and offer programs for citizens that foster awareness, appreciation, and knowledge that inspire actions to protect and enhance the natural environment. All Department classes and programs will promote environmental stewardship and volunteerism; and

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

WHEREAS, DPR and Audubon both work to educate the general public about environmental issues and conservation and to develop educational programs for children, youth, and families; and

WHEREAS, both parties share a commitment to serving diverse audiences and a programmatic approach that uses first-hand experience in the natural habitat; and

WHEREAS, Audubon and DPR concur that the renovation of the Building and the Hatchery is an appropriate project for a public/private partnership; and

WHEREAS, the parties agree that the public benefits from this programmatic partnership are substantial, including financial contributions from Audubon to renovate and improve the Building to develop an important public environmental education and community programming facility; and

WHEREAS, Audubon and DPR recognize that they cannot accomplish the environmental and conservation educational goals alone and given the many other demands for DPR's financial resources, DPR cannot complete the Project without substantial private donations; and

WHEREAS, Audubon recognizes that a successful private fundraising campaign needs a public commitment to the Project from governmental agencies, including the City; and

WHEREAS, Audubon and DPR desire to collaborate to achieve their shared long-term vision and goals with respect to the renovation of the Building and the Hatchery and the development and delivery of complementary community-based environmental education programs and conservation initiatives to a diverse audience; and

WHEREAS, Resolution 30339 authorized a Memorandum of Understanding between DPR and Audubon for a partnership to provide environmental education in Seward Park; for the renovation of the Seward Park Music Annex Building for said purpose; and authorizing future work to implement the terms of the parties' agreement; and

WHEREAS, Audubon and DPR wish to enter into this Agreement for the purpose of setting forth the development parameters and funding commitments and establishing the parameters for joint use of the Building and the Hatchery.

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and covenants described herein, DPR and Audubon agree as follows:

ARTICLE 1 DEFINITIONS

Capital words not defined herein shall have the meanings ascribed to them in the Use and Occupancy Agreement between The City of Seattle and National Audubon Society, Inc., attached hereto as Exhibit E.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 1.1 "Approval" (or "Approved") means the prior written consent of a party whose consent is required, or an authorized designee thereof.
- 1.2 "Audubon Project Representative" means the individual/entity hired by Audubon to manage the Building portion of the Project for Audubon.
- 1.3 "Audubon Share of Project Costs" means the total sum of \$1,372,869.
- 1.4 "Building" means the Seward Park Music Annex Building located at 5902 Lake Washington Boulevard, Seattle, Washington, and situated on the real property described on Exhibit A and depicted on Exhibit B hereto.
- 1.5 "Building Common Areas" means those portions of the Building not used exclusively for DPR's TREC program nor within the exclusive control of any tenant, licensee or concessionaire, including, but not limited to, meeting rooms, restrooms, the kitchen and lobby.
- 1.6 "Building Design Program" means the scope, schedule and budget along with associated considerations and review requirements that shape the design and construction, providing general guidelines and values to be achieved as well as specific direction to the designer and those directly involved in the design and construction management.
- 1.7 "City Project Manager" means the individual(s) designated as such by the Superintendent to manage the Project for City.
- 1.8 "City Share of Project Costs" means the total sum of \$618,600.00.
- 1.9 "Construction Costs" means the sum stated in the line items for Construction Costs in the Project Budget for the Building and the Hatchery. The term Construction Costs includes costs incurred under any construction contract, City, and such other Project-related costs as are approved by Audubon and the Superintendent.
- 1.10 "Design" means the graphic and written description of the Project including the instructions/specifications to be followed by the construction contractor to construct all or any portion of the Project.
- 1.11 "Environmental Law(s)" means any federal, state and local laws (whether under common law, statute, ordinance, rule, regulation, code or otherwise), permits, orders, decrees, and other requirements of governmental authorities relating to the protection of human health or the environment, whether existing as of the date hereof, previously enforced, or subsequently enacted.
- 1.12 "Force Majeure" means delays due to war, terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, weather or soils conditions that necessitate delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts or failure to act of any public or governmental entity or any other unforeseeable causes beyond the control or without the fault of either party.

- 1.13 "Hatchery" means the currently fenced facilities and ponds located in the eastern portion of Seward Park, depicted on Exhibit B hereto.
- 1.14 "Hazardous Material" means any element, compound, chemical, chemical mixture, or other substance that is identified as, or determined to be, a hazardous, toxic or dangerous substance, pollutant, contaminant, waste or material under, or is otherwise regulated under, any Environmental Law or other law relating to chemical management, environmental contamination, environmental cleanup or nuisances, including, without limitation, petroleum and petroleum products, asbestos, radon and other radioactive materials, bio-hazards and lead-based paint.
- 1.15 "Loaned Employee Agreement" means an agreement between the City and Audubon whereby a DPR naturalist is assigned to assist Audubon in the development and delivery of environmental programs at Seward Park.
- 1.16 "Premises" means that portion of the Building to be leased from the City to Audubon, pursuant to the Use and Occupancy Agreement, Exhibit E.
- 1.17 "Project" means renovation of the Building and the Hatchery for use as an environmental education center.
- 1.18 "Project Budget" means the cost of the Project, as last estimated by the parties hereto, which estimate is attached hereto, labeled "Exhibit C-n" (with "n" being the sequential number of the latest revision, if any, thereof); provided that, unless otherwise agreed by the parties, in no event shall the total Project Budget exceed \$1,991,469.
- 1.19 "Release", when used with respect to Hazardous Materials, includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about any part of the Premises, Building or any adjacent property of such materials.
- 1.20 "Remediation Activities" include, without limitation, activities in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material.
- 1.21 "TREC" means Teens for Recreation and Environmental Conservation, a DPR outdoor expedition-level program designed to expose multi-ethnic teens to environmental education, urban conservation and stewardship, while creating an environment for community leadership and empowerment.

ARTICLE 2 PURPOSE; LONG TERM OCCUPANCY; INTERIM USE; CONSTRUCTION TIMING; APPROVALS

- 2.1 Purpose. The purpose of this Agreement is to memorialize the parties' understandings and objectives with regard to the renovation of the Building and the Hatchery and the use of each facility to deliver public environmental programs. Once the Building is renovated, it is anticipated that it will house a DPR naturalist assigned to Audubon pursuant to an employee

loan agreement between the City and Audubon, DPR's TREC program and Audubon's nature programs based at Seward Park. It is the parties' intent that use of the Building and the Hatchery be consistent with DPR's education and conservation objectives. It is also the parties' intent that their respective programs at Seward Park will complement the other entities' programs and that they will coordinate the delivery of education and conservation objectives to avoid duplication within Seward Park.

2.2 Long Term Occupancy by Audubon. Contemporaneously with this Agreement, the parties shall execute the Use and Occupancy Agreement, Exhibit E, which will: (1) establish Audubon's right to use and occupy the Premises; (2) establish Audubon's right to use the Hatchery Program Areas and the Seward Park Common Areas; and (3) set parameters for the coordinated delivery by the parties of public environmental programs in Seward Park; all in accordance with the terms contained herein and in the Use and Occupancy Agreement. Upon issuance of the Certificate of Occupancy for the Building, the parties shall modify the Use and Occupancy Agreement to include the actual square footage of the Premises and Building Common Areas; the dollar amount of the annual rent, including offsets, as determined pursuant to the criteria set forth in Article V of the Use and Occupancy Agreement; and the date of the first Consumer Price Index adjustment, as those terms are defined in the Use and Occupancy Agreement.

2.3 Interim Use of Building. Prior to the completion of the Project, Audubon may use the Building's conference and activity rooms, subject to their availability. Audubon may also use Seward Park's established trails and shoreline for environmental programming purposes pursuant to a DPR Use Permit and subject to their availability, with authorized uses being in accordance with the then-current DPR fees and charges, if applicable. Audubon may also show the Building to prospective funding sources for the Project and may enter the Building for purposes of facilitating design and renovation of the Building; provided that, Audubon's interim use of the Building shall be coordinated with use of the Building by DPR's TREC and Naturalist Program staff and other scheduled uses of the Building and shall not disrupt activities occurring in the Building. Notwithstanding the foregoing, the City agrees that TREC and the Naturalist Program staff shall vacate the Building within ten (10) working days from the date that Audubon provides notice of the commencement of construction work pursuant to Article 6.8.1 of this Agreement and neither TREC nor the Naturalist Programs staff, nor any other party, shall have the right to enter the Building or the construction area until a Certificate of Final Completion has been issued for the Building, except for inspections as described in Article 6.4. DPR shall be solely responsible for removing all DPR and personal materials from the Building prior to the commencement of construction.

2.4 Construction Timing. The parties agree that the following parameters shall govern the commencement and completion of construction:

2.4.1 Audubon acknowledges that the Project Budget is based upon construction commencing in 2004. To that end, Audubon agrees that it will diligently endeavor, but is not required, to cause construction of the Building portion of the Project to commence by the end of 2004. In the event that Audubon does not commence construction in 2004, and as a result of such delay, the cost of construction increases based upon the inflationary index or from deterioration of the Building's condition, Audubon agrees to be solely responsible for such cost

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

increases unless such delay or cost increase is a direct result of any action or inaction of the City that was not caused by some action or inaction by Audubon.

The City similarly acknowledges that the Project Budget is based upon construction commencing in 2004. To that end, the City agrees that it will diligently endeavor, but is not required, to cause construction of the Hatchery portion of the Project to commence by the end of 2004; provided that the City agrees that it will not commence construction of the Hatchery until such time that Audubon commences construction of the Building. In the event that the City is unable to commence construction in 2004 solely a result of Audubon's failure to commence construction of the Building in 2004 Audubon shall be responsible for any cost increase in the Project Budget for the Hatchery which is attributable to inflation (as based upon the standard inflationary index). If the delay in the commencement of construction of the Hatchery is a the result of causes other than Audubon's failure to commence construction of the Building in 2004 or a direct result of any action or inaction by Audubon, the City shall be solely responsible for any attendant cost increases in the Project Budget for the Hatchery

- 2.4.2 Unless extended by the City, Audubon shall commence construction of the Building no later than December 31, 2006. In the event that Audubon has not commenced construction of the Building by this date, through no action of the City and barring Force Majeure events, the City may immediately terminate this Agreement pursuant to Article 11 of this Agreement.
- 2.4.3 Once construction of each component of the Project has commenced, the responsible party will proceed with diligence to cause such component to be renovated in accordance with all approved Project designs, specifications, and schedules, subject to delays for Force Majeure. Each party agrees that every reasonable effort will be made to complete its respective component of the Project by December 31, 2007, consistent with the terms of the Ordinance 120024; provided, that, as to Audubon, the following shall apply if construction of the Building is not complete by such date:
- (a) The City shall use its best efforts to extend use of any remaining portion of the City Share of Project Costs beyond the end of 2007 or, in the alternative, to identify another source of public funds to replace the unspent levy proceeds.
- (b) In the event that the City is unable to extend the remaining portion of the City Share of Project Costs or to identify another source of public funds, Audubon shall be solely responsible for all costs necessary to complete the Building.

ARTICLE 3 AUDUBON'S FINANCIAL COMMITMENT

- 3.1 Funding Thresholds. Prior to Audubon's execution of any contracts associated with the Project Budget (i.e. design or construction related contracts), Audubon must submit to DPR documentation (including actual receipts and pledges) of having raised the full amount of Audubon's required funding for that particular portion of the Project, *i.e.*,

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- a) Prior to execution of the design contract for the Building, Audubon must submit to DPR documentation of having raised \$236,353.
- b) Prior to execution of the construction contract for the Building, Audubon must submit to DPR documentation of having raised \$1,136,517 plus any additional sum as mutually agreed upon by both parties.
- c) Audubon agrees to place such funds in Audubon-controlled restricted accounts; provided that, the interest earned on such accounts shall be unrestricted and the interest earned may be used by Audubon for any purpose, consistent with Audubon accounting practices and donor restrictions.

3.2 Usable Building Commitment. Subject to Article 7 below (City Environmental Indemnity), following the commencement of construction, Audubon agrees and warrants that, if Audubon abandons the Project prior to the issuance of the Certificate of Occupancy, Audubon shall pay the amount required to make the Building usable, as reasonably determined by the Superintendent, and habitable as required by code, and shall reimburse the City for the City contributions to the Project planning, design and construction; provided that, in no event shall that amount exceed the unused portion of Audubon's \$1,372,869 total funding commitment plus any additional sum previously agreed upon by both parties. For purposes of this Article 3.20, the term "abandon" shall mean Audubon's failure to direct its construction contractor to finish the Building pursuant to the construction contract, unless due to a delay caused by the City's wrongful action or failure to act, or to cause, through failure to pay its construction contract, its contractor to physically and permanently abandon the Building.

ARTICLE 4 PROJECT BUDGET; COST SHARING

4.1 Project Budget. The Project Budget, as most recently revised, is appended to this Agreement as Exhibit C-1 and incorporated herein by this reference.

4.1.1 No change to the total Project Budget shall be made without the mutual Approval of the City Project Manager and Audubon, which approvals will not be unreasonably withheld.

4.1.2 Each Project Budget revision shall be effective when signed by the City Project Manager and Audubon. No further amendment of any portion of this Agreement shall be required. A signed copy of the latest revised Project Budget shall be appended to this Agreement in substitution of any other appended Project Budget, and each such attachment, by this reference, is and shall be incorporated herein.

4.2 Project Cost Sharing. The City and Audubon agree to share the total Project costs as set forth in the Project Budget as the same may be adjusted from time to time as provided in this Agreement as follows: for the renovation of the Building, Audubon shall pay \$1,372,869 and the City shall pay \$305,577. For the renovation of the Hatchery, the City shall pay \$313,023. Of the City's \$305,577 for the Building, approximately \$25,431 has already been spent or encumbered by the City for planning and design work.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

4.2.1 The parties shall ensure that the bids for the Building and Hatchery portions of the Project are separately stated. If bids for either portion of the Project exceed the current estimate, the scope of that component of the Project shall be reduced as provided in Article 6.5, below.

4.2.2 If the Project costs are less than \$1,991,469, City and Audubon each shall pay a proportionate share of such Project Costs (*i.e.*, City's share shall be \$618,600/\$1,991,469 and Audubon's share shall be \$1,372,869/\$1,991,469). If actual construction costs for either portion of the Project are less than budgeted, the savings shall be used to offset cost overruns in the other portion of the Project.

4.3 Fundraising Assistance. It is anticipated that the Audubon Share of Project Costs will come from private donations and, potentially, public grant sources other than DPR. DPR will assist Audubon in its fundraising efforts by communicating DPR's support for the Project and making appropriate representatives available to provide information and answer questions at fundraising events whenever possible.

4.4 Present Fundraising Status. As of the date of this Agreement, Audubon has raised \$200,000 of the \$1,372,869 that it has committed toward the Building portion of the Project. Audubon agrees that, from time to time, upon request by the City, it shall provide the City with documentation of such funds; provided, however, that, Audubon shall not be required to provide any identifying information relating to private fundraising activities or private donor information.

ARTICLE 5 RENOVATION PROJECT; DESIGN

5.1 Management of Project Design. Audubon shall contract for and manage the design for the Building renovation, in consultation with DPR and subject to its approval, which approval will not be unreasonably withheld. DPR shall contract for and manage the design for the Hatchery renovation, in consultation with Audubon. Design approvals shall be obtained from the non-managing entity at completion of the design program, early schematics, 100% schematics, 50% design development, 100% design development, 50% construction drawings and 99% construction drawings; provided that, unless otherwise agreed by the parties, the non-managing entity will complete its review and provide to the other party notice of its approval or disapproval thereof within seven (7) working days of receipt of such design. Each party shall ensure that the other, through the respective Project Representatives, is provided the opportunity to be involved and serve as a participant in on-going decision-making with respect to the design and construction of the Project, which participation shall include, without limitation, attending design team meetings, providing comments on design, attending meetings with the construction contractor(s), and providing comments on construction issues. Audubon shall pay for any additional DPR assistance it desires during the design phase at current DPR project management rates.

5.2 Design Values. City and Audubon agree that the Project design shall comply with any requirements established by the City's Landmark's Board, with any other adopted City and Park standards, and the mutually agreed upon design programs for each component of the Project. To the extent feasible, the parties shall incorporate design elements such as would

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

allow a structure to achieve the certified level of the United States Green Building Council Leadership in Energy and Environmental Design rating system. In addition, and to the extent feasible within the project budget, the design of the Hatchery portion of the project will incorporate methods for controlling vehicle access between the Building and the Hatchery.

- 5.3 Public Involvement in Project Design. Audubon shall conduct a public meeting to develop consensus on the Building concept and scope prior to schematic design. It shall conduct a second public meeting after schematic design, and a third public meeting prior to completion of construction documents. If Audubon so requests, DPR shall attend and participate in such meetings, at Audubon's expense; otherwise, DPR staff may voluntarily attend any such meetings at their own expense.
- 5.4 Public Work. The design contract for the Building shall be by Audubon pursuant to processes that: (a) satisfy all state and local laws for the solicitation of proposals or bids by contractors who are qualified to undertake design of the Building, and (b) fully comply with all other applicable federal, state and local requirements applicable to the Building, including those requirements related to the inclusion of required terms and conditions applicable to the Building in all such contracts. Among other requirements, such contracts will meet the following requirements for City public works projects utilizing City funding: (i) fair contracting practices (Chapter 14.10 SMC); and (ii) all applicable federal, state and local nondiscrimination requirements.
- 5.5 Changes in Approved Building Design and Specifications. If Audubon proposes to change or amend the approved Building design or any specification(s) that would cause the Building to exceed the Project Budget for that portion of the Project or that would result in a change contrary to the requirements established by the City's Landmarks Board or any other adopted City or DPR standards or the Building Design Program, such proposed change or amendment will be subject to the written approval of the City. The City will complete its review of any such proposed changes or amendments and provide to Audubon notice of its approval or disapproval thereof within ten (10) working days of receipt of any such proposed change or amendment.
- 5.6 No Representations or Liability. No City approval of any Building design or specification(s) (or amendments thereto) shall constitute an opinion or representation by the City as to their (i) compliance with any law, ordinance or standard, or (ii) suitability for any purpose other than those associated with the Building.
- 5.7 Americans with Disabilities Act. Audubon shall comply, and require its consultants and contractors to comply, with all applicable provisions of the Americans with Disabilities Act ("ADA") in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be considered a material breach of this Agreement.

ARTICLE 6 RENOVATION PROJECT; CONSTRUCTION

- 6.1 Management of Project Construction. Audubon shall contract for and manage construction of the Building improvements in consultation with DPR and DPR shall contract for and manage construction of the Hatchery improvements in consultation with Audubon. Audubon shall obtain a warranty from their construction contractor and name the City as a joint obligee.

- 6.2 **Regulatory Approvals; Compliance.** Each party shall be responsible for securing all necessary regulatory approvals related to the development and construction of its portion of the Project and each party shall be responsible for ensuring compliance during construction with any and all conditions or other requirements associated with such regulatory approvals. The parties agree to work cooperatively with one another, as necessary, to secure necessary regulatory approvals.
- 6.3 **Public Work.** The construction of the Project shall be a public work and Audubon shall comply with all laws with respect thereto. The construction contract for the Building shall be let by Audubon pursuant to processes that: (a) satisfy all state and local laws for the solicitation of proposals or bids by contractors who are qualified to undertake development or construction of the Building, and (b) fully comply with all other applicable federal, state and local requirements applicable to the Building, including those requirements related to the inclusion of required terms and conditions applicable to the Building in all such contracts. Among other requirements, such contracts will meet the following requirements for City public works projects utilizing City funding: (i) fair contracting practices (Chapter 14.10 SMC); (ii) all applicable federal, state and local nondiscrimination requirements; and (iii) the requirements set forth in RCW 35.22.650.
- 6.4 **Site Visits and Inspections.** Each party shall allow the other party, through the respective Project Managers, to visit its construction site to review and inspect the work; provided that, any such inspection shall be a cost borne solely by the inspecting party and shall not be deducted from the Construction Costs, unless the costs are included within the Project Budget. To the extent that official inspections are required by applicable City codes and regulations, Audubon may employ a qualified inspector for such purpose; provided that, Audubon must obtain DPR's approval of such inspector prior to the required inspections, which approval will not be unreasonably withheld.
- 6.5 **Options if Bids Exceed Total Construction Cost.** If the bid received for either component of the Project from the lowest and best bidder exceeds the estimated construction cost for that Project component, the managing party may (i) reject all bids and re-bid that component of the Project; (ii) consult with the appropriate architect to identify design changes to the Building Design Program that would enable that component of the Project to be constructed within the budgeted amount; or (iii) voluntarily pay the increased amount and proceed with construction. In the event of a redesign, such design changes shall be implemented and the managing party shall again invite bids for the construction of that component of the Project or any portion thereof; provided that, if design changes are elected to reduce the cost of construction of a Project component, the non-managing party may, at its option, pay the difference in cost to retain the original or more costly design.
- 6.6 **Cost Overruns.** If, during construction, it becomes apparent that the actual construction costs for either component of the Project will exceed the estimated construction costs shown in the current Project Budget, including any contingency allowance, for that component of the Project, the party responsible for managing that component of the Project (the "managing party") shall be solely responsible for any cost overruns for the component of the Project; provided that, the parties may agree, if possible, that Project funds be reallocated so that the total Project cost remains within the Project Budget; provided further that, the managing party may seek a design modification to bring that component of the Project within the estimated

construction costs, subject to the approval provisions contained in Article 6.8.2. If a design modification is made, the managing party shall be solely responsible for paying all costs associated therewith.

6.7 Additional Funding. If either of the events described in Article 6.5 (bids exceed the Project Budget) or Article 6.6 (cost overrun) occur, the City and Audubon, as an alternative or an additional remedy, may agree upon a collaborative plan to seek additional funding. Any such agreement or plan shall be set forth as an amendment to this Agreement and to the extent practicable, shall include provisions for both public and private funding sources.

6.8 Construction Phase Approvals and Control of Work; Substantial Completion and Final Completion.

6.8.1 Work Notification. Audubon shall notify DPR, in writing, at least ten (10) working days prior to the commencement of construction work on the Building. At that time or earlier, if possible, Audubon shall provide information on the areas that will be needed for staging of construction. DPR shall approve such areas, or identify alternate areas for staging if necessary to avoid disruption of community use of the park; provided that, DPR shall ensure that any alternative construction areas are convenient to the Building construction areas and will not add undue costs to construction of the Building. DPR shall thereafter, in a timely manner, issue construction license agreements for such staging areas.

6.8.2 Construction Phase Approvals and Control of Work. In addition to its right to approve the Building design and specifications, the City shall have the right to approve, in advance and in writing, any proposed changes to the work during construction that would cause the Building to exceed the Project Budget for that portion of the Project or that would result in a change contrary to the requirements established by the City's Landmarks Board or any other adopted City or DPR standards or design program. The City's approval decision under this Article shall be delivered within five (5) working days. In addition, each party will invite the non-managing party to participate in their weekly construction meetings.

6.9 Substantial Completion. Audubon shall notify the City Project Manager in writing when the Building is substantially completed. As part of such notification, Audubon shall advise the City Project Manager of any items of work that remain incomplete and a schedule for their completion. Such notification shall include the signature of the inspector approved by the City pursuant to Article 6.4 above.

6.10 Final Completion Date; Certificate of Occupancy. Final completion of the Building will have been achieved when (i) a permanent Certificate of Occupancy for the Building has been issued, and (ii) all remaining work items, including "punch list" items, have been completed to the satisfaction of the City.

6.10.1 Audubon shall schedule a final inspection of the Building when it and its construction contractor believe construction of the Building has been finally completed. Following notice of same from Audubon, the City Project Manager will conduct an inspection of the Building with Audubon and its design consultant and construction contractor.

If, following such inspection, the City agrees that construction of the Building is finally complete, the City will so advise Audubon by written notice within five business days after the inspection. Such written notice will include a Final Completion Date for the Building, as determined by the City. However, if the City, following such inspection, does not reasonably consider the construction of the Building to be finally complete, the City will so advise AUDUBON by written notice within such five day period stating the reasons for the City's decision.

Upon receipt of any written notice from the City that the construction of the Building is not finally complete, Audubon shall diligently pursue the remaining work necessary to achieve final completion. Subsequent inspection(s) for purposes of determining whether construction of the Building is finally completed shall occur in the manner set forth above.

6.10.2 Once a permanent Certificate of Occupancy has been issued and a Final Completion Date for the Building has been established, a Certificate of Final Completion will be issued by the City; provided, however, that such date and certificate shall not constitute acceptance by the City of any unauthorized or defective work or materials.

6.11 Building Construction Closeout Phase. The Building Construction Closeout Phase will commence upon issuance of the Certificate of Final Completion for the Building.

Within 120 days from the date of the issuance of the Certificate of Final Completion, Audubon shall perform the following obligations ("Audubon's Closeout Obligations"):

- (a) To the extent separately assignable, assign to the City all manufacturers' guaranties and warranties and related to the materials and fixtures provided to Audubon and located in the Building;
- (b) Secure and deliver to the City unconditional lien releases related to the Building from the Building design consultant, construction contractor, subcontractors, suppliers, vendors, laborers and material men;
- (c) Furnish the City with one (1) original complete sets of Mylar drawings ("Record Drawings") reflecting the final "as built" condition of the Building (black background prints are not acceptable). The Record Drawings shall also be provided to the City on electronic media that is compatible with Auto Cad 2000 or later version;
- (d) Furnish the City with all contractor maintenance manuals related to the Building, including operating manuals, equipment brochures, paint schedules and material brochures;
- (e) Deliver to the City all other Building information such as operating manuals and warranties; and in Audubon's possession that reasonably relate to the use and operation of the Building;
- (f) Deliver to the City all certificates of occupancy and other permits and approvals necessary for the use and operation of the Building; and

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

c) Attend a warranty walk through meeting scheduled by the City within one year of the issuance of the Certificate of Final Completion.

6.12 Defective or Unauthorized Work or Materials. If, within one year after the issuance of the Certificate of Final Completion, the City notifies Audubon that it has discovered defective or unauthorized work or materials, Audubon shall cause the correction of the defective or unauthorized work or materials as covered by the bond described in Article 9.3.3 (b) or, at the City's discretion, assign the right for the City to pursue Audubon's contractor or supplier thereof. Any disputes between Audubon and the City regarding the defective or unauthorized work or materials will be addressed through Article 13 (Disputes).

ARTICLE 7 ENVIRONMENTAL INDEMNITY

7.1 Audubon's Environmental Indemnity. If, after the commencement of construction on the Building, any act, omission or negligence of Audubon or any of its agents results in any contamination of the Premises, the Building or the surrounding property or in the Release of Hazardous Material from, on, in, on or beneath the Premises, the Building or adjacent property, then Audubon shall indemnify the City from and against all losses (including, without limitation, the loss or restriction of the use of the Building or adjacent property and sums paid in settlement of claims, fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) resulting from such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Building or adjacent property to its prior condition. Without limiting the foregoing, if Audubon or any of its agents or invitees causes or permits the Release of any Hazardous Materials on, about, in or beneath the Building or adjacent property, Audubon shall immediately, at no expense to the City, take any and all necessary actions to abate and remediate the Release in accordance with all Environmental Laws. Audubon shall afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material. This indemnity provision shall survive termination or expiration of this Agreement.

7.2 City's Environmental Indemnity. If any act, omission or negligence occurring prior to the commencement of Audubon's construction activities, and not as a result of any act, omission or negligence of Audubon or any of its agents, results or has resulted in any contamination of the Building or the surrounding property or in the Release of Hazardous Material from, on, in, or beneath the Building or adjacent property, then the City shall indemnify Audubon from and against all losses (including, without limitation, the loss or restriction of the use of the Building and delays in the construction of the Building and sums paid in fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) resulting from such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Material and any increased costs of construction of the Building resulting from such Release. The City's indemnity under this Article shall be limited to any contamination of the Premises or adjacent property that results from activities occurring or causes originating prior to the commencement of Audubon's construction activities and not as a result of any act, omission or negligence of Audubon or any of its agents. This indemnity provision shall survive termination or expiration of this Agreement.

ARTICLE 8 REPORTS; APPLICATIONS FOR PAYMENT.

8.1 Invoicing. During the design phase of the Building portion of the Project, Audubon's Project representative shall invoice DPR's Project Manager for the City's portion of the Building's design contract. The total amount of the City's contribution to the Building's design contract is \$20,406 or approximately 12.6% of the total estimated design contract amount of \$161,642. As the City has already expended or encumbered \$4,063 of the Building's design costs, the remaining balance for which the City shall be responsible is \$16,343. Audubon shall bill the City at the rate of 12.6% of the Building's design contract costs as they are incurred by Audubon until the City's remaining funding obligation of \$16,342 is expended. Each invoice shall contain a general status report, the percent of each design phase completed and the balance of funds remaining for design.

During the construction phase for the Building, the City will be contributing \$248,230 (or 26.85%) of the budgeted construction contract costs. Audubon's Project Representative shall invoice the City at 26.85% of the construction contractor's costs as Audubon incurs such costs. Each invoice shall contain a general status report, the inspector's report and a statement of the balance of funds remaining for construction.

8.1.1 Audubon may submit monthly requests for payment (invoices) to the City based upon (and not in excess of) the percentage of work completed as a percentage of the City's contribution to the Building's construction, based on a mutually agreed upon schedule of values. Audubon shall withhold a retained percentage from their construction contractor and not bill the City for their portion of the retainage until Audubon pays the contractor for the retained amounts.

8.1.2 Payment requests shall be directed to the City at the Parks and Recreation Department, 800 Maynard Avenue South, Third Floor, Seattle, WA 98134-1336, and shall be signed by an authorized representative of Audubon. The Superintendent, or a designated representative, shall approve or disapprove the request, in writing, within ten (10) working days of receipt of all required documentation. If the payment request is disapproved, the notice thereof shall contain the reasons for the disapproval; Audubon may correct the reasons for disapproval and resubmit the request for disapproved items. Payment will be made to Audubon within thirty (30) days after notice of the Superintendent's approval. The City will use its best efforts to expedite this payment process so that payment can be made as quickly as possible to Audubon.

8.2 City Audits. Upon request, Audubon (including any assignees of rights or responsibilities under this Agreement) shall permit the City to inspect and audit all pertinent books and

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

records of Audubon, its assignees, its consultants and contractors, any subcontractors, or any other person or entity that performed work in connection with or related to the Project, at any and all times deemed necessary by the City, including up to six years after the final payment has been made by the City under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City selects. Audubon shall supply the City with, or shall permit the City to make a copy of, any books and records or portion thereof. Audubon shall ensure that such inspection, audit and copying right of the City is a condition of any contract or agreement, subcontract, or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

- 8.3** DPR Reports to Audubon. During construction of the Hatchery improvements, DPR shall report to Audubon monthly on the general status of the project, the schedule and value statement provided by the contractor, the inspector's report, and the unexpended amount of City funds for that portion of the Project.

ARTICLE 9 INSURANCE

- 9.1** General Obligations. At all time hereunder, Audubon shall, at its own expense, obtain and continuously maintain, or cause to be obtained and continuously maintained, in full force and effect, insurance policy(ies) in conjunction with the following:

- (a) Audubon's activity on or use or occupation of the Project site;
- (b) the design, construction management, inspection, construction, reconstruction, operation, maintenance, use or existence of the Project, including the Annex; and
- (c) Any and all claims and risks in connection with the activities performed by Audubon under this Agreement.

- 9.2** Third Party Obligations. With respect to all consultants and contractors performing Project work on behalf of Audubon, Audubon shall:

- (a) Obtain from each consultant and contractor evidence that such contractor or consultant has obtained and maintained a policy or policies of insurance as required herein;
- (b) Submit evidence of insurance as required herein to the City for review and approval;
- (c) Require that all such policies name the City as an additional insured, including completed operations, on all liability policies per ISO form CG2026 or its equivalent; and
- (d) Include, in all contracts executed by Audubon with respect to the Project, provisions which extend to the City construction indemnities and warranties granted to Audubon.

9.3 **Required Insurance.** The following policies shall be obtained and continuously maintained at all times hereunder by Audubon.

9.3.1 Audubon shall obtain and continuously maintain the following policies of insurance:

(a) A policy of **Commercial General Liability Insurance**, written on an insurance industry standard occurrence form (CG 00 01) including all the usual coverage known as:

- Premises/Operations Liability;
- Products/Completed Operations;
- Personal/Advertising Injury;
- Contractual Liability;
- Explosion, Collapse and Underground Property Damage (XCU);
- Independent Contractors Liability;
- Stop Gap or Employers Contingent Liability; and
- Per Project Coverage (CG2503 ISO), or equivalent.

Such policy(ies) shall provide the following minimum limits:

Bodily Injury and Property Damage:

\$ 1,000,000	General Aggregate
\$ 1,000,000	Products & Completed Operations Aggregate
\$ 1,000,000	Personal & Advertising Injury
\$ 1,000,000	Each Occurrence
\$ 100,000	Fire Damage

(b) A policy of **Business Automobile Liability Insurance**, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto). If "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported, endorsement CA9948 & MCS 90 are required.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage

\$ 1,000,000 per accident

(c) A policy of **Excess Liability Insurance** above the primary general liability and auto liability policies that will provide a total limit of insurance of \$5,000,000 per Occurrence/Aggregate/per Claim. The excess policy shall be, at a minimum, as broad as the primary policies.

(d) A policy of **Worker's Compensation**: As respects Workers' Compensation insurance in the state of Washington, Audubon shall secure its liability for

industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Audubon shall be responsible for Workers' Compensation Insurance for any and all contractors and subcontractors who provide services with respect to the Project. Additionally, if the any contractor or subcontractor is required to work on or around a navigable waterway, the Authority shall provide evidence of United States Longshoremen's and Harbor Workers' (USL&H) coverage and contingent coverage for Jones Act (Marine Employers Liability) in compliance with federal statutes. If Audubon is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Audubon shall so certify to the City by submitting a letter signed by a corporate officer, indicating that it is a qualified self-Insurer, and setting forth the limits of any policy of excess insurance covering its employees; or any similar coverage required.

9.3.2 Design, Construction Management or Inspection. In addition to standard insurance requirements set forth above, Audubon shall obtain or cause to be obtained the following additional insurance coverage:

(a) Errors and Omissions Liability Insurance: A policy of Errors and Omissions Liability Insurance appropriate to each consultant's profession. Coverage should be for a professional error, act or omission arising out of the scope of services shown in the contract. The policy shall not exclude any of the following:

- Claims arising out of pollution for environmental work[†]
- Construction Administration Services[†]
- Laboratory analysis[†]

[†]Only required when services are to be performed under this agreement.

The minimum limit of coverage shall be \$1,000,000 per Claim/Aggregate

9.3.3 Construction, Reconstruction, Operations. In addition to the standard insurance requirements set forth above, Audubon shall secure or cause to be secured, the following additional insurance coverage:

(a) Builder's Risk Insurance: Audubon shall purchase and maintain builders insurance on an "All Risk" basis, in an amount equal to 100% replacement cost thereof, against loss from the perils of fire and other risks of direct physical loss, including earthquake and flood damage. Audubon/Contractor shall be responsible for the policy deductible. The policy shall **include as Loss Payee the City**. The Authority shall provide the City with a duplicate original of said Policy.

Coverage shall include all materials, supplies, and equipment intended for specific installation in the Project while such materials, supplies and/or equipment are located at the Project site, in transit or while temporarily located away from the Project site. Coverage shall also include the value of site preparation work, the value of underground property, the cost of debris removal, and the cost of pollutant cleanup as well as removal.

In addition, the following coverage extensions shall be included: delayed opening, loss of earnings, operation of building codes, demolition, contingent liability and increased costs of construction. The policy shall not contain any coinsurance penalty provision or any occupancy clauses.

With respect to the Builder's Risk Policy described herein, the City and Audubon waive all subrogation rights against each other, any contractors and consultants, and any of their subcontractors or subconsultants, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance held by the City as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity had an insurance interest in the property damaged.

The City reserves the right to purchase this policy for the Project, adding Audubon/Contractor as an additional insured to any such policy. If the City does purchase such a policy, Audubon shall reimburse the City for all of its costs for such coverage.

- (b) Warranty, Repair or Remedy of Defects. Audubon shall obtain a bond from a surety company, acceptable to the City and which names the City as a joint obligee, which for a period of one year after Certification of Final Completion of the Building shall provide for payment for the repair or remedy of defects in the Annex which are due to faulty or unauthorized materials or workmanship and for damage to other work resulting from such faulty material and workmanship.

9.3.4 Deductibles. If any of the above required insurance contains a deductible (or self-insured retention amount) the Audubon/Consultant/Contractor shall:

- (a) Disclose such amount; and
- (b) Be responsible for payment of any claim equal to or less than the deductible (or self-insured retention amount).

The City reserves the right to reject insurance policies with a deductible (or self-insured retention amount) in excess of \$25,000 for which adequate financial strength of the Insured cannot be demonstrated to the satisfaction of the City.

9.4 Conditions. The insurance policy or policies, endorsements thereto, and subsequent renewals required under this Article 9 shall:

- (a) Be subject to approval by the City as to company, form and coverage. The insurance company shall be:
 - (i) Rated A-:VII or higher in the A.M. Best's Key Rating Guide; and

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

- (ii) Licensed to do business in the State of Washington or be filed as surplus lines by a Washington broker.
- (b) Be primary as respects the City, and any other insurance maintained by the City shall be excess insurance and not contributing insurance with Audubon, and/or its consultants, contractors, inspectors, or other contractors of any kind;
- (c) Be maintained in full force and effect through the Agreement;
- (d) Protect the City within the policy limits from any and all losses, claims, actions, damages, and expenses arising out or resulting from Audubon's and/or any of its consultant's, contractor's, inspector's, or other contractor's performance or lack of performance;
- (e) Name the City as an additional insured pursuant to the requirements of the provisions below related to "Evidence of Insurance"; and
- (f) Include a provision (whether by endorsement or otherwise) indicating that, except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, the insurance shall apply:
 - (i). As if each party insured thereunder (whether as a named insured, additional named insured, or additional insured) were the only party insured by such policy; and
 - (ii) Separately to each insured against whom a claim is made or a suit is brought.

9.5 Evidence of Insurance. In many cases, evidence of insurance may be demonstrated by submitting a copy (photocopy or facsimile acceptable) of the declaration pages of the policy and the additional insured endorsement. The declaration pages shall clearly show the policy effective dates, limits and schedule of forms and endorsements. Any reference to premiums may be blacked out. However at the option of the City, Audubon and/or its designated Contractors, Consultants and Inspectors, as outlined above, may be required to submit a copy of the insurance policy, all referenced endorsements, or both. Certificates of Insurance (ACORD forms) will not be accepted as evidence of insurance. Evidence of insurance for each policy shall:

- (a) Comply with one of the following requirements regarding naming the City as an additional insured, including Completed Operations:
 - (i) Insurance Services Office (ISO) Standard Endorsement: An additional insured endorsement issued on an ISO form CG 20 26 or its equivalent, shall name "The City of Seattle, its officers, elected officials, employees, agents, and volunteers" as an additional insured. The endorsement shall

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- (a) Be signed by an authorized representative of the insurance company; and
 - (b) Include the policy number and name of the insured on the endorsement.
- (ii) Non-ISO Endorsements: For Non-ISO endorsements, any of the following options are acceptable:
- (a) A blanket clause (in the policy or endorsement) adding, without undue restriction of coverage, as additional insured anyone for whom Audubon and/or its consultants, contractors, inspectors, or other contractors of any kind, are required to provide insurance under a contract or permit;
 - (b) An additional insured endorsement on a non-ISO endorsement form containing the following provision:

"The City of Seattle, its officers, elected officials, employees, agents, volunteers, are an additional insured for all coverage provided by this policy and shall be fully and completely protected to the extent provided in said policy for any and every injury, death, damage and loss of any sort sustained by any person, organization or corporation in connection with any activity performed by Audubon, and/or its consultants, contractors, inspectors, or other contractors of any kind, as outlined above by virtue of the provisions of this Agreement between The City of Seattle and Audubon."

The coverage provided by this policy to The City of Seattle shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to The City of Seattle."; or

- (ii) Any other additional insured endorsement form or clause approved by the City.

9.6 Consultants, Contractors, Inspectors or other Contractors of any Kind Performing Work, or Other Agreements – Additional Insured Provision Requirement of Authority. Audubon shall require that any and all of its consultants, contractors, inspectors, or other contractors of any kind, performing work, or other agreements with respect to the Project, shall name the City as an additional insured, including completed operations, on all liability policies as indicated herein, on ISO Form 20 26 or equivalent. Audubon shall further require in all contracts with respect to the Project, a provision which extends to the City, construction indemnities and warranties granted to Audubon.

ARTICLE 10 INDEMNIFICATION

10.1 Audubon Indemnity. Audubon agrees to defend, indemnify and hold City and its affiliates, directors, officers, employees, agents and independent contractors harmless from any and all damages, costs and expenses (including attorney's fees) incurred in connection with any third party claims arising from any use of donated funds for a purpose other than the purpose originally set forth by the donor, or for any other act or omission of Audubon in connection

with fulfilling its obligations under this Agreement. These indemnification obligations shall survive the expiration or termination of this Agreement.

- 10.2 City Indemnity. City agrees to defend, indemnify and hold Audubon and its affiliates, directors, officers, employees, agents and independent contractors harmless from any and all damages, costs and expenses (including attorney's fees) incurred in connection with claims arising from any act or omission of City in connection with fulfilling its obligations under this Agreement. These indemnification obligations shall survive the expiration or termination of this Agreement.

ARTICLE 11 DEFAULT; TERMINATION

- 11.1 Defaults in Performance Constitute Material Breach. If either party defaults in performing of any of its obligations herein, in particular obligations relating to the payment of money, the non-defaulting party may declare this Agreement to have been materially breached.
- 11.2 Process for Termination of Agreement. Either party may terminate this Agreement if the other party has materially breached the Agreement and such breach has not been corrected to the reasonable satisfaction of the dissatisfied party within thirty (30) days after notice of breach has been given. If the nature of the breach is such that more than thirty (30) days are required to remedy the breach, then the breaching party shall not be in default if it commences to cure the breach within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the case of Audubon's monetary obligations, any nonpayment when due shall constitute a material breach that must be corrected within 30 days after notice of the breach has been given or the City may immediately terminate this Agreement.
- 11.3 Notice of Termination. Except for monetary defaults, notice of termination shall be given in writing by the party terminating this Agreement to the other party not less than five (5) days prior to the effective date of termination.
- 11.4 Responsibilities of Parties on Expiration or Termination of Agreement. If this Agreement is terminated due to Audubon's default prior to start of construction, then Audubon shall reimburse the City for one hundred percent (100%) of the City's expended financial contribution to the Project. If this Agreement is terminated due to the City's default prior to the start of construction, then the City will reimburse Audubon for Audubon's expended financial contribution to the Project. In either case, the parties shall be released from all continuing obligations under the Use and Occupancy Agreement. If this Agreement is terminated due to Audubon's default after construction begins, Audubon shall be obligated to satisfy its commitments as contained in Article 3.2 (Usable Building Commitment) of this Agreement. If this Agreement is terminated due to the City's default after construction begins but before the term of the Use and Occupancy Agreement has commenced, the City shall be obligated to reimburse Audubon for one hundred percent (100%) of Audubon's expended financial contribution to the design and construction of the Building and shall release Audubon from all continuing obligations under the Use and Occupancy Agreement. For purposes of this Article 11.4, the term "financial contribution" shall mean a party's paid or incurred expenses pursuant to the Project Budget as reflected in Exhibit C or as amended by mutual agreement.

11.5 Termination for Contamination or Release of Hazardous Substances. If, during either design or construction, Audubon discovers the existence of any contamination of the Building or the surrounding property or the existence of a Release of Hazardous Material from, on, in, on or beneath the Building or adjacent property, which is the result of any act or omission occurring prior to the commencement of Audubon's construction activities, and not as a result of any act, omission or negligence of Audubon or any of its agents, and such contamination or Release requires Remediation Activities or results in an increase in the Project Budget for the Building, Audubon shall have the right to immediately terminate this Agreement and the City shall be obligated to indemnify Audubon consistent with Article 7.2 above (City's Environmental Indemnity) and shall release Audubon from all continuing obligations under the Use and Occupancy Agreement.

11.6 Voluntary Termination by Audubon. In the event that Audubon is no longer able to carry out the purposes of this Agreement because of (a) corporate incapacity, (b) lack of funds to design or construct the Building, (c) failure to obtain the necessary permits and licenses from applicable governmental authorities after the diligent pursuit of same, or (d) the discovery of Hazardous Materials in the Building that predate the Commencement Date (in which case, Article 11.5 applies), then Audubon shall have the right to terminate this Agreement upon thirty (30) days written notice to the City. If Audubon terminates this Agreement as provided for herein, the requirements of Article 11.4 above shall apply as applicable; provided that, Article 11.4 shall not be deemed to apply in the event that termination is necessary pursuant to item (c) of this Article 11.6. For the sole purpose of applying Article 11.4 to this Article 11.6, Audubon shall be deemed the "defaulting party".

ARTICLE 12 NOTICES

All notices or documents required by this Agreement shall be in writing and shall be sufficiently given if either personally 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 Audubon Washington P.O. Box 462 Olympia, WA 98057
With a copy to:	General Counsel National Audubon Society, Inc. 700 Broadway New York, New York 10003
If to the City:	The City of Seattle Department of Parks and Recreation Administrator Contract and Business Resources P.O. Box 3036 Seattle, WA 98114

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

With a copy to: Herbye White, Director
Recreation and Support Division
Department of Parks and Recreation
100 Dexter North
Seattle, WA 98109

or by such other means as the parties agree, or to such other address as either party hereto may specify for itself in a notice to the other.

ARTICLE 13 DISPUTES

The parties shall make reasonable efforts to resolve disputes as expeditiously as possible through negotiations between the Audubon Center at Seward Park program director and the DPR Director of the Recreation and Support Division. If those negotiations are unsuccessful, the matter shall be referred to the Senior Vice President of Audubon Centers and the DPR Superintendent. If the parties cannot resolve any dispute arising under this Agreement, either party may submit the matter to a non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution ("ADR") procedures. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent ADR or legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available.

ARTICLE 14 MISCELLANEOUS

- 14.1 Time of Essence. Time is of the essence in the performance of this Agreement.
- 14.2 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.
- 14.3 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.
- 14.4 Binding Effect. The provisions, covenants, and conditions contained in this Agreement are personal to the parties hereto and are not assignable.
- 14.5 Applicable Law; Venue. This Agreement shall be interpreted under the laws of the State of Washington. Any litigation between the parties regarding this Agreement or any question,

claim, loss, or injury arising hereunder shall be brought in the Superior Court of the State of Washington for King County.

14.6 No Partnership or Joint Venture Created. 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.

14.7 Remedies Cumulative. The parties' rights under this Agreement are cumulative; failure on the part of any party to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The parties 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.

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

14.9 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.

14.10 Effectiveness of Agreement. This Agreement shall become effective only upon approval by the Seattle City Council and its execution by an authorized representative of each party.

14.11 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.

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

- Exhibit "A": Legal Description of Seward Park
- Exhibit "B": Depiction of Seward Park, including the Building
- Exhibit "C": Project Budget
- Exhibit "D": Projected Project Schedule
- Exhibit "E": Use and Occupancy Agreement

Ex. B does not match on title pg. 16, table

14.13 Entire Agreement. This Agreement and all attachments and exhibits pertaining to it 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.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

14.14 **Non-Liability of Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to Audubon, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Audubon, its successors and assigns under this Agreement, or for any obligation of the City under the Use and Occupancy Agreement. Likewise, no board member, member, officer, employee or other agent of Audubon shall be personally liable to the City, its successors and assigns under this Agreement, or for any obligation of Audubon under the Use and Occupancy Agreement, in the event of any default or breach by Audubon or for any amount which may become due to the City, its successors and assigns, or for any obligation of Audubon under this Agreement.

14.15 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

NATIONAL AUDUBON SOCIETY, INC.

President

Date

THE City OF SEATTLE

Kenneth R. Bounds, Superintendent
Department of Parks and Recreation

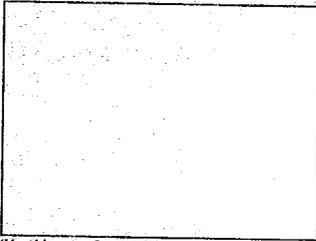
Date

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2003.



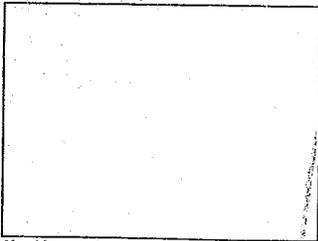
(Use this space for notarial stamp/seal)

Notary Public
Print/Type Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2003.



(Use this space for notarial stamp/seal)

Notary Public
Print/Type Name _____
My commission expires _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT A
LEGAL DESCRIPTION OF SEWARD PARK

GOVERNMENT LOT 3 IN SECTION 14; GOVERNMENT LOTS 1, 2, AND 3 IN SECTION 23; TRACTS 23, 24 AND 25 OF B. W. JOHN'S AND C. H. HANFORD'S 5 ACRE TRACTS, TOGETHER WITH THAT PORTION OF GOVERNMENT LOT 5 LYING SOUTHERLY OF THE SOUTH LINE OF SAID TRACT 23 IN SECTION 23; GOVERNMENTS LOTS 1, 2, AND 3 IN SECTION 24; ALL IN TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., TOGETHER WITH ALL ABUTTING LAKE WASHINGTON SHORELANDS AND INCLUDING ALL BOULEVARDS, STREETS, AND ALLEYS LYING WITHIN THE AFOREDESCRIBED LOTS, TRACTS, AND SHORELANDS.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

**EXHIBIT C
Project Budget**

TOTAL PROJECT BUDGET - COSTS AND FUNDING SOURCE									
	Annex			Hatchery			Total Project		
	City	Audubon	Totals	City	Audubon	Totals	City	Audubon	Totals
Planning	\$17,399	\$6,847	\$24,246	\$7,419		\$7,419	\$24,818	\$6,847	\$31,665
Design	\$34,572	\$229,504	\$264,076	\$51,343		\$51,343	\$85,915	\$229,504	\$315,419
Construction	\$253,606	\$1,136,517	\$1,390,123	\$254,261		\$254,261	\$507,867	\$1,136,517	\$1,644,384
Totals	\$305,577	\$1,372,869	\$1,678,445	\$313,023	\$0	\$313,023	\$618,600	\$1,372,869	\$1,991,468

**NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.**

EXHIBIT D
Projected Project Schedule

Activity	2003 by Quarters				2004 by Quarters				2005
	1	2	3	4	1	2	3	4	1
Design Begins			X						
Preliminary Design			X						
Design Development Begins				X					
Construction Document Phase Begins					X				
Final Design					X				
Construction Begins						X	X		
Construction Completed								X	
Building and Hatchery Open									X

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

Exhibit E

USE AND OCCUPANCY AGREEMENT

Between

**THE CITY OF SEATTLE,
a municipal corporation
of the State of Washington
and
NATIONAL AUDUBON SOCIETY, INC.,
a nonprofit corporation
of the State of New York**

**NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.**

TABLE OF CONTENTS

I.	DEFINITIONS	1
II.	LEASE OF PREMISES, LICENSE FOR ACCESS; EFFECTIVE DATE	3
A.	LEASE	3
B.	NONEXCLUSIVE LICENSE TO USE COMMON AREAS	4
C.	EFFECTIVE DATE	4
D.	FORM OF AMENDMENT	4
E.	POSSESSION AND OCCUPANCY	5
III.	USE/PURPOSE	5
IV.	TERM	5
V.	RENT	5
A.	FIXED RENT	5
B.	ADJUSTED FIXED RENT	5
C.	RENTAL OFFSETS	6
D.	ANNUAL RENT	6
VI.	TAXES, UTILITIES AND OTHER SERVICES	6
A.	TAXES	6
B.	FIXED RENT REDUCTION AND OFFSET INAPPLICABLE TO TAXES	7
C.	UTILITIES	7
D.	TELEPHONE AND DATA TRANSMISSION	7
E.	NO CITY LIABILITY	7
VII.	PROCESS FOR PAYMENT OF RENT AND OTHER EXPENSES	7
A.	TIME FOR PAYMENT OF ANNUAL RENT	7
B.	UTILITY AND OTHER SERVICE CHARGES	8
C.	PROGRAM AND BUILDING USE RECEIPTS	8
D.	LATE AND REFUSED PAYMENTS	8
E.	PAYMENT PROCESS	8
VIII.	OPERATIONAL REQUIREMENTS	8
A.	PROGRAMS	8
B.	COORDINATION	9
C.	COMMUNITY OUTREACH	9
D.	ACCESS	9
E.	PUBLIC USE OF BUILDING COMMON AREAS	9
F.	SCHEDULING AND CLOSURES	10
G.	USE SCHEDULE	10
H.	STAFF	11
I.	SUPPLY STORAGE	12
J.	INTOXICATING BEVERAGES	12
IX.	FORCE MAJEURE	12
X.	ACCEPTANCE OF BUILDING "AS IS"	12
XI.	MAINTENANCE AND REPAIRS	13
A.	AUDUBON'S CLEANING AND MAINTENANCE OBLIGATIONS	13
B.	CITY'S MAINTENANCE OBLIGATIONS	14
C.	RECYCLING OF WASTE MATERIALS	15
E.	MODIFICATIONS, ALTERATIONS AND ADDITIONS	15
F.	COORDINATION	17

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

G.	<u>CITY'S RIGHT TO STOP WORK</u>	17
XII.	SIGNS	18
A.	<u>NAME OF BUILDING AND USE OF NAME</u>	18
B.	<u>AUDUBON SIGNS</u>	18
XIII.	KEYS	19
XIV.	HAZARDOUS WASTE OR MATERIALS	19
A.	<u>RESTRICTION ON USE; RESPONSE PLAN; DEFINITION</u>	19
B.	<u>COMPLIANCE</u>	19
C.	<u>CITY'S RIGHTS</u>	19
D.	<u>AUDUBON'S DUTY TO NOTIFY; RESPONSE TO RELEASE</u>	20
E.	<u>REMOVAL UPON SURRENDER</u>	20
F.	<u>AUDUBON'S ENVIRONMENTAL INDEMNITY</u>	20
XV.	COMPLIANCE WITH LAWS	21
A.	<u>GENERAL REQUIREMENT</u>	21
B.	<u>LICENSES AND SIMILAR AUTHORIZATIONS</u>	21
C.	<u>NONDISCRIMINATION AND AFFIRMATIVE ACTION</u>	21
XVI.	LIENS	22
XVII.	LIABILITY AND INSURANCE	22
A.	<u>AUDUBON'S INDEMNITY</u>	22
C.	<u>INSURANCE</u>	23
XVIII.	DAMAGE OR DESTRUCTION	23
A.	<u>DAMAGE; EXTENT OF OBLIGATION TO RESTORE</u> (THIS SECTION IS AWAITING CONVERSATION WITH THE RISK MANAGER).....	23
B.	<u>NO OBLIGATION TO RESTORE PERSONAL PROPERTY</u>	24
C.	<u>DAMAGE NEAR END OF TERM</u>	24
XIX.	CITY'S CONTROL OF BUILDING AND VICINITY	25
XX.	DEFAULT; TERMINATION; REMEDIES	25
A.	<u>DEFAULT; CURE PERIODS</u>	25
B.	<u>CITY DEFAULT</u>	26
C.	<u>REMEDIES</u>	26
D.	<u>REMEDIES CUMULATIVE</u>	26
XXI.	TERMINATION	26
A.	<u>TERMINATION FOR BONA FIDE PUBLIC PURPOSE</u>	26
XXII.	SUBLEASES AND ASSIGNMENTS	27
XXIII.	SURRENDER	27
A.	<u>AUDUBON'S OBLIGATIONS</u>	27
B.	<u>RE-ENTRY BY CITY</u>	28
C.	<u>SURVIVAL OF LIABILITIES</u>	28
XXIV.	QUIET ENJOYMENT	28
XXV.	DISPUTES	28
XXVI.	CITY'S APPROVAL OR CONSENT	29
A.	<u>CONSENT EXPRESSLY FOR USE AGREEMENT PURPOSES; DISCRETION OF CITY</u>	29

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

B.	<u>CONSENTS HEREUNDER NOT FOR REGULATORY PURPOSES</u>	29
XXVII.	<u>SUCCESSORS AND ASSIGNS</u>	29
XXVIII.	<u>NOTICE</u>	29
A.	<u>ADDRESSES</u>	29
B.	<u>EFFECTIVENESS OF NOTICE</u>	30
XXIX.	<u>TERMINOLOGY</u>	30
A.	<u>HEADINGS</u>	30
B.	<u>GENDER AND NUMBER</u>	30
XXX.	<u>SEVERABILITY</u>	30
XXXI.	<u>APPLICABLE LAW</u>	30
XXXII.	<u>NEGOTIATED AGREEMENT; MERGER</u>	30
XXXIII.	<u>AUDITS AND RECORDS</u>	31
A.	<u>PROGRAM AUDIT REPORT</u>	31
B.	<u>RECORDS</u>	31

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
 IT IS DUE TO THE QUALITY OF THE DOCUMENT.

DRAFT
USE AND OCCUPANCY AGREEMENT

Between

THE CITY OF SEATTLE,
a municipal corporation
of the State of Washington
and
NATIONAL AUDUBON SOCIETY, INC.,
a nonprofit corporation
of the State of New York

This Use and Occupancy Agreement (the "Use Agreement") is entered into as of the day of _____, 200_, by The City of Seattle ("City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR") and the Superintendent thereof, and National Audubon Society, Inc. ("Audubon"), a nonprofit corporation of the State of New York.

I. DEFINITIONS

The following capitalized terms used in this Use Agreement shall have the following meanings:

"Approval" (or "Approved") means the prior written consent of the party whose consent is required or that party's designee.

"Audubon Center Director" means the director of the Audubon programs and activities at Seward Park.

"Building" means the the Seward Park Music Annex Building, located at 5902 Lake Washington Boulevard, and situated on the real property described on Exhibit A hereto and depicted on Exhibit B.

"Building Common Areas" means those portions of the Building not used exclusively for DPR programming nor within the exclusive control of any tenant, licensee or concessionaire. The Building Common Areas shall include but not be limited to, meeting rooms, restrooms, any kitchen areas and lobbies.

"Center" means the use of the Building and the Hatchery as an enviromental education center.

"Certificate of Occupancy" means a temporary certificate of occupancy issued by the City's Department of Construction and Land Use after the renovation of the Building or, if no temporary certificate of occupancy is issued, then a permanenet certificate of occupancy.

"Codes" include all land use, building, housing, fire, electrical, mechanical, plumbing and other codes applicable under City ordinances or State law, and all valid interpretations thereof issued by the agencies responsible for the administration thereof.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

"Development Agreement" means the agreement entered into between the parties which sets for the development parameters and funding commitments related to the Project.

"Effective Date" means the date when this Use Agreement is fully executed by the parties pursuant to Article II.C.

"Environmental Law(s)" means any federal, state and local laws (whether under common law, statute, ordinance, rule, regulation, code or otherwise), permits, orders, decrees, and other requirements of governmental authorities relating to the protection of human health of the environment, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Certificate of Final Completion" shall mean the Superintendent's reasonable determination that: (1) Audubon has obtained the Certificate of Occupancy for the Project; (ii) the Building meets adopted DPR standards; and (iii) there are no outstanding Audubon liabilities associated with the design and construction contracts for the Building. For the purpose of this definition, "outstanding liabilities" shall mean those liabilities that have not been bonded or addressed through other means to the reasonable satisfaction of the Superintendent.

"Fixed Rent" means the fair market rental value of the Premises and one-half (1/2) of the fair market rental value of the Building Common Areas and one-third (1/3) of the fair market value of the Hatchery Program Areas, which will not exceed a cost of \$1.35 per square foot cost per month, escalated annually by the Consumer Price Index for all Urban Consumers as defined in Article VB which shall be no more than 4% each year from 2003 until the date of execution of the Form of Amendment. The determinants of the fair market rental value of the Premises and the Hatchery Program Areas will consider all applicable restrictions on the use of the Building and the Hatchery Program areas.

"Hatchery" means the currently fenced facilities and ponds located in the eastern portion of Seward Park, as depicted on Exhibit B hereto.

"Hatchery Program Areas" means those portions of the Hatchery being renovated for environmental programs under the Development Agreement

"Hazardous Material" means any element, compound, chemical, chemical mixture, or other substance that is identified as, or determined to be, a hazardous, toxic or dangerous substance, pollutant, contaminant, waste or material under, or is otherwise regulated under, any Environmental Law or other law relating to chemical management, environmental contamination, environmental cleanup or nuisances, including, without limitation, petroleum and petroleum products, asbestos, radon and other radioactive materials, bio-hazards and lead-based paint.

"Improvement Expenditure Offset" means the offset against the Adjusted Fixed Rent for the total amount of Audubon's capital expenditures consistent with the agreed upon Project Budget in Exhibit C of the Development Agreement for improvements that benefit the Building as a whole.

"Loaned Employee Agreement" means the agreement between the City and Audubon whereby the City loans a DPR naturalist to Audubon to assist in the development and delivery of environmental programs in Seward Park..

"Occupancy Date" means the date when the Form of Amendment is executed for the Building.

"Personal Property" means any personal property, equipment or fixtures placed or installed by Audubon on the Premises.

"Premises" means that portion of the Building, excluding common areas and space reserved for TREC and the DPR Naturalist should the Loaned Employee Loan Agreement not be excuted or terminated

"Project" means renovation of the Building and the Hatchery for use as an environmental education center.

"Release", when used with respect to Hazardous Materials, includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about any part of the Premises, Building or any adjacent property of such materials.

"Seward Park Common Areas" means any portion of Seward Park designated by the City as being for the general use of tenants, licensees, concessionaires, patrons, employees, and invitees of the City and not within the exclusive control of any tenant, licensee, or concessionaire, and shall include but not be limited to parking areas, landscaped areas, roads, walks, corridors, public toilets, public stairs, ramps, elevators, and shelters.

"Superintendent" means the Superintendent of the City of Seattle Department of Parks and Recreation.

"TREC" means Teens for Recreation and Environmental Conservation, a DPR outdoor expedition-level program designed to expose multi-ethnic teens to environmental education, urban conservation and stewardship, while creating an environment for community leadership and empowerment.

II. LEASE OF PREMISES, LICENSE FOR ACCESS; EFFECTIVE DATE

A. Lease.

In consideration of the rents to be paid and the covenants and agreements hereinafter provided which the City and Audubon hereby agree to keep and perform, the City hereby leases to Audubon and Audubon hereby leases from the City, the Premises. In addition, the City grants to Audubon the exclusive first right and option to lease additional square footage in the Building as such square footage becomes available for lease. Audubon shall be required to exercise such option within thirty (30) days of the formal offer and any additional property leased pursuant to such exercise shall be subject to the same terms and conditions contained herein.

B. Nonexclusive License to Use Common Areas.

Subject to the terms and conditions of this Use Agreement, the City hereby grants to Audubon, and its officers, employees, agents, and invitees, the nonexclusive right during the Term of this Use Agreement to use the Building Common Areas and the Hatchery Program Areas. In addition, throughout the Term, Audubon may use the Seward Park Common Areas as from time to time constituted, in common with all other visitors and users of Seward Park and subject to such rules and regulations as the Superintendent may promulgate. Notwithstanding the foregoing, if Audubon desires to conduct programs on established trails in Seward Park as shown in Exhibit B, or along the shoreline, it shall not do so within 200 feet of eagle nesting trees. In addition, if Audubon desires to use any picnic shelters, it shall reserve the same through DPR's use and permit process, pay the then-current fees therefor and comply with all applicable requirements in connection with such use.

C. Effective Date.

This Use Agreement shall not become effective until all of the following conditions have been satisfied:

1. the Development Agreement has been fully executed by the City and Audubon; and
2. the Use Agreement has been signed by an authorized representative of Audubon and returned to the Superintendent at the address set forth below, accompanied by the required policies of insurance; and
3. the Use Agreement has been signed by the Superintendent or his designee, which shall occur no later than one week following DPR's receipt of the signed Use Agreement from Audubon.

The City shall immediately notify Audubon in writing when all conditions of this Article have been satisfied. Such notice shall expressly state the Effective Date of this Use Agreement.

D. Form of Amendment.

When the Certificate of Occupancy is issued for the Building and the Superintendent has issued the Certificate of Final Completion, the parties shall execute the Form of Amendment attached hereto as Exhibit F, which shall specify the precise values related to the following:

1. the square footage of the Premises, the Building Common Areas, and the Hatchery Program Area, including a depiction of the same; and
2. the amount of the Fixed Rent and the Improvement Expenditure Offset; and
3. the date of the first Consumer Price Index Adjustment.

E. Possession and Occupancy.

Audubon shall have possession of the Premises at the time the Form of Amendment is executed, subject to the rights reserved by the City herein. Prior to that time, Audubon may use portions of the Building and the Park per Article 2.3 of the Development Agreement.

III. USE/PURPOSE

Audubon agrees that its use of the Premises and the Hatchery shall be solely to develop and provide a variety of environmental education, conservation, outdoor recreation, and stewardship programs for children and adults as described in Article VIII, below; provided that, the Premises may also be used for purposes incidental thereto, including office space, limited retail transactions, storage, exhibits, and fundraising events.

This Agreement shall commence on the Effective Date, subject to the Form of Amendment. The term of occupancy ("Term") shall commence upon execution of the Form of Amendment ("Occupancy Date") and shall terminate 10 years thereafter, as set forth in the Form of Amendment, unless sooner terminated as provided herein. If Audubon is not in default with respect to any material provision of this Use Agreement, Audubon shall have the right to extend the Term for up to ten (10) additional years upon the same terms and conditions contained herein except that the Fixed Rent shall be adjusted based on the then-current fair rental value of the Premises as determined by an MAI-certified appraiser hired by the City at its expense and in consideration of any adjustment thereto as specified in Article V. In no event, however, shall the Fixed Rent for the first year of the extended term be less than the Fixed Rent paid during the last year of the original Use Agreement Term.

V. RENT

A. Fixed Rent.

Prior to executing the Form of Amendment, the City shall set a fair market rental value for the Premises and for use of the Building Common Areas and the Hatchery Program Areas based on the fair market rental value of the Premises plus one-half (1/2) of the fair market rental value of the Building Common Areas and one-third (1/3) of the fair market rental value of the Hatchery Program Areas, which will not exceed a cost of \$1.35 per square foot per month, escalated by the Consumer Price Index for all Urban Consumers as defined in Article VB, which shall be no more than 4% each year from 2003 until the date of execution of the Form of Amendment. The determinants for the fair market rental value shall include all applicable restrictions on the use of the Building and the Hatchery Program Area (the "Fixed Rent").

B. Adjusted Fixed Rent.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Commencing on the anniversary date of the execution of the Form of Amendment, the annual Fixed Rent shall be adjusted each year by the percentage increase that occurred during the preceding calendar year ("Adjustment Percentage") in the Consumer Price Index for all Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle-Tacoma-Bremerton Metropolitan Area ("Index"), using the base 1982-84 = 100, as published by the Bureau of Labor Statistics, United States Department of Labor, or its successor (the "CPI Increase") provided that the percentage increase does not exceed 4% each year. The result shall be known as the "Adjusted Fixed Rent". Should any year's CPI percentage change be less than zero, the change to the Fixed Rent for that year shall be set at zero percent (0%). Therefore, in no case shall any year's Fixed Rent be less than the prior year's amount. In the event of any change in the Index base (1982-84=100) or other modification of the CPI Index, or in the event the CPI is discontinued, the Superintendent shall select a similar index of comparable statistics on the cost of living for King County as shall be computed by an agency of the United States or by a responsible financial periodical or other recognized authority.

C. Rental Offsets.

1. Improvement Expenditure Offset. For the duration of this Use Agreement, including any extended term, Audubon shall be entitled to an offset against the Adjusted Fixed Rent for the total amount of Audubon's capital expenditures for the design and construction of the Building pursuant to the Project Budget in Exhibit C of the Development Agreement. The offset shall be credited against the Adjusted Fixed Rent over the term of this Use Agreement. The parties agree that to the extent that Audubon's capital expenditures exceed the amount of the Adjusted Fixed Rent, the excess shall be a gift to the City.

2. Public Benefit Offset. For the duration of this Use Agreement, including any extended term, Audubon shall be entitled to an offset against the Adjusted Fixed Rent for the value of the Public Benefit Components of Audubon's program at Seward Park, as described in Article VIII, below. The offset shall be credited against the Adjusted Fixed Rent over the term of this Use Agreement, with the value being determined each year by the value of Audubon's fee discounts, scholarships, programming, and stewardship activities, all as reported in Audubon's Program Audit Report described in Article XXXIII.

D. Annual Rent.

The Annual Rent shall be determined based upon the Adjusted Fixed Rent less any Improvement Expenditure Offset credit and less any Public Benefit Offset credit.

VI. TAXES, UTILITIES AND OTHER SERVICES

A. Taxes.

Audubon shall pay, before delinquency, all applicable taxes, levies, and assessments arising from its activities on or occupancy of the Premises, including, but not limited to any taxes arising out of the activity or business conducted on the Premises such as the

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

rental or sale of goods or services; taxes levied on its property, equipment, and improvements on the Premises; and taxes on Audubon's interest under this Use Agreement and any leasehold interest deemed to have been created thereby under Ch. 82.29A RCW (collectively, "Taxes"). If the State of Washington makes any demand upon the City as City for payment of leasehold excise taxes resulting from Audubon's occupation of the Premises or withholds funds due to the City to enforce collection of leasehold excise taxes Audubon shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums reasonably expended by, or withheld by the State of Washington from the City, in connection with such taxes.

B. Fixed Rent Reduction and Offset Inapplicable to Taxes.

The reduction and offsetting of any Fixed Rent pursuant to Article V.C. shall have no effect on the amount of any leasehold excise tax due and payable to the City or any other tax obligation of Audubon. Unless Audubon is exempt from the payment of Leasehold excise taxes, all such taxes shall be paid only in cash.

C. Utilities.

Audubon shall pay the costs of all utilities provided to the Building. Utility charges shall include but not be limited to, elevator service, if any, electricity, gas, water, sewer, garbage and recycling, heating, Building Common Area janitorial, and security alarm costs. DPR shall pay the costs of all utilities to the Hatchery. Audubon shall not install additional utilities without the City's Approval, which shall not be unreasonably withheld.

D. Telephone and Data Transmission.

With the Superintendent's Approval, Audubon may install customary telephone and data communication systems to secure service to the Premises for Audubon's use. Audubon shall pay for such services directly to the appropriate telephone or data processing company or other service provider.

E. No City Liability.

The City shall not be liable for any injury, loss or damage caused by or resulting from any interruption or failure of utility services due to any causes whatsoever, other than the City's gross negligence. Audubon shall not be entitled to an offset, reduction, or return of Fixed Rent as a result of any interruption or failure of said services.

VII. PROCESS FOR PAYMENT OF RENT AND OTHER EXPENSES

A. Time for Payment of Annual Rent.

Annual Rent shall be paid annually, commencing on the Occupancy Date and on each anniversary of the Occupancy Date thereafter within thirty days from the date of an invoice from the City setting forth the Annual Rent amount and the calculation thereof.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

Prior to the City's calculation of the Annual Rent, Audubon shall submit an estimate of the projected value of the Public Benefit Offset for the forthcoming year. This estimate will be evaluated against the Program Audit provided by Audubon at the end of the year and any required adjustments in the rent shall be made retroactively.

B. Utility and Other Service Charges.

The City shall invoice Audubon monthly for utilities and other services provided hereunder. Audubon shall pay such invoices within thirty (30) days of the date of each invoice.

C. Program and Building Use Receipts.

All funds collected by Audubon from third parties on behalf of the City shall be remitted to the City within forty-eight (48) hours of Audubon's receipt, together with a summary report indicating the program name, date and total receipts and any other required documents. Any funds collected by DPR staff from third parties on behalf of Audubon shall be remitted to Audubon within forty-eight (48) hours of DPR staff's receipt, together with a summary report indicating the program name, date and total receipts and any other required documents.

D. Late and Refused Payments.

If Audubon fails to pay any sum after such amount is due to the City, Audubon shall also pay to the City a rate of interest to be charged on delinquent accounts as established by Ordinance 117969 or any successor ordinance, the provisions of which are incorporated herein by reference. Audubon shall pay the City Twenty Dollars (\$20.00) for each check refused payment for insufficient funds or any other reason.

E. Payment Process.

All payments due to the City under this Use Agreement shall be shall be remitted by mail to the Department of Parks and Recreation, Attention: Contract and Business Resources, 800 Maynard Avenue S., Room 210, Seattle, WA 98134, or to such other place as the City may hereafter designate.

VIII. OPERATIONAL REQUIREMENTS

A. Programs.

Consistent with Audubon's mission, Audubon's programs shall be community-responsive, particularly to South 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;

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

- (ii) culturally inclusive of diverse perspectives and relationships with the environment;
- (iii) respectful of the natural and human history of Seward Park and all living things;
- (iv) designed to sustain the natural resources at Seward Park;
- (v) compatible with and supportive of the City's environmental stewardship programs, particularly the TREC and Naturalist programs;
- (vi) action and result-oriented; and
- (vii) designed to minimize the need for vehicle access to the Hatchery.

B. Coordination.

The City and Audubon shall coordinate their environmental education programs and other activities within the Building and other areas of Seward Park to avoid overuse and conflicts in scheduling through monthly meetings or other mutually agreed means of coordination between relevant personnel of Audubon and DPR. Audubon shall meet with representative of DPR's TREC program and reach consensus on the scheduling of Audubon activities in a manner that is compatible with the on-going activities of that program.

C. Community Outreach.

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 City on these outreach activities on an annual basis through the audit process described in Article XXXIII.

D. Access.

Audubon agrees to operate its programs and activities at Seward 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 Seward 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 City fees for programs of similar scope and quality, and a schedule of Audubon program fees shall be submitted to the City annually along with an annual plan that outlines how Audubon shall ensure affordability (i.e., level of scholarships and fees) for the City's review. At the end of the year, Audubon shall report on the actual level of affordability in the Program Audit report described in Article XXXIII.

E. Public Use of Building Common Areas.

Without displacing DPR's TREC and Naturalist programs, and ensuring continued community use of the Building, Audubon shall be the central user of the Building Common Areas for purposes of implementing an environmental education center. Subject to availability, the public may rent meeting rooms and other Building Common Areas. Audubon shall coordinate the scheduling and collect rental fees in accordance with the then current DPR rental policies. Audubon will retain rental fees as compensation for scheduling the Building's use and payment of all the Building's utilities as described in Article VII.B. Audubon shall report to DPR on a quarterly basis the number of rentals and associated fees collected by Audubon. Audubon will work to maximize opportunities for the public to use the Building Common Areas, particularly during evenings and weekends. If a conflict in scheduling arises, the Center Director shall work cooperatively with the interested parties to negotiate a solution; provided that, an aggrieved party may appeal any such determination directly to the Superintendent.

F. Scheduling and Closures.

If Audubon intends to use any part of the Premises or other parts of the Building or Seward Park during the hours the park is closed to the public, it must obtain DPR's Approval and notify DPR security.

The City reserves and retains the right to close the Building for major maintenance or repairs, or to implement public safety measures, at reasonable times upon not less than seven (7) days' written notice to Audubon or, in case of emergency, without notice or liability of any kind; provided that no non-emergency major maintenance or repair or non-emergency implementation of public safety measures shall commence unless and until the parties have agreed upon a coordination plan addressing the hours, terms and conditions under which such action may occur. The City agrees that Audubon shall not be charged for any rent attributable to the dates when the Building is closed for such purposes unless Audubon is responsible for the repairs or maintenance that necessitate the closure.

G. Use Schedule.

Thirty (30) days before the end of each quarter, Audubon shall provide DPR, for its Approval, a list of Audubon's proposed use dates for the Hatchery and other areas in Seward 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.

Thirty (30) days before the end of each quarter, DPR shall provide Audubon, for its approval, a list of DPR's proposed use dates for the Building Common Areas 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. DPR may make changes to this schedule as needed and as space and scheduling permits, to accommodate its programming needs and other permitted uses.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

H. Staff.

1. Loaned Naturalist. The City shall "loan" a DPR naturalist to Audubon to assist in the development and delivery of environmental programs in Seward Park, consistent with the terms of this Use Agreement. The loaned employee shall remain a City employee, with all the commensurate rights, responsibilities and privileges and the City shall pay the salary and all required or selected employer's benefits contribution for the loaned employee for up to two years, beginning on the Occupancy Date. Audubon will reimburse DPR for one-half of the employee's salary and benefit costs on a monthly basis. Audubon shall pay such invoices within 30 days of the date of each invoice. A manager from DPR's Recreation and Support Division shall provide supervisory support to the employee, but daily operations will be managed by the Audubon Center Director.

Either party may cancel this loan arrangement at any time, provided a sixty (60) day notice of such intention is provided to the other party or the parties may agree to extend the arrangement at the end of the two-year period stated above.

2. Audubon Staffing. Audubon shall employ personnel or assign volunteers in numbers that it reasonably deems appropriate and necessary to conduct its environmental education and other program staffing needs for its programs at Seward Park and to protect the safety of program participants and the public. Audubon may provide for operation of these programs through its existing or contracted staff. At Audubon's expense, Audubon shall have the Washington State Patrol conduct criminal history background checks of all potential staff members before they are employed; provided that, if acceptable to the Washington State Patrol, Audubon may use an independent entity to provide such background checks and shall provide DPR with the results of same. Audubon shall provide DPR with a written list of its state board and center staff, with telephone numbers, at the beginning of each fiscal year and shall promptly notify DPR of any changes.

3. Employee Conduct. The following shall govern employee conduct at the Center:

(a) If a complaint is filed by an Audubon employee at the Center against a City employee at the Center for harassment as defined in Audubon's adopted harassment policies and after investigation of such complaint by Audubon, Audubon determines that a basis for such complaint exists, Audubon will notify the Superintendent within 24 hours after the complaint is filed and the Superintendent will commence an investigation and take appropriate action pursuant to appropriate City ordinance and regulations.

(b) If a complaint is filed by a City employee at the Center against an Audubon employee at the Center for harassment as defined in the City's adopted harassment policy and after investigation of such complaint by the Superintendent, the Superintendent determines that a basis for such complaint exists, the Superintendent within 24 hours will notify Audubon, and Audubon shall commence an investigation and take appropriate action pursuant to appropriate Audubon practices and procedures.

(c) If any employee at the Center is not adequately performing his or her job at the Center or has other performance related issues, the Center Director and the Superintendent or their designees agree to discuss and resolve such issues in good faith through each entities' appropriate employee review mechanisms

I. Supply Storage.

Audubon shall ensure that all of its supplies and materials are appropriately stored and secured in such a way as to not unreasonably inconvenience or conflict with other uses and users of the Building.

J. Intoxicating Beverages.

Audubon shall not permit intoxicating beverages of any kind to be used, sold, consumed or dispensed in the Building or the Premises unless the Superintendent has Approved such use, sale, consumption or dispensation, in writing, and Audubon complies with all applicable laws, ordinances, rules and regulations in connection therewith, as now or hereafter amended. The City acknowledges that Audubon may host special events, including fundraising events, in the Building and may request the Superintendent to approve the consumption or dispensation of alcoholic beverages at such events, which approval shall not be unreasonably withheld in connection therewith. Prior to conducting any event at which alcoholic beverages are served, Audubon shall obtain insurance acceptable to the City's Risk Management Department for liquor/host liability.

IX. FORCE MAJEURE

With the exception of monetary obligations, which shall not be excused, Audubon shall not be in breach of its obligations under this Use Agreement due to delays in the performance of its obligations caused by events beyond Audubon's reasonable control and without its negligence, including but not restricted to, any delays compelled by court order, acts of God, acts of the public enemy, unforeseeable acts of a unit of local state or federal government, unforeseeable acts or omissions by other parties, fires, floods, strikes, embargoes, delays in essential utility services and unusually severe weather or delays of contractors or subcontractors due to such causes. The time for the performance of the obligation shall be extended for the period of the delay if Audubon promptly requests an extension of time in writing from City, but in any event, within thirty (30) days after Audubon becomes aware, or reasonably should have been aware, of the event resulting in any such delay.

X. ACCEPTANCE OF BUILDING "AS IS"

Audubon is fully familiar with the condition of the Building and the Premises and accepts the Premises AS IS, subject to the environmental indemnity provisions contained in Article 7 of the Development Agreement and subject to the City's environmental indemnity contained in Article XIV(G). The City makes no warranties or representations of any kind with respect to the condition of the Building or the Premises or their suitability for Audubon's purposes. Audubon agrees that any express or implied representations or warranties made by or on behalf of the City prior to the date hereof, unless expressly set forth in this Use Agreement, are hereby revoked and canceled and shall have no force or effect. Audubon further agrees that no representations or

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

warranties are implied by any provision of this Use Agreement or any other words or conduct in connection with this transaction.

Audubon agrees that the City shall have no liability or obligation as a result of any defect or condition of the Building or Premises, including without limitation latent defects. The City shall have no obligation to undertake any repairs, maintenance or other work of any kind except as expressly set forth in this Use Agreement.

Audubon and the City acknowledge that this Article has been specifically bargained for and that the City would not be willing to Lease the Premises on the terms and conditions set forth herein without Audubon's agreement to the terms of this Article.

XI. MAINTENANCE AND REPAIRS

A. Audubon's Cleaning and Maintenance Obligations.

1. Audubon shall at all times keep the Premises and Building Common Areas in a neat, clean, safe and sanitary condition, with normal wear and tear and damage and destruction by fire and other extraordinary casualty excepted, and shall use and maintain the Premises and Building Common Areas in accordance with all codes, the laws of the State of Washington and the Charter and ordinances of The City of Seattle, and in accordance with all valid directives, rules and regulations issued by any authorized City or State officer. Audubon shall not cause or permit any waste, damage, or injury to the Building or the Premises; use or permit on or in the Building or the Premises anything that will increase the rate of fire insurance thereon; maintain anything on or in the Building or the Premises that may be dangerous to life or limb; overload the floors; permit any objectionable noise or odor to escape or to be emitted from the Building or the Premises; or permit anything to be done in or around the Building or the Premises that in any way will tend to create a nuisance, or interfere with access to and from Seward Park or any part thereof. If the Superintendent has a good faith belief that any activity occurring on the Premises presents an imminent threat to public health or safety, then after consultation with the Audubon Center Director, the Superintendent may order such activity to immediately cease, without liability to the City for such interruption, until such threat has been adequately evaluated or remedied, as the case may be.

2. If requested by Audubon, the City may maintain, clean and repair the Premises to the ordinary standards provided to other DPR tenants occupying similar facilities, or as otherwise agreed upon by the parties, and shall keep the same in good condition, normal wear and tear and damage and destruction by fire and other extraordinary casualty excepted. Audubon shall pay the cost of maintaining, cleaning and repairing the Premises as well any extraordinary costs of cleaning, repairing or maintaining the Building Common Areas or the Building, occasioned by Audubon's use and occupancy thereof, within 30 days after receipt of an invoice therefor.

3. Audubon shall implement, at no cost or expense to the City, a preventive maintenance custodial care program that is consistent with other similar DPR facilities and operations and as determined by the Superintendent. Audubon shall be informed of such preventative maintenance custodial care obligations prior to Audubon's occupancy of the Premises.

Audubon shall participate in an annual inspection of the Building and the Premises with the Maintenance Services division of DPR and be responsible, except where the City is obligated under the terms of this Use Agreement to be so responsible, for taking any and all action that may be reasonably required to maintain and operate the Premises in accordance with the then current DPR standards, a current example of such standards is attached hereto as Exhibit E, and Audubon's obligations under this Use Agreement. DPR shall notify Audubon ninety (90) days in advance of any proposed DPR standards changes that may impact Audubon's obligations under this Use Agreement.

4. The City reserves for itself, its officers, employees, agents and contractors, free access to the Premises, at all reasonable times upon reasonable notice for purposes of inspecting, cleaning, or making repairs, to the Premises or any other property owned by or under the control of the City, including additions or alterations to City property other than the Premises, but this right shall not be construed as an agreement on the part of the City to make inspections, clean or make repairs, additions or alterations except as specifically provided elsewhere in this Use Agreement. Audubon shall reimburse City on demand for the cost of any such repairs or alterations resulting from Audubon's activities, reasonable wear and tear excepted; provided that, the City shall provide notice to Audubon of the need for such repairs or alterations and shall afford Audubon the option of performing such repairs or alterations. The City also reserves the right to make alterations to the Building Common Areas at no cost to Audubon where such alterations will not unreasonably interfere with Audubon's ordinary operation of the Premises or use of the Building Common Areas.

B. City's Maintenance Obligations

The City shall maintain the Building, including but not limited to electrical and mechanical systems (heating, plumbing, ventilation), the roof, exterior shell, and exterior doors, all at no cost or expense to Audubon. The City shall be responsible for the ordinary maintenance of the grounds surrounding the Building, including the Seward Park areas, including lawn mowing, trimming or removal of plants when required, control of noxious weeds, clearing of leaves and other natural debris, and street, parking area and general access maintenance. Such maintenance shall be to the same standard, and generally with the same frequency, as maintenance of other grounds and general access at City parks (not including park natural areas). Unless otherwise agreed in writing by the parties, the City shall not be responsible for clearing snow, ice, obstructions and hazards from sidewalks, driveways, parking areas, walkways, steps, ramps and other paved surfaces in Seward Park, or for repair of holes, cracks, or other defects in such surfaces. With regard to the streets serving the Building and the

Premises, the City shall have only such obligations as the City has generally for all streets, and shall have no special obligations under this Use Agreement. The City shall also be responsible for maintaining the natural resource areas of Seward Park consistent with, at a minimum, the policies for Park Management and Environmental Stewardship as contained in the adopted Parks and Recreation Comprehensive Plan 2000.

C. Recycling of Waste Materials.

Audubon shall adhere to any recycling program employed by DPR at the Building, and shall collect, sort and separate all solid waste products and deposit the same in receptacles provided by the City.

D. Modifications, Alterations and Additions.

1. Throughout the Term of this Use Agreement, Audubon shall have the right, at its own expense and without the prior consent of the Superintendent, to install such of its own machinery and equipment, to make such minor improvements and additions, and to attach such removable fixtures in or upon the Premises as may be necessary to conduct its permitted operations, and to remove same at any time prior to the expiration or termination hereof. As used in this Use Agreement, "minor improvements and additions" means (a) ordinary repairs and non-structural alterations of any portion of the Premises that, individually, cost less than \$5,000 or together with all other items of a similar or related nature during the calendar year, cost less than \$15,000.00, and (b) emergency repairs immediately necessary for the usual and customary usage of the Premises. The foregoing figures shall be adjusted to reflect changes in the CPI in accordance with the methodology described in Article V.B. Audubon agrees that it will not divide any project into units of work to circumvent the dollar restrictions stated above.

2. Audubon shall make no modifications, alterations, additions or improvements to the Premises or any part thereof the estimated cost of which exceeds the limitations set forth in Article XID (i) (a "Major Alteration"), without first obtaining the Approval of the Superintendent, which consent shall not be unreasonably withheld. In exercising discretion, the Superintendent shall take into account any proposed alteration or improvement that affects (a) any structural portions of the Building including exterior walls, roof, foundation and core of the Building; (b) the exterior of the Building or which are visible from outside the Building or which are likely to increase insurance costs (unless Audubon agrees to pay such increased insurance costs); or (c) any of the Building systems, including elevator, plumbing, air conditioning, heating, electrical, security, life safety and power. In seeking the Superintendent's Approval, Audubon shall provide the Superintendent with interim plans and specifications at the end of the design development and at the 50% construction document stage. Prior to any Major Alteration other than an emergency repair, Audubon shall provide the Superintendent final plans and specifications to which architects and engineers have affixed their professional seals and signatures and such other information concerning the nature and cost of the alterations as may be

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

reasonably requested by the Superintendent. As a condition to giving such consent, the Superintendent may require Audubon, among other things, to undertake the work in a manner determined by the Superintendent to reasonably minimize disruption to other tenants, occupants, employees and users of the Building or Seward Park, to remove, if reasonably possible, any such modification, alteration, improvement or addition at the expiration of the Use Agreement Term and to restore the Premises to its prior condition. All such modifications, alterations, additions and/or improvements shall be constructed at Audubon's sole cost and expense and shall be performed in a good and workmanlike manner in accordance with Superintendent-approved plans and specifications and by a contractor and under a construction contract, the terms and conditions of which have been approved by the Superintendent (such approval not to be unreasonably withheld). Once approved, no material changes shall be made to any plans and specifications without the Superintendent's consent. If the Superintendent consents to any proposed modification, alteration, addition or improvement to the Premises, the same shall not be a warranty as to the adequacy of the design, workmanship or quality of materials and the City hereby expressly disclaims any responsibility or liability for the same. If any improvement is constructed in violation of this paragraph, Audubon shall either promptly make it consistent with approved plans and specifications, or cease using the improvement and remove it from the Premises. Except as expressly agreed by the parties, the City shall under no circumstances have any obligation to repair, maintain or replace all or any portion of such modifications, alterations, additions or improvements to the Premises. Audubon agrees to pay as Additional Rent a reasonable sum for project management costs necessarily incurred by the City with respect to Major Alterations, such sum to be agreed upon by the parties as part of any approval of the Major Alteration.

3. Before commencing any work under this Article XI, Audubon, regardless of whether Superintendent consent is required or not, shall notify the Superintendent in writing of the expected date of commencement thereof and shall require its contractor to secure, at no cost to the City, a payment and performance bond as required by statute, naming the City as joint obligee and insurance at least equivalent to that required pursuant to Exhibit C. The City shall then have the right at any time and from time to time to post and maintain on the Premises such notices as the City reasonably deems necessary to protect the Premises and the City from mechanics' liens, materialmen's liens or any other liens. Any such modification, alteration, improvement or addition shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable laws and regulations and the requirements of all insurance policies applicable to the Premises. Audubon shall provide the Superintendent with "as-built" plans showing any Major Alteration in the Premises or the Building. Audubon shall require its contractors to maintain a safe working environment at all times, including the continuation of all fire and security protection devices, including fire sprinkler systems and availability and operation of fire water supply lines during any such construction. All damage or injury done to the Premises, the Building, or any private property in the vicinity of the Building during the construction of such work by Audubon or by any persons who may be in or upon

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

the Premises or the Building with the express or implied consent of Audubon and which is caused by acts or omissions of Audubon or Audubon's officers, contractors, subcontractors, agents, invitees, licensees, employees, successors or assigns shall be paid by Audubon. Audubon shall pay, when due, all claims for labor or materials furnished to or for Audubon at or for use in the Premises.

4. All such modifications, alterations, additions or improvements shall at the expiration or earlier termination of the Use Agreement become the property of the City and remain upon and be surrendered with the Premises.

5. All articles of personal property, furniture and movable partitions owned or installed by Audubon at its expense in the Premises shall be and remain the property of Audubon and may be removed by Audubon at any time during the Term of this Use Agreement provided that Audubon shall, at its sole cost and expense, repair any damage to the Premises caused by such removal.

6. In undertaking any repairs, modifications, alterations, additions or improvements, Audubon shall ensure that it and each of its contractors and agents protects from damage or destruction private and public property on or in the vicinity of the Premises that is not scheduled for repair, replacement or removal. Any property damaged by Audubon or its contractors or agents in the course of any repair, modification, alteration, addition or improvement shall be promptly repaired or replaced at Audubon's expense.

7. No change shall be made to electrical wiring or plumbing in the Premises or to and from the Premises other than by a properly licensed electrician or plumber.

E. Coordination.

The parties shall cooperate to the maximum extent possible to ensure that all construction work undertaken by or on behalf of Audubon is coordinated with the work of other contractors working at Seward Park, Seward Park tenants and with routinely scheduled events and activities. No construction work of any kind shall commence unless and until the parties have agreed upon a coordination plan addressing the hours, terms and conditions under which such construction may occur. Audubon shall work closely with the Superintendent or his/her designee to schedule construction activity to minimize construction impacts such as noise, dust and fumes.

F. City's Right to Stop Work.

Throughout the course of any construction, DPR and Audubon shall consult regarding any adverse impact on Seward Park events that may result from construction-related activity. If, after consultation between the Superintendent and Audubon regarding the adverse impact that construction-related activity is likely to have or is actually having on one or more Seward Park events and their joint effort to modify or reschedule such construction-related activity so as to minimize such adverse effect, the Superintendent determines, in the exercise of such official's reasonable discretion, that a material adverse impact is still likely to occur or is occurring, Audubon, upon notice from the

Superintendent, shall order the immediate suspension or cessation of the construction-related activity specified in such notice for the duration identified in such notice.

If, after consultation with Audubon, the Superintendent determines that any work being performed upon the Premises is materially inconsistent with approved construction documents or any other required plan, program or rule, the Superintendent shall so notify Audubon, in writing, and the parties shall endeavor to resolve the situation. If the parties are unable to devise a plan to resolve the inconsistency, Audubon, upon notice from Superintendent shall order the immediate suspension of the affected portion of the work until the matter has been corrected. The notice shall state the required action to cure the nonconformity. Except in cases affecting public health and safety, the Superintendent will provide Audubon with at least 72 hours' advance written notice that it intends to issue a suspension notice and provide Audubon an opportunity to cure the nonconformity. Audubon shall not be entitled to damages from the City as a consequence of any increased cost or time of performance attributable to any such suspension, unless it is determined that the Superintendent issued a suspension notice without a reasonable basis.

XII. SIGNS

A. Name of Building and Use of Name.

For the term of the Use Agreement, the Building will be named "Seward Park Environmental and Audubon Center" to reflect the partnership and the programs housed in the Building. Such name will be used on signs identifying the Building and, to the extent practicable, in promotional and other marketing materials specifically relating to Audubon's or the City's activities or events at the Building. The Audubon Center will be operated solely by Audubon, will identify itself as an Audubon Center consistent with the branding and identity program of other Audubon Centers around the country, and will use as its symbol a logo that is a trademark of Audubon and used by Audubon. The City acknowledges Audubon's exclusive right, title and interest in and to the trade and corporate name "National Audubon Society" and the trademarks "Audubon" and "Audubon Center" ("Audubon Marks"), and acknowledges that any use of the Audubon Marks without the benefit of a license agreement is an infringement of Audubon's rights and constitutes unfair competition. While this Use Agreement is in effect and thereafter, the City will not in any manner represent that it has any interest in the Audubon Marks; will not contest Audubon's exclusive right, title and interest in and to, or the validity of, the Audubon Marks; and will not act in any manner inconsistent with Audubon's indivisible ownership of the Audubon Marks.

B. Audubon Signs.

Audubon may, upon Approval from DPR, which consent shall not be unreasonably withheld, install bulletin boards and other signs or postings within the Building Common Areas and display community-related notices, posters, and similar materials related to Audubon's operations within the Building. 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

Seward Park; provided that, any such postings shall be subject to the City's Ethics Commission prohibitions on certain signage in public buildings. Audubon shall not, without the Superintendent's Approval, install any signs on the exterior of the Building.

XIII. KEYS

In accordance with DPR Administrative Policy 2.71, attached hereto as Exhibit D, Audubon will obtain, account for and collect keys from DPR to the exterior door(s) of the Building at the time of occupancy and after any change in the locks of the exterior doors. Any change in locks for the Premises shall be at Audubon's expense. If a lock change is made to any exterior door of the Premises, Audubon shall provide the Superintendent with one (1) key for each lock changed immediately after such change has been completed. Audubon shall account for and collect keys in accordance with Exhibit D.

XIV. HAZARDOUS WASTE OR MATERIALS

A. Restriction on Use; Response Plan; Definition.

Audubon shall not cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Building, or any adjacent property. Audubon represents, warrants and agrees that Audubon's uses of the Premises, the Building and the Seward Park Common Areas (including uses by invitees or licensees) shall not involve the use, production, or disposal of any hazardous substances, except for cleaning and maintenance supplies normally used in the operation of similar buildings that shall be used, stored and disposed of in compliance with all applicable laws, regulations and prudent practices. If Audubon is granted permission to bring any Hazardous Material (other than such cleaning and maintenance supplies) into the Building or the Premises, then before doing so, Audubon shall prepare and submit to the City a hazardous materials response plan acceptable to the City. Audubon shall comply fully with such plan, at Audubon's sole expense.

B. Compliance.

Audubon, at its sole expense, shall promptly comply with all Environmental Laws relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of Hazardous Materials either

(i) in, on, around or under the Building if resulting from a Release caused by the act or omission of Audubon or any of its employees, agents, contractors, licensees or invitees.

(ii) in, on or under any other part of the Building or any adjacent property or area within Seward Park if resulting from a Release caused by the act or omission of Audubon or any of its employees, agents, contractors, licensees or invitees.

C. City's Rights.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

After notice to Audubon and a reasonable opportunity for Audubon to effect such compliance as identified in Article XIV.B, the City may, but is not obligated to, enter the Premises or Building and take such actions and incur such costs and expenses to comply with any Environmental Laws regarding Hazardous Material as the City deems advisable to protect its interests, *provided*, however, that the City shall not be obligated to give Audubon notice and an opportunity to effect such compliance if (i) such delay might result in material harm, (ii) Audubon has actual knowledge of the situation and has had a reasonable opportunity to effect such compliance, or (iii) an emergency exists. Whether or not Audubon has actual knowledge of the presence or Release of a Hazardous Material, Audubon shall reimburse the City on demand for the full amount of all costs and expenses incurred by the City in connection with compliance activities, and such obligation shall continue even after the termination of this Use Agreement.

D. Audubon's Duty to Notify; Response to Release.

Audubon shall notify the City immediately of the presence or Release of any Hazardous Material (other than Hazardous Material permitted under this Article that are stored, used, handled and disposed of in compliance herewith) and shall take timely and appropriate steps to protect persons and property from, and remedy the effects of, any such Hazardous Material, which steps shall include immediate action in the case of any Release of a Hazardous Material.

E. Removal Upon Surrender.

Upon surrender of the Premises to the City, whether upon expiration or earlier termination of this Use Agreement, Audubon shall remove and properly dispose of any Hazardous Material brought into the Building or the Premises at any time during Audubon's occupancy of the Premises, or introduced onto any part of the Building or Premises, or Released on or under the Building or Premises by Audubon or any of its employees, agents, contractors, licensees or invitees.

F. Audubon's Environmental Indemnity.

If Audubon breaches any of its obligations contained in this Article, or, if any act, omission or negligence of Audubon or any of its agents or invitees results in any contamination of the Building, Premises or any other part of the adjacent property or area in Seward Park or in the Release of Hazardous Material from, on, about, in, on or beneath the Premises, then Audubon shall indemnify the City from and against all losses (including, without limitation, the loss or restriction of the use of the Premises or adjacent property and sums paid in settlement of claims, fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Use Agreement and relating to such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Building or adjacent property or area in Seward Park to its prior condition. Without limiting the foregoing, if Audubon or any of its agents or invitees causes or permits the Release of any Hazardous Materials on, about, in or beneath the Premises or adjacent

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

property, Audubon shall immediately, at no expense to the City, take any and all necessary actions to abate and remediate the Release in accordance with all Environmental Laws. Audubon shall afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material. This indemnity provision shall survive termination or expiration of this Use Agreement.

G. City's Environmental Indemnity.

If any act, omission or negligence of the City or any of its agents (other than Audubon) results or has resulted in any contamination of the Premises or adjacent property or in the Release of Hazardous Material from, on, in, on or beneath the Premises or adjacent property, then the City shall indemnify Audubon from and against all losses (including, without limitation, the loss or restriction of the use of the Premises or the Building and sums paid in fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Use Agreement and resulting from such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Premises to its prior condition. The City's indemnity under this Article shall include, without limitation, any contamination of the Premises or adjacent property that results from activities occurring or causes originating prior to the initial term of this Use Agreement; provided that the City shall not be required to indemnify Audubon for any contamination that is the result of any act, omission or negligence of Audubon or any of its agents. This indemnification shall survive the termination or expiration of this Use Agreement.

XV. COMPLIANCE WITH LAWS

A. General Requirement.

Audubon, at its sole cost and expense, shall comply with all applicable laws and regulations, rules and orders of the United States, the State of Washington and the City of Seattle that may from time to time be put into effect relating to, controlling or limiting Audubon's use and operation of the Premises.

B. Licenses and Similar Authorizations.

Audubon, at its sole cost and expense, shall secure and maintain in full force and effect during the Term of this Use Agreement, all licenses, permits, and similar legal authorizations required for its use of the Premises, and comply with all requirements thereof.

C. Nondiscrimination and Affirmative Action.

Audubon shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

Seattle, including the Seattle Municipal Code ("SMC"), notably SMC Ch. 20.44, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

D. Americans with Disabilities Act.

Audubon acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Audubon further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Audubon warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Use Agreement.

XVI. LIENS

If, because of any act or omission of Audubon, any mechanic or other lien or order for payment of money shall be filed against the Building or the Premises, Audubon shall at its sole expense cause the same to be discharged or bonded within thirty (30) days after the date of such filing.

XVII. LIABILITY AND INSURANCE.

A. Audubon's Indemnity.

Audubon shall protect, defend, indemnify and hold the City harmless from and against any and all claims (including, but not limited to employee claims) and from any costs, reasonable attorneys' fees, expenses and liabilities incurred in connection with such claim, arising from Audubon's use of the Premises, the Building or Seward Park (including any use of the Building, Premises or Park by Audubon's agents, contractors or employees) or the conduct of its business, and shall further protect, defend, indemnify and hold the City harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Audubon's part to be performed under the terms of this Use Agreement. Audubon, upon notice from the City, shall defend the same at Audubon's expense. Notwithstanding the foregoing, if RCW 4.24.115 (or any successor provision) applies, this indemnity shall apply only to the extent of Audubon's negligence or that of its agents, servants or employees.

Solely with respect to claims for indemnification under this Use Agreement, Audubon waives its immunity under Title 51 RCW, the Industrial Insurance Act, or any other employee benefit act. This indemnification provision is the result of mutual negotiation and shall survive the termination of this Agreement.

B. City's Indemnity

The City shall protect, defend, indemnify and hold Audubon harmless from and against any and all claims (including, but not limited to employee claims) and from any costs, reasonable attorneys' fees, expenses and liabilities incurred in connection with such

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

claim, arising from the City's negligent use of the Premises, the Building, the Hatchery, or Seward Park (including any use of the Building, Premises, Hatchery, or Seward Park by the City's agents, contractors or employees) or the conduct of its business therein, and shall further protect, defend, indemnify and hold Audubon harmless from and against any and all claims arising from any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Use Agreement. The City, upon notice from Audubon, shall defend the same at the City's expense. Notwithstanding the foregoing, if RCW 4.24.115 (or any successor provision) applies, this indemnity shall apply only to the extent of the City's negligence or that of its agents, servants or employees.

Solely with respect to claims for indemnification under this Use Agreement, the City waives its immunity under Title 51 RCW, the Industrial Insurance Act, or any other employee benefit act. This indemnification provision is the result of mutual negotiation and shall survive the termination of this Agreement.

C. Insurance.

- (i) Audubon shall, at all times during the term of this Use Agreement, obtain and maintain continuously, at its own expense, insurance as described in Exhibit C, and shall file with the Superintendent and the City's Department of Risk Management, evidence of a policy or policies of insurance as enumerated therein.
- (ii) The City shall cause its Master Use Policy to extend to the Building. The parties understand that the standard deductible for such insurance is \$500,000.00; however, the parties hereby agree to equally share the costs for reducing the deductible to \$50,000.

XVIII. DAMAGE OR DESTRUCTION

A. If there is any material damage or destruction to the Building or the Hatchery Program areas resulting from the fault of either party, then the responsible party shall be solely responsible for any necessary repairs or replacements.

B. Damage; Extent of Obligation to Restore. If there is any material damage or destruction to the Building (for purposes of this Use Agreement, material damage or destruction shall mean damage or destruction resulting from no fault of either party to this Use and Occupancy Agreement which costs \$50,000 or more to repair or replace), then if the City decides not to repair or replace the damaged portion of the Building and the Premises thereby become unusable, either party shall have the option, upon written notice to the other, which option shall be exercised within thirty (30) days of the date of such damage or destruction, to terminate this Use Agreement; provided that, if applicable insurance proceeds (including the City's payment of any deductible as described in Article XVII(C) above) are or would have been sufficient to pay the cost of reconstruction or restoration, the insured party shall reconstruct or restore the damage within two (2) years of the destruction. If the Use Agreement is not terminated, it shall continue in full force and effect and the City shall proceed as promptly as is practicable

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

to restore the Building to an architectural unit as nearly comparable in form, fit and function as is reasonable to the unit existing just prior to such damage. If either party elects to terminate the Use Agreement, such notice of termination shall specify the date for termination, which date shall not be more than thirty (30) days after the giving of such notice, and upon the date so specified the Term of this Use Agreement shall expire as fully and completely as if such date were the date hereinabove set forth for the end of the Term of this Use Agreement and Audubon shall thereupon vacate the Premises, without prejudice to any rights and remedies accrued to the City under this Use Agreement prior to such termination. Any rent paid or payable by Audubon shall be adjusted as of the date of such termination. Should the City elect to rebuild and be delayed or prevented from completing the repairs or restoration of the damage to the Building after the occurrence of such damage or destruction by reason of force majeure, the time for the City to commence or complete repairs shall be extended for the period of force majeure. In the event of repair, reconstruction and restoration as herein provided, the Annual Rent provided to be paid under this Use Agreement shall be abated proportionately based upon the extent to which Audubon's use of the Premises is impaired during the period of such repair, reconstruction or restoration.

C. If there is any minor damage or destruction to the Building (for purposes of this Use Agreement, minor damage or destruction shall mean damage or destruction which costs less than \$50,000 to repair or replace and is from no fault of either party), then the City shall proceed as promptly as is practicable to restore the Building to as nearly comparable form, fit and function as is reasonable to the unit existing just prior to such damage.

Each party shall be solely responsible for the repair of any damage or destruction (other than normal wear and tear) caused by that party. For purposes of this Article XVIII, damage or destruction caused by public use of the Building, including the Building Common Areas, shall be attributable to the City; provided that, Audubon shall have the obligation to mitigate such damage to the extent possible.

D. No Obligation to Restore Personal Property.

If the City is required or elects to restore the Building or such portion thereof which has been destroyed as provided in this Article XVIII, the City shall not be required to restore Audubon's personal property, machinery, furniture or equipment, such excluded items being Audubon's sole responsibility to restore. Audubon shall not be entitled to any compensation or damages from the City for the loss of the use of the whole or any part of the Premises, its tenant improvements, alterations, modifications or additions made to the Premises or Audubon's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration, except as may be otherwise provided in Article XVIII A, above.

E. Damage Near End of Term.

Notwithstanding anything to the contrary contained in this Article XVIII, the City shall not have any obligation whatsoever to repair, reconstruct or restore the Premises (a) when the damage occurs during the last twelve (12) months of the Term, (b) to the extent that

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

insurance proceeds are not available therefore, or (c) to the extent the City is unable to obtain necessary permits for the construction thereof.

XIX. CITY'S CONTROL OF BUILDING AND VICINITY

All common and other facilities provided by the City, except for the Building Common Areas, including parking areas, are subject to the exclusive control and management by the City. Accordingly, the City may 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; provided that, the City shall not act in a manner that would unreasonably interfere or displace Audubon's operations at Seward Park :

- (i) Change of Vicinity. Increase, reduce, or change in any manner whatsoever the number, dimensions and locations of the walks, buildings, parking and landscape areas in the vicinity of the Premises;
- (ii) Traffic Regulation. Regulate all traffic within and adjacent to the Building, including the operation and parking of Audubon's vehicles and those of its invitees, employees, and patrons;
- (iii) Display of Promotional Materials. Erect, display and remove promotional exhibits and materials and permit special events on or adjacent to the Building;
- (iv) Promulgation of Rules. Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any City property including but not limited to the Building; and
- (v) Change of Businesses. Change the size, number, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken in the vicinity of the Building.

XX. DEFAULT; TERMINATION; REMEDIES

A. Default; Cure Periods.

The occurrence of any of the following shall constitute a material default and breach of this Use Agreement by Audubon:

- (i) Audubon's failure to pay Annual Rent or any other monetary sums required to be paid hereunder within ten (10) days after notice;
- (ii) Audubon's abandonment or vacation of the Premises for a period of sixty (60) days unless such vacation has been required by the City pursuant to the terms of this Agreement;
- (iii) Audubon's failure to observe or perform any material covenant, condition or provision of this Use Agreement not already specifically mentioned in this Article XX, where such failure continues for thirty (30) days after

written notice thereof from the City to Audubon; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, Audubon shall not be deemed to be in default if Audubon shall within such period commence such cure and thereafter diligently prosecute the same to completion; or

(iv) a material breach of the Development Agreement.

B. City Default.

The City's failure to observe or perform any material covenant, condition or provision of this Use Agreement or the Development Agreement, where such failure continues for thirty (30) days after written notice thereof from Audubon to the City shall be a default; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, the City shall not be deemed to be in default if the City shall within such period commence such cure and thereafter diligently prosecute the same to completion.

C. Remedies.

If a default occurs, the party not in default may terminate this Use Agreement, or any extension of it, by giving written notice thereof to the party in default at least ninety (90) days prior to the effective date of termination. Upon the expiration of the date and time fixed in the notice of termination, Audubon shall immediately surrender the Premises and all improvements thereon, to the City.

D. Remedies Cumulative.

The remedies under this Article XX are in addition to, and not in limitation of, any other remedies available to the City or Audubon in law or equity.

XXI. TERMINATION

A. Termination for Bona Fide Public Purpose.

In addition to any other provision contained herein, the City may terminate this Use Agreement at any time, in whole or in part, by written notice, for a bona fide public purpose as determined by the Seattle City Council; provided that, in such event, the City shall be obligated to repay Audubon for the unamortized value of Audubon's initial investment in the development and construction of the Building or the portion thereof as to which this Use Agreement has been terminated, pursuant to the Project Budget in Exhibit C of the Development Agreement, as depreciated, and less any amount previously credited as an offset toward the Adjusted Fixed Rent.

B. Voluntary Termination by Audubon. In the event that Audubon is no longer able to carry out the purposes of this Use Agreement because of (a) corporate incapacity, (b) lack of funds to maintain and operate the Building, (c) inability to obtain the necessary permits and licenses from applicable governmental authorities, or (d) the discovery of

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Hazardous Materials on the Premises that predate the Commencement Date, , then Audubon shall have the right to terminate this Lease upon one hundred twenty (120) days written notice to DPR. If Audubon shall terminate this Lease as provided above, then Audubon shall surrender the Premises pursuant to the City consistent with Article XXIII (Surrender) hereof and shall not look to the City for financial compensation except as may be provided by Article XIV. G.

XXII. SUBLEASES AND ASSIGNMENTS

Audubon shall not sublease, transfer, assign, mortgage, hypothecate or convey this Use Agreement or any interest therein, in whole or in part without the Superintendent's Approval, which Approval may be granted, withheld, or conditioned in each instance in the Superintendent's sole discretion. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. Any assignee Approved by the Superintendent must accept and assume in writing all the terms and conditions of this Use Agreement to be kept and performed by Audubon. Any transfer of this Use Agreement from Audubon by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment for purposes of this Use Agreement. The Superintendent's 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 Building or the Premises by, under, or through Audubon.

XXIII. SURRENDER

A. Audubon's Obligations.

Subject to the terms of Article XVIII relating to damage and destruction, upon expiration or earlier termination of the Term of this Use Agreement whether by lapse of time or otherwise (including any holdover period), Audubon, at its expense, shall: (a) deliver to the City all keys to the Building, the Premises or any Personal Property that the City has agreed may remain in or on the Premises or accessory thereto; (b) except as otherwise agreed by the parties, remove all of Audubon's moveable Personal Property, goods and effects and those of all persons claiming under Audubon from the Premises; (c) remove all telecommunications and computer network wiring and cabling, to the extent required by the City, (d) remove all signs, symbols, advertising and printed material, and (e) promptly and peacefully surrender the Premises (including surrender of all Audubon improvements and other attached equipment and/or other alterations, additions or improvements installed in the Premises by the City or Audubon) in reasonably clean condition together with all Approved alterations, changes and additions thereto, in good repair, good order and safe condition. Any property left on the Premises more than thirty (30) days after the expiration or termination of the Use Agreement Term shall be deemed to have been abandoned and to have become the property of the City to dispose of as the City deems expedient and Audubon shall be liable for all costs associated with the disposal of such property.

Audubon agrees to repair any damage to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, signs or advertising, machinery, equipment, furniture or movable partitions including, without

limitation thereto, repairing the floor and patching and painting the walls where required by the City to the City's reasonable satisfaction all at Audubon's sole cost and expense. Audubon shall indemnify the City against any loss or liability resulting from delay by Audubon in so surrendering the Premises, including, without limitation, any claims made by any tenant succeeding Audubon based on such delay.

B. Re-entry by City.

If the Premises are vacated or abandoned by Audubon, or in the event of the termination of this Use Agreement under any provision hereof, the City may re-enter the Premises in such manner as the City deems necessary in its sole discretion, and the City may repossess the Premises by force, summary proceedings or by any other procedure provided by law or equity. Audubon hereby waives all claims for damages that may be caused by the City re-entering and taking possession of the Premises or removing and storing Audubon's property as herein provided, and Audubon shall indemnify and hold the City harmless therefrom. No such reentry shall be considered or construed to be a forcible entry.

C. Survival of Liabilities.

Any liability of Audubon or the City hereunder for negligent or intentional acts or omissions occurring during the Term of this Use Agreement, or arising under the indemnity provisions of this Use Agreement, shall survive termination and surrender (whether or not any claim giving rise to such liability shall have accrued).

XXIV. QUIET ENJOYMENT

The City covenants that, subject to the express provisions of this Use Agreement, if and so long as Audubon pays the Annual Rent and other charges required by this Use Agreement, and performs all of its obligations pursuant to the terms, covenants and conditions of this Use Agreement, Audubon shall quietly enjoy the Premises.

XXV. DISPUTES

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations between the Seward Park Audubon Center Director and the DPR Director of Recreation and Support Division. If those negotiations are unsuccessful, the matter shall be referred to the Senior Vice President of Audubon Centers and the DPR Superintendent. If the parties cannot resolve any dispute arising under this Use Agreement, either party may submit the matter to a non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution ("ADR") procedures. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent ADR or legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

XXVI. CITY'S APPROVAL OR CONSENT

A. Consent Expressly for Use Agreement Purposes; Discretion of City.

Whenever the City's Approval is required under this Use Agreement (a) Audubon must obtain such Approval expressly for purposes of this Use Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such Approval may be withheld in the City's reasonable discretion.

B. Consents Hereunder Not for Regulatory Purposes.

Any permission, consent, or Approval of the City contained herein or given pursuant to this Use Agreement is or shall be granted solely in the City's capacity of lessor of the Premises, and not in its regulatory or public utility capacity. No such consent or Approval shall be construed as any representation or assurance that the matter consented to or Approved complies with applicable laws, regulations, ordinances or Codes, nor shall any such consent or Approval be construed to authorize any failure to comply with any of the foregoing.

XXVII. SUCCESSORS AND ASSIGNS

The terms, covenants and conditions contained in the Use Agreement and in the Exhibits annexed thereto shall bind Audubon and its successors, assigns, and sublessees, and shall inure to the benefit of City and its successors and assigns.

XXVIII. NOTICE

A. Addresses.

Any notice called for in this Use Agreement shall be in writing and shall be hand-delivered to the respective parties at the addresses below, or deposited in the United States mail, postage prepaid, addressed as follows:

If to City: Department of Parks and Recreation
Administrator
Contract and Business Resources
P.O. Box 3036
Seattle, WA 98114

With a copy to: Director of Recreation and Support Division
Department of Parks and Recreation
100 Dexter Building
Seattle, WA 98109

If to Audubon : Executive Director
Audubon Washington

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

P.O. Box 462
Olympia, WA 98057

With a copy to: General Counsel
National Audubon Society, Inc.
700 Broadway
New York, New York 10003

B. Effectiveness of Notice.

Notices shall be deemed to have been received by the parties two (2) working days after mailing or upon actual delivery or receipt by facsimile during normal business hours, whichever first occurs. The parties, by notice given may designate any further or different addresses to which some or all notices, certificates or other communications shall be sent.

XXIX. TERMINOLOGY

A. Headings.

The headings of the various Articles of this Use Agreement have been inserted for convenience only and shall not be construed as modifying, amending or affecting the express terms and provisions herein.

B. Gender and Number.

Words of any gender used in this Use Agreement shall be held to include any other gender and words in singular numbers shall be held to include the plural when the context so requires.

XXX. SEVERABILITY

If any provision of this Use Agreement, or its application to particular circumstances, is held invalid, this Use Agreement shall be construed as if the invalid part were never included or were expressly made inapplicable to such circumstances, as the case may be, and this Use Agreement shall remain valid and in force to the fullest extent permitted by law.

XXXI. APPLICABLE LAW

This Use Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any legal action under this Use Agreement shall be King County Superior Court.

XXXII. NEGOTIATED AGREEMENT; MERGER

The parties to this Use Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Use Agreement reviewed by their respective legal counsel, and

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

that the terms and conditions of this Use Agreement are not to be construed against any party on the basis of such party's draftmanship thereof.

This Use Agreement, and the terms and provisions herein, contain the entire agreement and understanding between the parties with respect to the leasing of the Premises. Any other negotiations, agreements, or understandings with respect to the leasing of the Premises are hereby expressly merged and assumed within the terms and provisions of this Use Agreement. No negotiations, communications, agreements or understanding with respect to the Use Agreement shall have any effect in the construction, application or enforcement of this Use Agreement.

XXXIII. AUDITS AND RECORDS

A. Program Audit Report.

Audubon will furnish to City a written program audit report, performed by Audubon staff. If so required by the City after any breach or default by Audubon hereunder (whether or not such breach or default shall have been cured), the program audit shall be performed by a qualified independent consultant. The program audits will be provided to the City annually, within 30 days after the end of each calendar year, unless otherwise Approved by the City. If any annual audit report indicates noncompliance with the provisions of this Use Agreement or if the Superintendent reasonably believes that problems exist, the City may, by written notice to Audubon, require that semiannual audit reports be provided. Program audits shall include but not be limited to: compliance with contract terms; maintenance of records; program delivery; property maintenance; liaison with community and outreach efforts, program fees; value of fee discounts and scholarships, finances; and any other topic agreed between the City and Audubon to be a proper component of a program audit. At the Superintendent's request, the Audubon Center Director shall meet with a DPR representative within sixty (60) days of submission of the annual Audit report for the purpose of evaluating Audubon's programmatic performance under this Agreement. To the extent practicable, Audubon shall incorporate all reasonable suggestions made by the DPR representative into its programs.

B. Records.

In addition to the foregoing, the City shall have the right, at the City's cost and expense, to perform, or to commission a consultant to perform, audits or reviews of Audubon's activities at Seward Park at any time. Audubon shall prepare and maintain in good order, accurate and up-to-date records demonstrating compliance with the terms of this Use Agreement and documenting the operation of the Premises, and shall make all such records available for inspection and copying promptly upon the City's request; provided, that, Audubon reserves the right to redact information related to private fundraising activities and private donor information. The provisions of this Article and the rights of the City hereunder shall be included in any Approved sublease.

XXXIII. Non-Liability of Officials, Employees and Agents.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to Audubon, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Audubon, its successors and assigns under this Use Agreement, or for any obligation of the City under this Use Agreement. Likewise, no board member, member, officer, employee or other agent of Audubon shall be personally liable to the City, its successors and assigns under this Use Agreement, in the event of any default or breach by Audubon or for any amount which may become due to the City, its successors and assigns, or for any obligation of Audubon under this Use Agreement.

XXXIV. Counterparts.

This Use Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Signed:

THE CITY OF SEATTLE

NATIONAL AUDUBON SOCIETY, INC.

By: _____

Signature

Kenneth Bounds
Superintendent, Department of Parks
and Recreation of The City of Seattle

By: _____

Signature

Print Name: _____

Date: _____

Date: _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

CITY ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this ____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared KENNETH BOUNDS, to me known to be the Superintendent of the Department of Parks and Recreation of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____
Print Name: _____

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of National Audubon Society, Inc., a New York nonprofit corporation, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____
Print Name: _____

List of Exhibits:

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- A. Legal Description of Seward Park
- B. Map of Seward Park
- C. Insurance Requirements
- D. DPR's Key Policy
- E. DPR's Cleaner Facilities Inspection Guide
- G. Form of Amendment

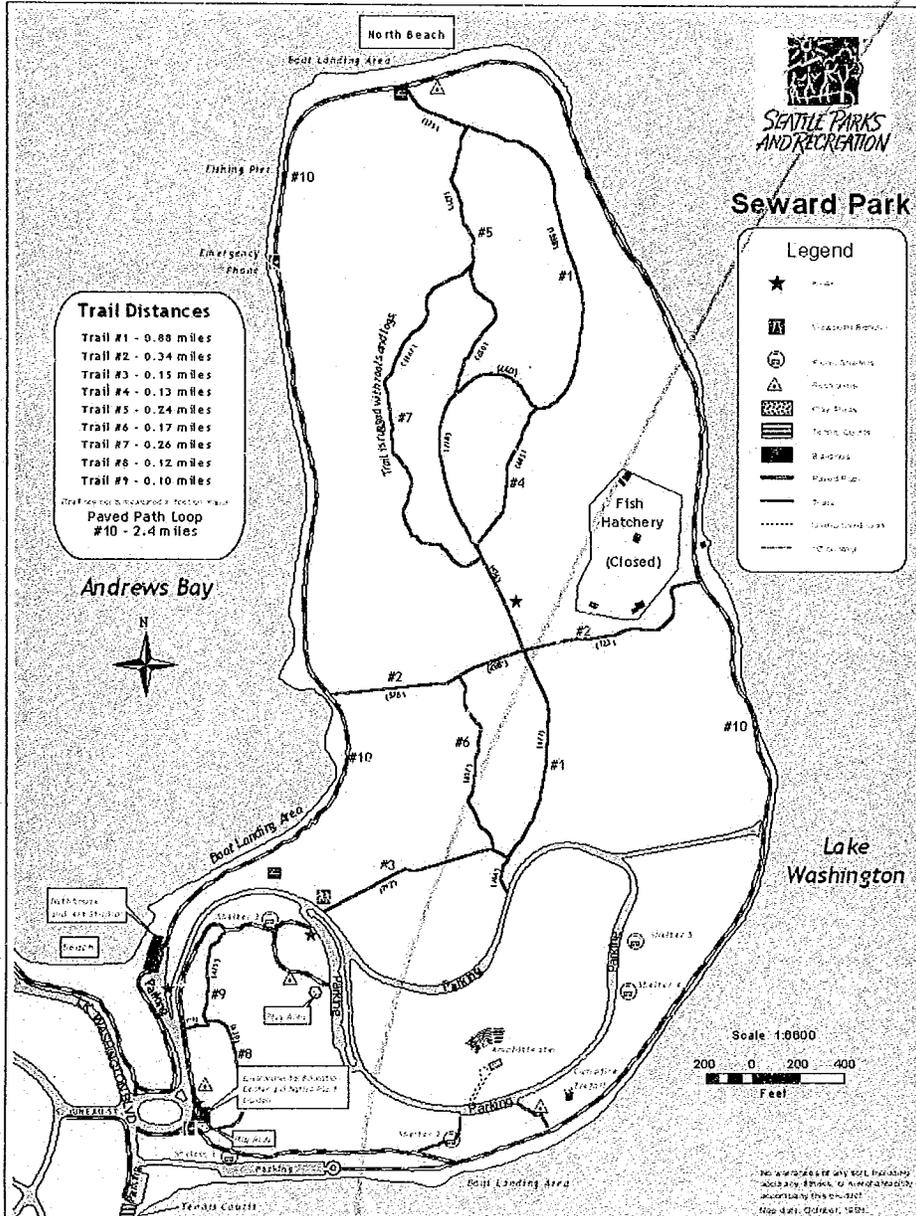
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT A
LEGAL DESCRIPTION OF SEWARD PARK

GOVERNMENT LOT 3 IN SECTION 14;; GOVERNMENT LOTS 1, 2, AND 3 IN SECTION 23; TRACTS 23, 24 AND 25 OF B. W. JOHN'S AND C. H. HANFORD'S 5 ACRE TRACTS, TOGETHER WITH THAT PORTION OF GOVERNMENT LOT 5 LYING SOUTHERLY OF THE SOUTH LINE OF SAID TRACT 23 IN SECTION 23; GOVERNMENTS LOTS 1, 2, AND 3 IN SECTION 24; ALL IN TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., TOGETHER WITH ALL ABUTTING LAKE WASHINGTON SHORELANDS AND INCLUDING ALL BOULEVARDS, STREETS, AND ALLEYS LYING WITHIN THE AFOREDESCRIBED LOTS, TRACTS, AND SHORELANDS.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT B
MAP OF SEWARD PARK



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT C

Insurance Requirements

(1) Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01) or equivalent, including all the usual coverages known as:

- Premises/Operations Liability
- Products/Completed Operations
- Personal/Advertising Injury, to include
 - Sexual Molestation
 - Discrimination
 - Sexual Harassment
- Contractual Liability
- Independent Contractors Liability
- Stop Gap or Employers Contingent Liability
- Explosion, Collapse, or Underground (XCU), (as applicable)*
- Liquor Liability/Host Liquor Liability (as applicable)*
- Fire Damage Legal
- Per Location Aggregate CG2504

*These coverages are required only when the operations on the Premises may include exposures to which these specified coverages respond.

Such policy(ies) must provide the following minimum limits:

Bodily Injury and Property Damage -
\$ 1,000,000 General Aggregate
\$ 1,000,000 Products & Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence
\$ 100,000 Fire Damage

Stop Gap Employers Liability
\$ 1,000,000 Each Accident
\$ 1,000,000 Disease - Policy Limit
\$ 1,000,000 Disease - Each Employee

There shall be no deductible or self-insured retention except as expressly Approved in writing by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be Audubon's responsibility.

(2) Business Automobile Liability, including coverage for owned, non-owned, Leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

\$ 1,000,000 per accident

The insurance required under items (1), above, shall be endorsed to include The City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insureds, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City's Risk Manager, except for cases of nonpayment of premiums, in which case notice shall be ten (10) days. In addition, Audubon's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with Audubon's insurance.

(3) Workers' Compensation in accordance with the provisions of Title 51 of the Revised Code of Washington. If Audubon is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Audubon shall so certify by a letter signed by a corporate officer and setting forth the limits of any policy of excess insurance covering its employees.

(4) Property Insurance for the Premises and for Audubon's personal property, for their full replacement value, with the City named as an additional insured, and covering the following hazards:

- (a) loss or damage by fire and such other risks as the City shall require (including earthquake and flood damage);
- (b) loss or damage from leakage or sprinkler systems now or hereafter installed in any Building;
- (c) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed in the Building.
- (d) Business Interruption with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of Audubon's business because of fire or other cause.

City and Audubon waive all subrogation rights against each other for damages caused by fire or other perils to the extent covered by property insurance obtained hereunder or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by any person as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity had an insured interest in the property damaged.

(5) Evidence of Insurance

The following documents must be provided as evidence of insurance coverage prior to the commencement date of this Use Agreement and, with respect to any renewal or substitute policy, promptly upon issuance thereof, but in any event no later than ten (10) days before the expiration or termination of any previous policy:

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- (a) A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
- (b) A copy of the endorsement naming The City of Seattle as an additional insured, showing the policy number, and signed by an authorized representative of the insurance company on a form CG2026 (ISO), or such other form as the City's Risk Manager may require or deem acceptable.
- (c) A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including full copies of any company-specific or manuscript endorsements.
- (d) A copy of an endorsement stating that the coverages provided by the policy to City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City, (except for cases of nonpayment of premiums).
- (e) A copy of a "Separation of Insureds" or "Severability of Interests" clause, indicating, essentially, that except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (for Commercial General Liability and Business Automobile Liability Insurance).

In addition, within five (5) days of any request by City, Audubon shall provide full copies of all insurance policies, together with all amendments and endorsements and proof of premiums paid.

(6) Approval of Risk Manager; Adjustments

All policies shall be subject to Approval by the City's Risk Manager as to company (must be issued by a company rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and shall be primary to all other insurance. If the City determine that the required limits set forth above are not reasonably adequate for any reason, including without limitation inflation or changes in the nature or scope of activities on the Premises, then Audubon shall procure such increases in policy limits as the City shall require, within sixty (60) days of written notice from City.

(7) Definitions

Capitalized terms used in this Exhibit and not otherwise defined in this Use Agreement shall have the meanings commonly ascribed to such terms in the insurance industry.

(8) Assumption of Risk. The placement and storage of personal property in the Premises shall be the responsibility, and at the sole risk, of Audubon.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

(9) Adjustments of Claims. Audubon shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of Audubon's activities of under this Use Agreement.

(10) Compliance by Audubon. Audubon shall not violate or permit to be violated any of the conditions or provisions of any insurance policies affecting the Building or the Premises.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT D
DPR KEY CONTROL POLICY

Department Policy & Procedure

City of Seattle



Subject:		Number 060-P 2.7.1
Key Control		Effective July 1, 1999
		Supersedes September 20, 1993
Approved:	Department: Parks and Recreation	Page 1 of 13

1.0 PURPOSE

- 1.0 To provide for the security of Department employees, facilities and equipment by managing the Key and Lock Control System.

2.0 ORGANIZATIONS AFFECTED

- 2.1 Department of Parks and Recreation
2.2 Seattle School District

3.0 REFERENCES None

4.0 POLICY

- 4.1 The Security Program Specialist, in coordination with the FMDD Customer Support Manager, Customer Support Administrative Staff and Carpenter Shop personnel shall manage the key and lock control system. Facility staff shall be managed by facility managers and the Security Program Specialist shall manage the policy to protect the integrity of the Park Department Key and Lock Control System.
- 4.2 Keys to Department-owned or operated facilities are issued to Department employees as needed in their jobs.
- 4.3 First line supervisors are responsible for all keys issued to their employees.
- 4.4 Key holders are responsible for the keys issued to them and are forbidden to loan or give their Department-issued keys to anyone else.
- 4.5 Outside duplication of Department keys is not allowed.
- 4.6 Non-employees are issued operational key(s) only with the express permission of the appropriate program facility manager, and their Section Manager. The Security Program Specialist retains the right to review each request for appropriateness.
- 4.6.1 Non-employees will be required to make a cash deposit before being issued keys, except as in paragraph 7.3.4

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 4.6.2 Non-employees will normally not be reissued keys after having lost keys.
- 4.6.3 Associated Recreation Council (ARC), Woodland Park Zoological Society and Aquarium Society employees will be treated the same as Department employees when issuing keys and for other provisions of this policy and procedure.
- 4.7 A responsible individual will sign for each key issued. A supervisor (or designee) may sign as the recipient for line staff. Certain keys, such as for toilet paper holders, towel dispensers, etc. will not be part of Key Control.
- 4.8 Because of the value of the stock of certain non-Department tenants of Department facilities, such tenants will use their own lock cores and issue their own keys (e.g., Seattle Art Museum, Museum of History and Industry, Golf Pro Shops) except for roadway gates and bollards which require Police, Fire, and Parks Department access. Concessionaires will supply locks and keys in accordance with the conditions of their contracts with the Department.
- 4.9 Supervisors may not permanently retain, reissue or otherwise change assignment of employees' keys except through the Key Control Policy. Any transfer of keys from one individual to another will not be done within the organization unit but will be accomplished by turning the keys in to the Key Control Office.
- 4.10 Locks will not be changed or re-cored without the written Approval of the Security Program Specialist.
- 4.10.1 Program facility managers will submit re-coring requests in writing to the Security Program Specialist, clearly stating the reason(s) for the request.
- 4.10.2 The Security Program Specialist will evaluate the recoring request. A key audit is required, unless waived by Security.
- 4.10.3 If the recoring request is Approved, a job order will be called into the Consolidated Work Order System (CWOS) for the Carpenter Shop, (who shall be responsible for keying of cores and changing the cores in buildings. They will decide which cores are appropriate for a given need and then submit a recoring plan to the Security Program Specialist for Approval).
- 4.10.4 The Carpenter Shop will not change key cores or issue keys without an Approved work order except in an emergency with the Approval of the Security Program Specialist or Parks Duty Officer, as appropriate.
- 4.10.5 Written notification of recoring shall be done by the Security Program Specialist and new keys will be provided by the Key Control Office.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

- 4.10.6 Zoo management will be able to recore without obtaining prior permission, but Zoo staff will send a record of permanent recoring of facilities to the Security Program Specialist (who will forward it to the CWOS Administrative Specialists for entry into the Key control Data Base).
- 4.11 Forced entry (entry without the proper key) may be authorized only in emergencies and in consultation of the Security Program Specialist or Park Duty Officer, as appropriate. (See paragraph 7.6)

5.0 DEFINITIONS

- 5.1 The Key and Lock Control System is defined as the keys and door cores that secure buildings and equipment. Vehicle, desk, cash register, toilet paper holders, paper towel dispensers, and other minor work-related keys are not within the scope of this system and their issuance, use and disposition are exempt from the provisions of the Key Control Policy.
- 5.2 As delegated by the Customer Support Manager, a trained member(s) of the Facilities Maintenance Customer Support/Jobline staff shall be designated Key Control Officer and assigned the duties of issuing keys and keeping key and lock related records. The Key Control Office shall maintain Sonitrol records, issue and delete Sonitrol numbers, and maintain the Parks Duty Officer (PDO) schedule and perform other related duties as assigned. The Customer Support Manager shall assign members of the Customer Support Services staff to backfill and "cover" the Key Control Officer position as appropriate.

6.0 RESPONSIBILITY

- 6.1 First Line Supervisors - It shall be the responsibility of first line supervisors to identify the key needs of their personnel, to requisition appropriate keys promptly for those personnel, to instruct the employees in proper key safeguard methods during orientation and to ensure the prompt return of keys by individuals leaving the Department. Each supervisor signing Separation Report Forms must ensure the keys have been turned in to the Key Control Office BEFORE he or she signs and processes the form.
 - 6.1.1 A responsible supervisor may sign as the recipient for the employee (e.g. John Doe, supervisor for Jane Smith).
 - 6.1.2 Each supervisor shall instruct his/her subordinates in key control procedures during new employee orientation and thereafter annually.
 - 6.1.3 As a regular part of the annual employee evaluation process, it is recommended that the supervisor perform, a key audit. This consists of writing out a list of keys carried by the employee. Return this list and any keys no longer needed to the Key Control Office. Each supervisor may also audit keys of employees as needed, or as requested by the Security Program Specialist.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 6.1.4 Each supervisor shall promptly report all losses of keys by persons in his/her organization. The supervisors shall make a phone report to the Security Program Specialist within the first three hours of the next working day, and written follow-up reports to the Division Director, with copies to the Security Program Specialist and Key Control Office, within a week.
- 6.1.5 Each supervisor is responsible for the key security performance of his/her employees.
- 6.1.6 Persons returning keys shall verify that keys have been signed off/on the key control signature card each time keys are returned to the Key Control Office. An employee is responsible for his or her keys until they are returned and signed off.
- 6.1.7 It is the responsibility of the first line supervisor to return keys when they are no longer needed. If an employee transfers to a different work unit, the outgoing supervisor is responsible for collecting and returning the employee's keys. The new supervisor is responsible for obtaining and issuing the appropriate keys to the transferred employee.
- 6.1.7.1 Punitive action may be taken if 6.1.7 is not complied with (see 7.5).
- 6.2 Security Program Specialist - The Security Program Specialist shall (via appropriate staff):
- 6.2.1 Maintain key assignment cards for all individuals holding Department and joint use public school keys, and shall require a signature for each key issued. Upon return of each key, the Key Control Office shall sign and write "returned" on the card.
- 6.2.2 Maintain a cross file for each key designation, listing persons having corresponding keys.
- 6.2.3 Maintain an up-to-date file of lost keys and of the names of individuals and the organizations which they represent who have been careless with keys or have lost keys.
- 6.2.4 Maintain a list of door core assignments.
- 6.2.5 Issue only authorized keys that are the lowest security key required to do the job.
- 6.2.6 Maintain a date "tickler" file indicating when temporary key issues are due to be returned.
- 6.2.7 Ask for key audits on occasion, with or without specific cause.
- 6.2.8 Issue keys only with appropriate authorization, except in emergencies and security related matters.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 6.3 Human Resources Unit - The Human Resources Unit shall advise the Key Control Office when personnel are being separated from employment.
- 6.4 The Security Program Specialist is responsible for insuring the integrity of the key and lock policy. He or she also has the authority to coordinate with all Parks Department employees and vendors as necessary to implement this policy. The Security Program Specialist shall be the administrator of the key and lock policy, with the understanding that normal operational functions shall be under the direct supervision of the appropriate manager or crew lead.
- 6.5 Initiators of a Key Request for non-Department persons - A "sponsor" recommending that a key be issued to a non-Parks person shall be responsible for seeing that the issued key is returned promptly at the date the Use Agreement is up, the contract is completed, the sport season is over, or the special event is finished and clean-up is completed. Such a sponsor will normally be the person with the Department function most closely related to the reason for the key issue (e.g., Project Manager sponsors contractor; Grants and Contracts Manager sponsors concessionaire; Community Center Coordinator sponsors Day Care Center programs).

7.0 PROCEDURE

7.1 Issuing Keys to Employees

- 7.1.1 Initiation of request - Employee's supervisor initiates a request for the employee on a Key Requisition Form.
- 7.1.2 Approval routing - The employee sends the request through his or her supervisor and Section Manager, for Approval.
- 7.1.3 The Section Manager sends the request to the Key Control Office for processing. Key control Officer will only forward 'master' key requests and any problematic requests to the Security Program Specialist for review and Approval.
 - 7.1.3.1 The requestor shall be notified when the keys are ready to be picked up. If the key requests are hand-carried, it will be up to the discretion of the Key Control Office when the key can be issued. The Key Control Office shall make every effort to issue keys in a timely manner.
- 7.1.4 The Section Manager can Approve keys within his or her area of supervision. A Director and the Security Program Specialist needs to Approve the Key Request only if the employee has lost keys, a discipline issue is involved, a grand master is being requested, a key is being issued to a non-employee, or is complicated by other factors.
- 7.1.5 The Section Manager can limit employees access to facilities under his or her direct supervision.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

7.1.6 Key assignment cards- The Key Control Office issues the Approved key(s) in exchange for a signature for each key (one key - one signature). A name card thereby keeps listings of keys held by each person. There shall be a dual record keeping system, (i.e. key assignment cards and a key control database) until paper key assignment cards are replaced by electronic key assignment database. Then a written addendum shall explain the changes in the policy.

7.2 Issuing Keys to Contractors

7.2.1 General - for minor jobs, it is permissible to issue a specific key to the contractor upon Approval of the Project Manager and Supervisor. The Project Manager will initiate the key requisition and route for Approval via the procedure outlined above in 7.1.2.

7.2.2 Major construction - In case of new construction or major building overhaul, the Project Development Section will specify vendor installation of a "contractor's core" and vendor return to the proper Department core, at the contractor's expense.

7.3 Issuing Keys to Non-Employees - Keys are sometimes issued to non-employees when the public benefits significantly from keys being issued to particular individuals. These cases are often associated with children's or other programs operated by a non-profit organization, or by a concession operation on a city-owned facility (Pratt Fine Arts is an example). In justified cases, keys are issued in the following manner:

7.3.1 Initiation of request - The program organization with operational responsibility for the service, or for the facility involved, initiates the request on a Key Requisition Form (B-65). The initiator notes on the form the need or benefits involved and recommends Approval. (See Responsibility section 6.5.)

7.3.2 See 7.1.3

7.3.3 A key deposit of \$50 is required for all non-Department persons, for each key.

7.3.3.1 The appropriate Division Director may waive or reduce the fifty dollar deposit per key only in exceptional cases:

- the key user is under contract to the Department relative to the service that necessitates the key.
- the key user is doing the Department a service in providing the assistance that necessitates the key.
- A contractor will normally pay the key deposit.

NOTICE IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

7.3.3.2 The Department encourages key deposits in the form of checks to the "Parks and Recreation Department" rather than cash, but in either case the Key Control officers or appropriate management staff, via chain of supervision, shall issue receipts for the key deposits. A due date will be determined at the time of issue. The deposits are forwarded to the Accounting and Payroll Unit (with names, organizations, addresses, and phone numbers) for placement in a guaranteed deposit fund.

7.3.4 Keys will not be issued to private citizens to restrict the use of or to secure public property. The securing of Parks facilities is the exclusive responsibility of Department employees, Police and Fire Department staff, and specifically hired security personnel. The Department, not being in direct control of the circumstances under which a private citizen may use a key, would set up conditions for misuse and could be negligent and possibly liable.

7.3.5 Key and deposit returns - Upon return of each key from a non-employee, the Key Control Office will take the following actions:

7.3.5.1 Sign an appropriate entry(s) on the signature card.

7.3.5.2 A return receipt will be given, if requested

7.3.5.3 Notify the Accounting Unit that the key(s) has been returned and that the deposit is to be refunded.

7.4 Safeguarding Keys and Restrictive Considerations

7.4.1 Persons having keys are to take conscientious care in the safeguarding of those keys. Keys will normally be kept on the person or in locked cabinets - not in desks, vehicles, or other unsecured places.

7.4.2 Keys are not to be loaned between co-workers except in emergencies, and then not for more than 24 hours. Such loans are only to be made with a specific Approval of line supervisors, within their line responsibility, and upon notification of the Security Program Specialist. If keys are loaned between co-workers, a receipt will be issued to the employee giving up his or her keys.

7.4.3 Keys to the exterior doors of Parks buildings will be provided only to persons working there and who arrive early, leave late, or work weekends.

7.4.4 Each supervisor will promptly notify the Security Program Specialist in writing of all key procedure violations and lost keys for review by management to determine corrective measures needed, such as recoring locks, changing procedures, and charging for costs incurred. The notification will clearly state the circumstances surrounding the loss of the keys (date,

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

time, approximate location) and whether or not the loss poses a security problem.

7.4.5 Employees going on leave-of-absence, or "zero" timesheets, or extended sick leave MUST return all keys to the Key Control Office. (Keys then will be tagged and locked in the key control file for safekeeping.)

7.4.6 Any employee may return any keys to the (Key Control Office) for safekeeping while on vacation. Losing keys in activities like skiing or while on vacation will be considered evidence of direct violation of these instructions.

7.4.7 Day Care Center employees, SPICE Program employees, and other non-Parks personnel may not pass keys to each other, and instruction and enforcement is a responsibility of appropriate Parks employees with assignments related to the non-Parks function (see 7.3).

7.5 Disciplinary and Corrective Measures

7.5.1 Violations of the provision of this policy and procedure by Department employees will be handled in accordance with the Policy and Procedure on "Coaching and Corrective Action" (060- P 4.4.3).

7.5.1.1 The supervisor or (manager) who can recommend appropriate coaching or corrective action will review key procedure violations.

7.5.1.2 The supervisor or manager will consider the following factors when evaluating a key procedure violation.

- The extent of employee carelessness
- Where and when a key was lost
- The level of security affected
- Whether an employee took sufficient care to safeguard the key(s)
- Whether the violation is a second offense
- The loss of a "grandmaster" or other "master" key (those keys which open more than one facility) will be considered to be a more serious infraction than the loss of other keys.

7.5.1.3 The supervisor or manager must check with the Security Program Specialist to determine the potential effect on the security of the employee's facilities or equipment from the key policy violation.

7.5.1.4 The Security Program Specialist will notify the appropriate Division Director of certain key policy violations:

- The second loss of keys within one year

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- Extreme carelessness in safeguarding keys
- Apparent uncorrected key policy violations
- Duplication of Department keys

7.5.1.5 The loss of a "grandmaster" or other "master" key, (those keys that open more than one facility) will be considered to be a more serious infraction of the Policy and Procedure and may be treated as such when discipline is given. The loss of a "master" key may result in suspension, demotion or dismissal depending upon the severity of the loss of security. Security cores J and K series shall be included and considered "masters".

7.5.2 Any non-employee who loses a key(s) will lose his or her key deposit and will also be billed for any necessary or desirable recoring if there is any indication of not having taken conscientious care of the key(s).

7.6 Forced Entry without a Key

7.6.1 When time permits, a person may force entry only after telephoning and coordinating with the Security Program Specialist during working hours, or with the Parks Duty Officer during off-hours.

7.6.2 When time does not permit this coordination, any person cutting a lock or otherwise forcing entry must report by telephone to the Security Program Specialist or Parks Duty Officer immediately thereafter, and follow-up in 24 hours with a written report to the Security Program Specialist via line management. The report must clearly state the necessity, the Approving authority, the persons involved, and the resecuring action taken.

8.0 APPENDICES

8.1 Key Requisition Form

8.2 Key Assignment Card

8.3 School/Parks Agreement: Procedure for Issuing School District Facility Keys and Procedure for Issuing Parks Department Facility Keys

NOTICE IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



KEY REQUISITION FORM

FACILITY: _____

PHONE: _____

Name _____ Title _____ Dept. or non-Dept _____

____ Permanent Employee ____ Temporary Employee ____ New Employee
____ Lost/Stolen** ____ Transferred Employee**
____ Other

Access Location/Description of Use (facility, area, task):

Key Series Requir

1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

PRIORITY: ____ Emergency ____ Routine Is Sonitrol clearance required? ____
yes no

Approval Signatures:

Requesting Supervisor:

_____ *print or type name* _____ *signature* _____ *da*

Section or Program Manager:

_____ *print or type name* _____ *signature* _____ *da*

Division Director

_____ *print or type name* _____ *signature* _____ *da*

Security Supervisor *

_____ *signature* _____ *date*

On completion forward to the Customer Support Unit, Mailslot 25

Key Processing:

Administrative Specialist/Customer Support Services Staff

_____ *signature* _____ *date*

- * Only required for issue of all master keys, replacement of lost keys, and issue to non-employees.
- ** A key audit is required if keys were lost, stolen or employee has transferred. If requested key is a replacement for assigned facility key, attach memo written by KEY HOLDER explaining loss.
- *** \$50 deposit required for each key issued, unless reduced or waived by the appropriate Superintendent.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT E
DPR's Cleaner Facilities Inspection Guide

**NOTICE: IF THE DOCUMENT IN THIS FRACTION IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.**

EXHIBIT F
Form of Amendment

EXHIBIT _____
TO THE USE AND OCCUPANCY AGREEMENT

Between
THE CITY OF SEATTLE,
a municipal corporation
of the State of Washington
and
NATIONAL AUDUBON SOCIETY, INC.,
a nonprofit corporation
of the State of New York

FORM OF AMENDMENT

This Amendment to the Use and Occupancy Agreement executed on _____, 2_____, is made between the City of Seattle ("City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR") and the Superintendent thereof, and National Audubon Society, Inc. ("Audubon"), a nonprofit corporation of the State of New York.

1. The following capitalized terms shall have the meanings set forth below.
 - a. "Building Common Areas" shall mean those portions of the Building not used exclusively for DPR programming nor within the exclusive control of any tenant, licensee or concessionaire, including, but not limited to, meeting rooms, restrooms, any kitchen areas and lobby, consisting of ___ square feet, and depicted on Exhibit ___ to this Amendment.
 - b. "Fixed Rent" shall be \$ _____.
 - c. "Hatchery Program Areas" shall mean those portions of the Hatchery not used exclusively for DPR programming, consisting of ___ square feet, and depicted on Exhibit ___ to this Amendment.
 - d. "Improvement Expenditure Offset" shall be \$ _____.
 - e. "Premises" shall mean that portion of the Building, excluding common areas and space required for TREC, consisting of _____ square feet, and depicted on Exhibit ___ to this Amendment.

2. Consumer Price Index Adjustment. For purposes of determining the annual rent adjustment pursuant to Article V of the Use Agreement, the date of the first consumer price index adjustment shall be set as of January 1, 20__.

NOTICE IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

3. Date. This Amendment to the Use and Occupancy Agreement is made this _____ day of _____, 20__.

THE CITY OF SEATTLE

NATIONAL AUDUBON SOCIETY, INC.

By: _____
Signature
Kenneth Bounds
Superintendent, Department of Parks
and Recreation of The City of Seattle

By: _____
Signature
Print Name: _____

Date: _____

Date: _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

CITY ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this _____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared KENNETH BOUNDS, to me known to be the Superintendent of the Department of Parks and Recreation of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____
Print Name: _____

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of National Audubon Society, Inc., a New York nonprofit corporation, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____
Print Name: _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Form revised January 17, 2003

Fiscal Note

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Cindi Shiota 390-3520 Charles Ng 684-8001	Marilynne Gardner 233-5109

Legislation Title:

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to execute an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs; and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years with an option to continue said use and occupancy for an additional ten years.

Summary of the Legislation:

The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years and exercise an option to continue to use and occupy a portion of the named facilities for an additional ten years. No new appropriation authority is required. The Agreement memorializes the parties' understandings and objectives pertaining to the provision of environmental education programs, building renovation, budget, design, construction, project management, and Audubon fund-raising requirements. DPR's financial contribution to this project is capped at \$618,600 and Audubon has pledged to contribute the remaining \$1,372,869 required to complete the project as mutually agreed and designed.

Appropriations (in \$1,000's): Not applicable.

Fund Name and Number	Department	Budget Control Level*	2003 Appropriation	2004 Anticipated Appropriation
TOTAL	N/A	N/A	N/A	N/A

** This is line of business for operating budgets, and program or project for capital improvements*

Funds for this project have already been appropriated in the 2002 and 2003 Capital Improvement Programs under CIP Program # K723003 and CIP Project # K733120. No additional appropriation results from this legislation.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Expenditures (in \$1,000's): Not applicable.

Fund Name and Number	Department	Budget Control Level*	2003 Expenditures	2004 Anticipated Expenditures
TOTAL	N/A	N/A	N/A	N/A

**This is line of business for operating budgets, and program or project for capital improvements*

Anticipated Revenue/Reimbursement (in \$1,000's): Not applicable.

Fund Name and Number	Department	Revenue Source	2003 Revenue	2004 Revenue
TOTAL	N/A	N/A	N/A	N/A

Notes:

As conditions such as the square footage to be leased by Audubon cannot be identified until the renovation is completed, a "Form of Amendment" will be executed when this information is available (Exhibit F of the Use and Occupancy Agreement).

Rent will be based on the fair market value of the space to be occupied by Audubon plus 50% of the fair rental value of the Building's common areas and 33% of the Hatchery program areas, with annual adjustments based on the Consumer Price Index for all Urban Consumers, limited to 4% each year. For the duration of the lease, Audubon shall be entitled to an offset against its rent for the total amount of Audubon's capital contributions to the renovation project and for the value of the public benefit of Audubon's environmental programs to under-served communities. Should Audubon's contributions exceed the amount of offset, the excess shall be a gift to the City.

Total Permanent Positions Created Or Abrogated Through Legislation, Including FTE Impact; Estimated FTE Impact for Temporary Positions: Not applicable.

Fund Name and Number	Department	Position Title*	2003 FTE	2004 FTE
TOTAL	N/A	N/A	N/A	N/A

- List each position separately

New positions will be requested in the 2005 Budget (see Operations & Maintenance section below). No positions will be abrogated as a result of this legislation.

Do positions sunset in the future? (If yes, identify sunset date):

N/A

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota

Date: April 8, 2003

Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
Version #2.

Background (Include brief description which states the purpose and context of legislation and include record of previous legislation and funding history, if applicable):

Renovation of the Annex Building into an environmental education center was one of the initiatives identified by DPR as a priority in the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy to further its commitment to environmental stewardship. City funding of \$618,000 was identified for this purpose in Ordinance 120024 authorizing the Levy, which was subsequently approved by the voters on November 7, 2000. DPR intends to revise the Proposed 2004-2009 CIP to reflect the addition of the hatchery element and the additional Audubon funding commitment, to the Department's Seward Park Annex project (CIP Project K733120).

This agreement is consistent with Ordinance 120024 which reads, in part, "Whereas the City will seek to leverage funds through collaboration with County, State and Federal sources and with private and non-profit organizations...through the development of partnerships for the purpose of enhancing projects and programs funded through the levy lid lift..."

In July 2001, the City passed Resolution 30339 authorizing a Memorandum of Understanding between DPR and Audubon, which established a framework for the development of this agreement.

The financial cost of not implementing the legislation (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented):

This project was specifically approved by the voters as part of the Neighborhood Parks, Green Spaces, Trails, and Zoo Levy on November 7, 2000.

Possible alternatives to the legislation which could achieve the same or similar objectives (Include any potential alternatives to the proposed legislation, including using an existing facility to fulfill the uses envisioned by the proposed project, adding components to or subtracting components from the total proposed project, contracting with an outside organization to provide the services the proposed project would fill, or other alternatives):

N/A

Is the legislation subject to public hearing requirements (If yes, what public hearings have been held to date):

Public meetings were conducted on March 6, June 5, 2002; and March 25, 2003. A Park Board Hearing was conducted on April 10, 2003.

Other Issues (including long-term implications of the legislation):

If Audubon fails to successfully raise its required funding, it will reimburse DPR for its capital contributions to the Project and DPR will use its funding to do small improvements to the

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

Cindi Shiota

Date: April 8, 2003

Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
Version #2.

Annex Building. This will result in the continuation of the current, limited environmental programming at Seward Park

FOR CAPITAL PROJECTS ONLY

Background (Include brief description that states the purpose and context of legislation, the expected useful life, anticipated customers/users, assumed level of LEED or other sustainable design elements. Also include record of previous legislation and funding history, if applicable):

Not applicable.

Spending Plan and Future Appropriations for Capital Projects (Estimate cost of legislation over time; list timing of anticipated appropriation authority requests and expected spending plan. Please identify your cost estimate methodology including inflation assumptions and key assumptions related to the timing of appropriation requests and expected expenditures. In addition, include the projected costs of meeting the LEED Silver standard in all facilities and buildings with over 5,000 gross square feet of occupied space. Also, be sure to include percent for art and percent for design as appropriate):

Spending Plan and Budget	2003	2004	2005	2006	2007	2008	Total
Planning	\$31,665						\$31,665
Design	\$210,279	\$105,141					\$315,420
Construction		\$1,644,384					\$1,644,384
Total	\$241,944	\$1,749,525					\$1,991,469

Key Assumptions:

The above spending plan is based upon the following planned project schedule:

Planning and Design: 3rd Quarter 2003 – 1st Quarter 2004

Construction: 1st Quarter 2004 – 4th Quarter 2004

Building and Hatchery Opens: 1st Quarter 2005

Funding source (Identify funding sources including revenue generated from the project and the expected level of funding from each source):

Funding Source	2003	2004	2005	2006	2007	2008	Total
2000 Parks Levy Fund (33850)	\$124,000	\$494,600					\$618,600
Audubon Funding	\$236,352	\$1,136,517					\$1,372,869
TOTAL	\$360,352	\$1,631,117					\$1,991,469

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Cindi Shiota
 Date: April 8, 2003
 Name of Companion Legislation: DPR Agreement with National Audubon Society, Inc.
 Version #2.

Bond Financing Required: Not applicable.

Type	Amount	Assumed Interest Rate	Term	Timing	Expected Annual Debt Service/Payment
TOTAL	N/A	N/A	N/A	N/A	N/A

Uses and Sources for Operation and Maintenance Costs for the Project:

O&M	2003	2004	2005	2006	2007	2008	Total
Uses							
Start Up							
On-going			36	37	38	39	150
Sources (itemize)							
2000 Parks Levy Fund			36	37	38	39	150

Key Assumptions:

Audubon will pay all the costs of utilities, custodial service, and security alarm costs at the Annex Building. DPR will pay the same costs at the Hatchery with existing base budget funding allocated to the Annex Building. New O&M costs expected to come online in 2005 are funded by the 2000 Parks Levy Fund and include gardening supplies, a 0.02 Utility Laborer, a 0.02 Gardener, and major maintenance work related to the Seward Park Annex - Renovation project.

Periodic Major Maintenance costs for the project (Estimate capital cost of performing periodic maintenance over life of facility. Please identify major work items, frequency):

Major Maintenance Item	Frequency	Cost	Likely Funding Source
TOTAL			

Funding sources for replacement of project (Identify possible and/or recommended method of financing the project replacement costs):

Not applicable.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

NOTICE IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON - KING COUNTY

--SS.

160747
City of Seattle, Clerk's Office

No. ONLY PUBLICATION

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

CTOT:121189-121194 TITLE

was published on

7/9/2003

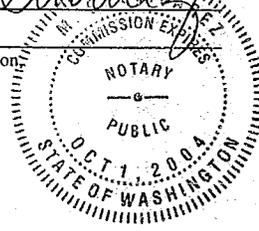
J. S.

Subscribed and sworn to before me on

7/9/2003

McL...

Notary public for the State of Washington
residing in Seattle



Affidavit of Publication

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on June 16, 2003, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 121194

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 121191

AN ORDINANCE relating to sale of City real property for multifamily residential development, authorizing the sale of Parcel 17 South in the I-90 Redevelopment Project area, at 29th Ave. So. and So. Judkins St., for \$353,000 to Housing Resources Group, a Washington non-profit corporation intending to develop low-income rental housing on the property; authorizing the Housing Director to execute and administer a contract for sale and deed; appropriating sale proceeds for payments to the State and closing costs; and ratifying and confirming prior acts, all by a vote of three-fourths of the members of the City Council.

ORDINANCE NO. 121190

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to execute an agreement with the National Audubon Society, Inc. to renovate the Seward Park Music Annex Building and the Hatchery for environmental education programs; and establishing the conditions under which Audubon may use and occupy a portion of the named facilities for a period of ten years with an option to continue said use and occupancy for an additional ten years.

ORDINANCE NO. 121189

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the execution of a Use, Occupancy, and Maintenance Agreement with the Cascade Neighborhood Council for the provision of recreational opportunities to the public at the Cascade Building Facility.

ORDINANCE NO. 121193

AN ORDINANCE authorizing the execution of the First Amendment to 1998 Agreement Between The City of Seattle and the University of Washington to revise land acquisition and leasing provisions of that Agreement.

Publication ordered by JUDITH PIPPIN,
City Clerk.

Date of publication in the Seattle Daily
Journal of Commerce, July 8, 2003.

7/9(160747)

ORD 121190

**ADDITION
TO
ORDINANCE:**

121190

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

DEVELOPMENT AGREEMENT
Between
THE CITY OF SEATTLE
Department of Parks and Recreation
and
NATIONAL AUDUBON SOCIETY, INC.

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into by and between THE CITY OF SEATTLE ("City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR"), and NATIONAL Audubon SOCIETY, INC. ("Audubon"), a not-for-profit corporation organized in 1905 under the laws of the State of New York.

RECITALS

WHEREAS, the City owns and DPR has jurisdiction over and manages Seward Park including the Seward Park Music Annex Building (the "Building") and the Hatchery located within Seward Park; and

WHEREAS, on November 7, 2000, the voters of the City of Seattle approved Ordinance 120024, the Parks and Green Spaces Levy, which identified the sum of \$618,600.00 to partially fund renovation of the Building and the Hatchery for use as an Environmental Education Center (the "Project"); and

WHEREAS, Ordinance 120024 expresses the City's intention to leverage said funds through collaborations with public and private organizations to enhance the projects and programs funded through the levy lid lift; and

WHEREAS, Audubon is a private non-profit conservation organization, whose mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity. The organization is named after naturalist and wildlife painter John James Audubon, a renowned conservationist of Haitian and French parentage; and

WHEREAS, Audubon has established a state office in Washington, Audubon Washington, to carry out its mission and oversee its activities in the State of Washington; and

WHEREAS, DPR has established an Environmental Stewardship Commitment Statement, which reads, in part,

Seattle Parks and Recreation will be a role model for environmentally friendly practices. The Department will provide opportunities and offer programs for citizens that foster awareness, appreciation, and knowledge that inspire actions to protect and enhance the

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

natural environment. All Department classes and programs will promote environmental stewardship and volunteerism; and

WHEREAS, DPR and Audubon both work to educate the general public about environmental issues and conservation and to develop educational programs for children, youth, and families; and

WHEREAS, both parties share a commitment to serving diverse audiences and a programmatic approach that uses first-hand experience in the natural habitat; and

WHEREAS, Audubon and DPR concur that the renovation of the Building and the Hatchery is an appropriate project for a public/private partnership; and

WHEREAS, the parties agree that the public benefits from this programmatic partnership are substantial, including financial contributions from Audubon to renovate and improve the Building to develop an important public environmental education and community programming facility; and

WHEREAS, Audubon and DPR recognize that they cannot accomplish the environmental and conservation educational goals alone and given the many other demands for DPR's financial resources, DPR cannot complete the Project without substantial private donations; and

WHEREAS, Audubon recognizes that a successful private fundraising campaign needs a public commitment to the Project from governmental agencies, including the City; and

WHEREAS, Audubon and DPR desire to collaborate to achieve their shared long-term vision and goals with respect to the renovation of the Building and the Hatchery and the development and delivery of complementary community-based environmental education programs and conservation initiatives to a diverse audience; and

WHEREAS, Resolution 30339 authorized a Memorandum of Understanding between DPR and Audubon for a partnership to provide environmental education in Seward Park; for the renovation of the Seward Park Music Annex Building for said purpose; and authorizing future work to implement the terms of the parties' agreement; and

WHEREAS, Audubon and DPR wish to enter into this Agreement for the purpose of setting forth the development parameters and funding commitments and establishing the parameters for joint use of the Building and the Hatchery.

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and covenants described herein, DPR and Audubon agree as follows:

ARTICLE 1 DEFINITIONS

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Capital words not defined herein shall have the meanings ascribed to them in the Use and Occupancy Agreement between the City and Audubon, attached hereto as Exhibit E.

- 1.1 "Approval" (or "Approved") means the prior written consent of a party whose consent is required, or an authorized designee thereof.
- 1.2 "Audubon Project Representative" means the individual/entity hired by Audubon to manage the Building portion of the Project for Audubon.
- 1.3 "Audubon Share of Project Costs" means the total sum of \$1,372,869.
- 1.4 "Building" means the Seward Park Music Annex Building located at 5902 Lake Washington Boulevard, Seattle, Washington, and situated on the real property described on Exhibit A and depicted on Exhibit B hereto.
- 1.5 "Building Common Areas" means those portions of the Building not used exclusively for DPR's TREC program nor within the exclusive control of any tenant, licensee or concessionaire, including, but not limited to, meeting rooms, restrooms, the kitchen and lobby.
- 1.6 "Building Design Program" means the scope, schedule and budget along with associated considerations and review requirements that shape the design and construction, providing general guidelines and values to be achieved as well as specific direction to the designer and those directly involved in the design and construction management.
- 1.7 "City Project Manager" means the individual(s) designated as such by the Superintendent to manage the Project for City.
- 1.8 "City Share of Project Costs" means the total sum of \$618,600.00.
- 1.9 "Construction Costs" means the sum stated in the line items for Construction Costs in the Project Budget for the Building and the Hatchery. The term Construction Costs includes costs incurred under any construction contract and such other Project-related costs as are approved by Audubon and the Superintendent.
- 1.10 "Design" means the graphic and written description of the Project including the instructions/specifications to be followed by the construction contractor to construct all or any portion of the Project.
- 1.11 "Environmental Law(s)" means any federal, state and local laws (whether under common law, statute, ordinance, rule, regulation, code or otherwise), permits, orders, decrees, and other requirements of governmental authorities relating to the protection of human health or the environment, whether existing as of the date hereof, previously enforced, or subsequently enacted.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 1.12 "Force Majeure" means delays due to war, terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, weather or soils conditions that necessitate delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts or failure to act of any public or governmental entity or any other unforeseeable causes beyond the control or without the fault of either party.
- 1.13 "Hatchery" means the currently fenced facilities and ponds located in the eastern portion of Seward Park, depicted on Exhibit B hereto.
- 1.14 "Hazardous Material" means any element, compound, chemical, chemical mixture, or other substance that is identified as, or determined to be, a hazardous, toxic or dangerous substance, pollutant, contaminant, waste or material under, or is otherwise regulated under, any Environmental Law or other law relating to chemical management, environmental contamination, environmental cleanup or nuisances, including, without limitation, petroleum and petroleum products, asbestos, radon and other radioactive materials, bio-hazards and lead-based paint.
- 1.15 "Loaned Employee Agreement" means an agreement between the City and Audubon whereby a DPR naturalist is assigned to assist Audubon in the development and delivery of environmental programs at Seward Park.
- 1.16 "Premises" means that portion of the Building to be leased from the City to Audubon, pursuant to the Use and Occupancy Agreement, Exhibit E.
- 1.17 "Project" means renovation of the Building and the Hatchery for use as an environmental education center.
- 1.18 "Project Budget" means the cost of the Project, as last estimated by the parties hereto, which estimate is attached hereto, labeled "Exhibit C-n" (with "n" being the sequential number of the latest revision, if any, thereof); provided that, unless otherwise agreed by the parties, in no event shall the total Project Budget exceed \$1,991,469.
- 1.19 "Release", when used with respect to Hazardous Materials, includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about any part of the Premises, Building or any adjacent property of such materials.
- 1.20 "Remediation Activities" include, without limitation, activities in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material.

1.21 "TREC" means Teens for Recreation and Environmental Conservation, a DPR outdoor expedition-level program designed to expose multi-ethnic teens to environmental education, urban conservation and stewardship, while creating an environment for community leadership and empowerment.

ARTICLE 2 PURPOSE; LONG TERM OCCUPANCY; INTERIM USE; CONSTRUCTION TIMING; APPROVALS

- 2.1 Purpose. The purpose of this Agreement is to memorialize the parties' understandings and objectives with regard to the renovation of the Building and the Hatchery and the use of each facility to deliver public environmental programs. Once the Building is renovated, it is anticipated that it will house a DPR naturalist assigned to Audubon pursuant to the Loaned Employee Agreement, DPR's TREC program and Audubon's nature programs based at Seward Park. It is the parties' intent that use of the Building and the Hatchery be consistent with DPR's education and conservation objectives. It is also the parties' intent that their respective programs at Seward Park will complement the other entities' programs and that they will coordinate the delivery of education and conservation objectives to avoid duplication within Seward Park.
- 2.2 Long Term Occupancy by Audubon. Contemporaneously with this Agreement, the parties shall execute the Use and Occupancy Agreement, Exhibit E, which will: (1) establish Audubon's right to use and occupy the Premises; (2) establish Audubon's right to use the Building Common Areas, the Hatchery Program Areas and the Seward Park Common Areas; and (3) set parameters for the coordinated delivery by the parties of public environmental programs in Seward Park; all in accordance with the terms contained herein and in the Use and Occupancy Agreement. Upon issuance of the Certificate of Occupancy for the Building, the parties shall modify the Use and Occupancy Agreement to include the actual square footage of the Premises and Building Common Areas; the dollar amount of the annual rent, including offsets, as determined pursuant to the criteria set forth in Article V of the Use and Occupancy Agreement; and the date of the first Consumer Price Index adjustment, as those terms are defined in the Use and Occupancy Agreement.
- 2.3 Interim Use of Building. Prior to the completion of the Project, Audubon may use the Building's conference and activity rooms, subject to their availability. Audubon may also use Seward Park's established trails and shoreline for environmental programming purposes pursuant to a DPR Use Permit and subject to their availability, with authorized uses being in accordance with the then-current DPR fees and charges, if applicable. Audubon may also show the Building to prospective funding sources for the Project and may enter the Building for purposes of facilitating design and renovation of the Building; provided that, Audubon's interim use of the Building shall be coordinated with use of the Building by DPR's TREC and Naturalist Program staff and other scheduled uses of the Building and shall not disrupt activities occurring in the Building. Notwithstanding the foregoing, the City agrees that TREC and the Naturalist Program staff shall vacate the Building within ten (10) working days from the date that Audubon provides notice of the commencement of construction work pursuant to Article 6.8.1 of this Agreement and neither TREC nor the Naturalist Programs

staff, nor any other party, shall have the right to enter the Building or the construction area until a Certificate of Final Completion has been issued for the Building, except for inspections as described in Article 6.4. DPR shall be solely responsible for removing all DPR and personal materials from the Building prior to the commencement of construction.

2.4 Construction Timing. The parties agree that the following parameters shall govern the commencement and completion of construction:

- 2.4.1 Audubon acknowledges that the Project Budget is based upon construction commencing in 2004. To that end, Audubon agrees that it will diligently endeavor, but is not required, to cause construction of the Building portion of the Project to commence by the end of 2004. In the event that Audubon does not commence construction in 2004, and as a result of such delay, the cost of construction increases based upon the inflationary index or from deterioration of the Building's condition, Audubon agrees to be solely responsible for such cost increases unless such delay or cost increase is a direct result of any action or inaction of the City that was not caused by some action or inaction by Audubon.

The City similarly acknowledges that the Project Budget is based upon construction commencing in 2004. To that end, the City agrees that it will diligently endeavor, but is not required, to cause construction of the Hatchery portion of the Project to commence by the end of 2004; provided that the City agrees that it will not commence construction of the Hatchery until such time that Audubon commences construction of the Building. In the event that the City is unable to commence construction in 2004 solely as a result of Audubon's failure to commence construction of the Building in 2004 Audubon shall be responsible for any cost increase in the Project Budget for the Hatchery which is attributable to inflation (as based upon the standard inflationary index). If the delay in the commencement of construction of the Hatchery is a result of causes other than Audubon's failure to commence construction of the Building in 2004 and is not a direct result of any action or inaction by Audubon, the City shall be solely responsible for any attendant cost increases in the Project Budget for the Hatchery

- 2.4.2 Unless extended by the City, Audubon shall commence construction of the Building no later than December 31, 2006. In the event that Audubon has not commenced construction of the Building by this date, through no action of the City and barring Force Majeure events, the City may immediately terminate this Agreement pursuant to Article 11 of this Agreement.
- 2.4.3 Once construction of each component of the Project has commenced, the responsible party will proceed with diligence to cause such component to be renovated in accordance with all approved Project designs, specifications, and schedules, subject to delays for Force Majeure. Each party agrees that every reasonable effort will be made to complete its respective component of the Project by December 31, 2007, consistent with the terms of the Ordinance 120024; provided, that, as to Audubon,

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

the following shall apply if construction of the Building is not complete by such date:

- (a) The City shall use its best efforts to extend use of any remaining portion of the City Share of Project Costs beyond the end of 2007 or, in the alternative, to identify another source of public funds to replace the unspent levy proceeds.
- (b) In the event that the City is unable to extend the remaining portion of the City Share of Project Costs beyond December 31, 2007, or to identify another source of public funds, Audubon shall be solely responsible for all costs necessary to complete the Building; provided that, the City shall be obligated to pay any invoice for an agreed upon City contribution per the Project Budget which has been received from Audubon by December 31, 2007.

ARTICLE 3 AUDUBON'S FINANCIAL COMMITMENT

- 3.1 Funding Thresholds.** Prior to Audubon's execution of any contracts associated with the Project Budget (i.e. design or construction related contracts), Audubon must submit to DPR documentation (including actual receipts and pledges) of having raised the full amount of Audubon's required funding for that particular portion of the Project as follows:
- a) Prior to execution of the design contract for the Building, Audubon must submit to DPR documentation of having raised \$236,353.
 - b) Prior to execution of the construction contract for the Building, Audubon must submit to DPR documentation of having raised \$1,136,517 plus any additional sum as mutually agreed upon by both parties.
- 3.2 Control of Funds.** Audubon agrees to place such funds in Audubon-controlled restricted accounts; provided that, the interest earned on such accounts shall be unrestricted and the interest earned may be used by Audubon for any purpose, consistent with Audubon accounting practices and donor restrictions.
- 3.3 Usable Building Commitment.** Subject to Article 7 below (City Environmental Indemnity), following the commencement of construction, Audubon agrees and warrants that, if Audubon abandons the Project prior to the issuance of the Certificate of Occupancy for the Building, Audubon shall pay the amount required to make the Building usable and habitable as required by code and consistent with DPR standards, and shall reimburse the City for the City contributions to the Project planning, design and construction; provided that, in no event shall that amount exceed the unused portion of Audubon's \$1,372,869 total funding commitment plus any additional sum previously agreed upon by both parties. For purposes of this Article 3.3, the term "abandon" shall mean Audubon's failure to direct its construction contractor to

finish the Building pursuant to the construction contract, unless due to a delay caused by the City's wrongful action or failure to act or a Force Majeure delay, or to cause, through failure to pay its construction contract, its contractor to physically and permanently abandon the Building; provided that, in the event that Audubon and its contractor are engaged in a fee dispute and Audubon has withheld payment of the construction contract pending resolution of the dispute, any abandonment by the contractor for such reason shall not be deemed an abandonment for purposes of this Article 3.3.; provided that, Audubon diligently pursues resolution of the dispute and, in any event, causes the construction of the Building to continue.

ARTICLE 4 PROJECT BUDGET; COST SHARING

4.1 Project Budget. The Project Budget, as most recently revised, is appended to this Agreement as Exhibit C-1 and incorporated herein by this reference.

4.1.1 No change to the total Project Budget shall be made without the mutual Approval of the City Project Manager and Audubon, which approvals will not be unreasonably withheld.

4.1.2 Each Project Budget revision shall be effective when signed by the City Project Manager and Audubon. No further amendment of any portion of this Agreement shall be required. A signed copy of the latest revised Project Budget shall be appended to this Agreement in substitution of any other appended Project Budget, and each such attachment, by this reference, is and shall be incorporated herein.

4.2 Project Cost Sharing. The City and Audubon agree to share the total Project costs as set forth in the Project Budget as the same may be adjusted from time to time as provided in this Agreement as follows: for the renovation of the Building, Audubon shall pay \$1,372,869 and the City shall pay \$305,577. For the renovation of the Hatchery, the City shall pay \$313,023. Of the City's \$305,577 for the Building, approximately \$25,431 has already been spent or encumbered by the City for planning and design work.

4.2.1 The parties shall ensure that the bids for the Building and Hatchery portions of the Project are separately stated. If bids for either portion of the Project exceed the current estimate, the scope of that component of the Project shall be reduced as provided in Article 6.5, below.

4.2.2 If the Project costs are less than \$1,991,469, City and Audubon each shall pay a proportionate share of such Project Costs (*i.e.*, City's share shall be \$618,600/\$1,991,469 and Audubon's share shall be \$1,372,869/\$1,991,469). If actual construction costs for either portion of the Project are less than budgeted, the savings shall be used to offset cost overruns in the other portion of the Project.

- 4.3 Fundraising Assistance. It is anticipated that the Audubon Share of Project Costs will come from private donations and, potentially, public grant sources other than DPR. DPR will assist Audubon in its fundraising efforts by communicating DPR's support for the Project and making appropriate representatives available to provide information and answer questions at fundraising events whenever possible.
- 4.4 Present Fundraising Status. As of the date of this Agreement, Audubon has raised \$200,000 of the \$1,372,869 that it has committed toward the Building portion of the Project. Audubon agrees that, from time to time, upon request by the City, it shall provide the City with documentation of such funds; provided, however, that, Audubon shall not be required to provide any identifying information relating to private fundraising activities or private donor information.

ARTICLE 5 RENOVATION PROJECT; DESIGN

- 5.1 Management of Project Design. Audubon shall contract for and manage the design for the Building renovation. DPR shall contract for and manage the design for the Hatchery renovation. Design approvals, which shall not be unreasonably withheld, shall be obtained from the non-managing entity at completion of the design program, early schematics, 100% schematics, 50% design development, 100% design development, 50% construction drawings and 99% construction drawings; provided that, unless otherwise agreed by the parties, the non-managing entity will complete its review and provide to the other party notice of its approval or disapproval thereof within seven (7) working days of receipt of such design. Each party shall ensure that the other, through the respective Project Representatives, is provided the opportunity to be involved and serve as a participant in on-going decision-making with respect to the design and construction of the Project, which participation shall include, without limitation, attending design team meetings, providing comments on design, attending meetings with the construction contractor(s), and providing comments on construction issues. Audubon shall pay for any additional DPR assistance it requests (above any budgeted assistance) during the design phase at the then current DPR project management rates.
- 5.2 Design Values. City and Audubon agree that the Project design shall comply with any requirements established by the City's Landmark's Board, with any other adopted City and Park standards, and the mutually agreed upon design programs for each component of the Project. To the extent feasible, the parties shall incorporate design elements such as would allow a structure to achieve the certified level of the United States Green Building Council Leadership in Energy and Environmental Design rating system. In addition, and to the extent feasible within the project budget, the design of the Hatchery portion of the project will incorporate methods for controlling vehicle access between the Building and the Hatchery.
- 5.3 Public Involvement in Project Design. In accordance with City policies, Audubon shall conduct a public meeting to develop consensus on the Building concept and scope prior to schematic design. It shall conduct a second public meeting after schematic design, and a third public meeting prior to completion of construction documents. If Audubon so requests, DPR

shall attend and participate in such meetings, at Audubon's expense; otherwise, DPR staff may voluntarily attend any such meetings at their own expense.

- 5.4 Public Work. The design contract for the Building shall be by Audubon pursuant to processes that: (a) satisfy all state and local laws for the solicitation of proposals or bids by contractors who are qualified to undertake design of the Building, and (b) fully comply with all other applicable federal, state and local requirements applicable to the Building, including those requirements related to the inclusion of required terms and conditions applicable to the Building in all such contracts. Among other requirements, such contracts will meet the following requirements for City public works projects utilizing City funding: (i) fair contracting practices (Chapter 14.10 SMC); and (ii) all applicable federal, state and local nondiscrimination requirements.
- 5.5 Changes in Approved Building Design and Specifications. If Audubon proposes to change or amend the approved Building design or any specification(s) that would cause the Building to exceed the Project Budget for that portion of the Project or that would result in a change contrary to the requirements established by the City's Landmarks Board or any other adopted City or DPR standards or the Building Design Program, such proposed change or amendment will be subject to the written approval of the City, which approval shall not be unreasonably withheld. The City will complete its review of any such proposed changes or amendments and provide to Audubon notice of its approval or disapproval thereof within ten (10) working days of receipt of any such proposed change or amendment.
- 5.6 No Representations or Liability. No City approval of any Building design or specification(s) (or amendments thereto) shall constitute an opinion or representation by the City as to their (i) compliance with any law, ordinance or standard, or (ii) suitability for any purpose other than those associated with the Building
- 5.7 Americans with Disabilities Act. Audubon shall comply, and require its consultants and contractors to comply, with all applicable provisions of the Americans with Disabilities Act ("ADA") in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be considered a material breach of this Agreement.

ARTICLE 6 RENOVATION PROJECT; CONSTRUCTION

- 6.1 Management of Project Construction. Audubon shall contract for and manage construction of the Building improvements in consultation with DPR and DPR shall contract for and manage construction of the Hatchery improvements in consultation with Audubon. Consistent with Article 9 of this Agreement, Audubon shall insure that its contract for construction contains a construction warranty of not less than one year and shall provide that the City is an intended beneficiary of such warranty.
- 6.2 Regulatory Approvals; Compliance. Each party shall be responsible for securing all necessary regulatory approvals related to the development and construction of its portion of the Project and each party shall be responsible for ensuring compliance during construction

with any and all conditions or other requirements associated with such regulatory approvals. The parties agree to work cooperatively with one another, as necessary, to secure necessary regulatory approvals.

- 6.3 Public Work.** The construction of the Project shall be a public work and Audubon shall comply with all laws with respect thereto. The construction contract for the Building shall be let by Audubon pursuant to processes that: (a) satisfy all state and local laws for the solicitation of proposals or bids by contractors who are qualified to undertake development or construction of the Building, and (b) fully comply with all other applicable federal, state and local requirements applicable to the Building, including those requirements related to the inclusion of required terms and conditions applicable to the Building in all such contracts. Among other requirements, such contracts will meet the following requirements for City public works projects utilizing City funding: (i) fair contracting practices (Chapter 14.10 SMC); (ii) all applicable federal, state and local nondiscrimination requirements; and (iii) the requirements set forth in RCW 35.22.650.
- 6.4 Site Visits and Inspections.** Each party shall allow the other party, through the respective Project Managers, to visit its construction site to review and inspect the work; provided that, any such inspection shall be a cost borne solely by the inspecting party and shall not be deducted from the Construction Costs, unless the costs are included within the Project Budget. To the extent that official inspections are required by applicable City codes and regulations, Audubon may employ a qualified inspector for such purpose; provided that, Audubon must obtain DPR's approval of such inspector prior to the required inspections, which approval will not be unreasonably withheld or delayed.
- 6.5 Options if Bids Exceed Total Construction Cost.** If the bid received for either component of the Project from the lowest and best bidder exceeds the estimated construction cost for that Project component, the party responsible for managing that component of the Project (the "managing party") may (i) reject all bids and re-bid that component of the Project; (ii) consult with the appropriate architect to identify design changes to the Building Design Program that would enable that component of the Project to be constructed within the budgeted amount; or (iii) voluntarily pay the increased amount and proceed with construction. In the event of a redesign, such design changes shall be implemented and the managing party shall again invite bids for the construction of that component of the Project or any portion thereof; provided that, if design changes are elected to reduce the cost of construction of a Project component, the non-managing party may, at its option, pay the difference in cost to retain the original or more costly design.
- 6.6 Cost Overruns.** If, during construction, it becomes apparent that the actual construction costs for either component of the Project will exceed the estimated construction costs shown in the current Project Budget, including any contingency allowance, for that component of the Project, the managing party shall be solely responsible for any cost overruns for that component of the Project; provided that, the parties may agree, if possible, that Project funds be reallocated so that the total Project cost remains within the Project Budget; provided further that, the managing party may seek a design modification to bring that component of

the Project within the estimated construction costs, subject to the approval provisions contained in Article 6.8.2. If a design modification is made, the managing party shall be solely responsible for paying all costs associated therewith.

6.7 Additional Funding. If either of the events described in Article 6.5 (bids exceed the Project Budget) or Article 6.6 (cost overrun) occur, the City and Audubon, as an alternative or an additional remedy, may agree upon a collaborative plan to seek additional funding. Any such agreement or plan shall be set forth as an amendment to this Agreement and to the extent practicable, shall include provisions for both public and private funding sources.

6.8 Construction Phase Approvals and Control of Work

6.8.1 Work Notification. Audubon shall notify DPR, in writing, at least ten (10) working days prior to the commencement of construction work on the Building. At that time or earlier, if possible, Audubon shall provide information on the areas that will be needed for staging of construction. DPR shall approve such areas, or identify alternate areas for staging if necessary to avoid disruption of community use of the park; provided that, DPR shall ensure that any alternative construction areas are convenient to the Building construction areas and will not add undue costs to construction of the Building. DPR shall thereafter, in a timely manner, issue construction license agreements for such staging areas.

6.8.2 Construction Phase Approvals and Control of Work. In addition to its right to approve the Building design and specifications, the City shall have the right to approve, in advance and in writing, any proposed changes to the work during construction that would cause the Building to exceed the Project Budget for that portion of the Project or that would result in a change contrary to the requirements established by the City's Landmarks Board or any other adopted City or DPR standards or design program. The City's approval decision under this Article shall be delivered within five (5) working days. In addition, each party will invite the non-managing party to participate in their weekly construction meetings.

6.9 Substantial Completion. Audubon shall notify the City Project Manager in writing when the Building is substantially completed. As part of such notification, Audubon shall advise the City Project Manager of any items of work that remain incomplete and a schedule for their completion. Such notification shall include the signature of the inspector approved by the City pursuant to Article 6.4 above.

6.10 Final Completion Date; Certificate of Occupancy. Final completion of the Building will have been achieved when (i) a permanent Certificate of Occupancy for the Building has been issued, and (ii) all remaining work items, including "punch list" items, have been completed to the satisfaction of the City.

6.10.1 Audubon shall schedule a final inspection of the Building when it and its construction contractor believe construction of the Building has been finally completed. Following notice of same from Audubon, the City Project Manager will conduct an

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

inspection of the Building with Audubon and its design consultant and construction contractor.

If, following such inspection, the City agrees that construction of the Building is finally complete, the City will so advise Audubon by written notice within five business days after the inspection. Such written notice will include a Final Completion Date for the Building, as determined by the City. However, if the City, following such inspection, does not reasonably consider the construction of the Building to be finally complete, the City will so advise AUDUBON by written notice within such five day period stating the reasons for the City's decision.

Upon receipt of any written notice from the City that the construction of the Building is not finally complete, Audubon shall diligently pursue the remaining work necessary to achieve final completion. Subsequent inspection(s) for purposes of determining whether construction of the Building is finally completed shall occur in the manner set forth above.

6.10.2 Once a permanent Certificate of Occupancy has been issued and a Final Completion Date for the Building has been established, a Certificate of Final Completion will be issued by the City; provided, however, that such date and certificate shall not constitute acceptance by the City of any unauthorized or defective work or materials.

6.11 Building Construction Closeout Phase. The Building Construction Closeout Phase will commence upon issuance of the Certificate of Final Completion for the Building.

Within 120 days from the date of the issuance of the Certificate of Final Completion, Audubon shall perform the following obligations ("Audubon's Closeout Obligations"):

- (a) To the extent separately assignable, assign to the City all manufacturers' guaranties and warranties and related to the materials and fixtures provided to Audubon and located in the Building;
- (b) Secure and deliver to the City unconditional lien releases related to the Building from the Building design consultant, construction contractor, subcontractors, suppliers, vendors, laborers and material men;
- (c) Furnish the City with one (1) original complete sets of Mylar drawings ("Record Drawings") reflecting the final "as built" condition of the Building (black background prints are not acceptable). The Record Drawings shall also be provided to the City on electronic media that is compatible with Auto Cad 2000 or later version;
- (d) Furnish the City with all contractor maintenance manuals related to the Building, including operating manuals, equipment brochures, paint schedules and material brochures;

(e) Deliver to the City all other Building information such as operating manuals and warranties and in Audubon's possession that reasonably relate to the use and operation of the Building;

(f) Deliver to the City all certificates of occupancy and other permits and approvals necessary for the use and operation of the Building ; and

(g) Attend a warranty walk through meeting scheduled by the City within one year of the issuance of the Certificate of Final Completion.

6.12 Defective or Unauthorized Work or Materials. If, within one year after the issuance of the Certificate of Final Completion, the City notifies Audubon that it has discovered defective or unauthorized work or materials, Audubon shall cause the correction of the defective or unauthorized work or materials as covered by the bond described in Article 9.3.3 (b) or, at the City's discretion, assign the right for the City to pursue Audubon's contractor or supplier thereof. Any disputes between Audubon and the City regarding the defective or unauthorized work or materials will be addressed through Article 13 (Disputes).

ARTICLE 7 ENVIRONMENTAL INDEMNITY

7.1 Audubon's Environmental Indemnity. If, after the commencement of construction on the Building, any act, omission or negligence of Audubon or any of its agents results in any contamination of the Premises, the Building or the surrounding property or in the Release of Hazardous Material from, on, in, on or beneath the Premises, the Building or adjacent property, then Audubon shall indemnify the City from and against all losses (including, without limitation, the loss or restriction of the use of the Building or adjacent property and sums paid in settlement of claims, fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) resulting from such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, and to restore the Building or adjacent property to its prior condition. Without limiting the foregoing, if Audubon or any of its agents or invitees causes or permits the Release of any Hazardous Materials on, about, in or beneath the Building or adjacent property, Audubon shall immediately, at no expense to the City, take any and all necessary actions to abate and remediate the Release in accordance with all Environmental Laws. Audubon shall afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material. This indemnity provision shall survive termination or expiration of this Agreement.

7.2 City's Environmental Indemnity. If any act, omission or negligence occurring prior to the commencement of Audubon's construction activities, and not as a result of any act, omission or negligence of Audubon or any of its agents, results or has resulted in any contamination of

the Building or the surrounding property or in the Release of Hazardous Material from, on, in, or beneath the Building or adjacent property, then the City shall indemnify Audubon from and against all losses (including, without limitation, the loss or restriction of the use of the Building and delays in the construction of the Building and sums paid in fines, civil penalties, attorneys' fees, consultants' fees and experts' fees and costs) resulting from such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material and any increased costs of construction of the Building resulting from such Release. The City's indemnity under this Article shall be limited to any contamination of the Premises or adjacent property that results from activities occurring or causes originating prior to the commencement of Audubon's construction activities and not as a result of any act, omission or negligence of Audubon or any of its agents. This indemnity provision shall survive termination or expiration of this Agreement.

ARTICLE 8 REPORTS; APPLICATIONS FOR PAYMENT.

8.1 Invoicing. During the design phase of the Building portion of the Project, Audubon's Project representative shall invoice DPR's Project Manager for the City's portion of the Building's design contract. The total amount of the City's contribution to the Building's design contract is \$20,406 or approximately 12.6% of the total estimated design contract amount of \$161,642. As the City has already expended or encumbered \$4,063 of the Building's design costs, the remaining balance for which the City shall be responsible is \$16,343. Audubon shall bill the City at the rate of 12.6% of the Building's design contract costs as they are incurred by Audubon until the City's remaining funding obligation of \$16,342 is expended. Each invoice shall contain a general status report, the percent of each design phase completed and the balance of funds remaining for design.

During the construction phase for the Building, the City will be contributing \$248,230 (or 26.85%) of the budgeted construction contract costs. Audubon's Project Representative shall invoice the City at 26.85% of the construction contractor's costs as Audubon incurs such costs. Each invoice shall contain a general status report, the inspector's report and a statement of the balance of funds remaining for construction.

8.1.1 Audubon may submit monthly requests for payment (invoices) to the City based upon (and not in excess of) the percentage of work completed as a percentage of the City's contribution to the Building's construction, based on a mutually agreed upon schedule of values. Audubon shall withhold a retained percentage from their construction contractor and not bill the City for their portion of the retainage until Audubon pays the contractor for the retained amounts.

8.1.2 Payment requests shall be directed to the City at the Parks and Recreation Department, 800 Maynard Avenue South, Third Floor, Seattle, WA 98134-1336, and shall be signed by an authorized representative of Audubon. The

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Superintendent, or a designated representative, shall approve or disapprove the request, in writing, within ten (10) working days of receipt of all required documentation. If the payment request is disapproved, the notice thereof shall contain the reasons for the disapproval; Audubon may correct the reasons for disapproval and resubmit the request for disapproved items. Payment will be made to Audubon within thirty (30) days after notice of the Superintendent's approval. The City will use its best efforts to expedite this payment process so that payment can be made as quickly as possible to Audubon.

8.2 City Audits. Upon request, Audubon (including any assignees of rights or responsibilities under this Agreement) shall permit the City to inspect and audit books and records pertaining to the Project of Audubon, its assignees, its consultants and contractors, any subcontractors, or any other person or entity that performed work in connection with or related to the Project, at any and all times deemed necessary by the City, including up to six years after the final payment has been made by the City under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City selects. Audubon shall supply the City with, or shall permit the City to make a copy of, any books and records or portion thereof. Audubon shall ensure that such inspection, audit and copying right of the City is a condition of any contract or agreement, subcontract, or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

8.3 DPR Reports to Audubon. During construction of the Hatchery improvements, DPR shall report to Audubon monthly on the general status of the project, the schedule and value statement provided by the contractor, the inspector's report, and the unexpended amount of City funds for that portion of the Project.

ARTICLE 9 INSURANCE

9.1 General Obligations. At all time hereunder, Audubon shall, at its own expense, obtain and continuously maintain, or cause to be obtained and continuously maintained, in full force and effect, insurance policy(ies) in conjunction with the following:

- (a) Audubon's activity on or use or occupation of the Project site;
- (b) the design, construction management, inspection, construction, reconstruction, operation, maintenance, use or existence of the Project, including the Building; and
- (c) Any and all claims and risks in connection with the activities performed by Audubon under this Agreement.

9.2 Third Party Obligations. With respect to all consultants and contractors performing Project work on behalf of Audubon, Audubon shall:

- (a) Obtain from each consultant and contractor evidence that such contractor or consultant has obtained and maintained a policy or policies of insurance as required herein;
- (b) Submit evidence of insurance as required herein to the City for review and approval;
- (c) Require that all such policies name the City as an additional insured, including completed operations, on all liability policies per ISO form CG2026 or its equivalent; and
- (d) Include, in all contracts executed by Audubon with respect to the Project, provisions which extend to the City construction indemnities and warranties granted to Audubon.

9.3 Required Insurance. The following policies shall be obtained and continuously maintained at all times hereunder by Audubon.

9.3.1 Audubon shall obtain and continuously maintain the following policies of insurance:

- (a) A policy of **Commercial General Liability Insurance**, written on an insurance industry standard occurrence form (CG 00 01) including all the usual coverage known as:
 - Premises/Operations Liability;
 - Products/Completed Operations;
 - Personal/Advertising Injury;
 - Contractual Liability;
 - Explosion, Collapse and Underground Property Damage (XCU);
 - Independent Contractors Liability;
 - Stop Gap or Employers Contingent Liability; and
 - Per Project Coverage (CG2503 ISO), or equivalent.

Such policy(ies) shall provide the following minimum limits:

Bodily Injury and Property Damage:

\$ 1,000,000	General Aggregate
\$ 1,000,000	Products & Completed Operations Aggregate
\$ 1,000,000	Personal & Advertising Injury
\$ 1,000,000	Each Occurrence
\$ 100,000	Fire Damage

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- (b) A policy of **Business Automobile Liability Insurance**, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto). If "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported, endorsement CA9948 & MCS 90 are required.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage
\$ 1,000,000 per accident

- (c) A policy of **Excess Liability Insurance** above the primary general liability and auto liability policies that will provide a total limit of insurance of \$5,000,000 per Occurrence/Aggregate/per Claim. The excess policy shall be, at a minimum, as broad as the primary policies.
- (d) A policy of **Worker's Compensation**: As respects Workers' Compensation insurance in the state of Washington, Audubon shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Audubon shall be responsible for Workers' Compensation Insurance for any and all contractors and subcontractors who provide services with respect to the Project. Additionally, if the any contractor or subcontractor is required to work on or around a navigable waterway, the Authority shall provide evidence of United States Longshoremen's and Harbor Workers' (USL&H) coverage and contingent coverage for Jones Act (Marine Employers Liability) in compliance with federal statutes. If Audubon is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Audubon shall so certify to the City by submitting a letter signed by a corporate officer, indicating that it is a qualified self-Insurer, and setting forth the limits of any policy of excess insurance covering its employees; or any similar coverage required.
- 9.3.2 Design, Construction Management or Inspection. In addition to standard insurance requirements set forth above, Audubon shall obtain or cause its contractor to obtain the following additional insurance coverage:
- (a) **Errors and Omissions Liability Insurance**: A policy of Errors and Omissions Liability Insurance appropriate to each consultant's profession. Coverage should be for a professional error, act or omission arising out of the scope of services shown in the contract. The policy shall not exclude any of the following:
- Claims arising out of pollution for environmental work[†]
 - Construction Administration Services[†]

- Laboratory analysis[†]

[†]Only required when services are to be performed under this agreement.

The minimum limit of coverage shall be \$1,000,000 per Claim/Aggregate

9.3.3 Construction, Reconstruction, Operations. In addition to the standard insurance requirements set forth above, Audubon shall secure or cause to be secured, the following additional insurance coverage:

- (a) **Builder's Risk Insurance:** Audubon shall purchase and maintain builders insurance on an "All Risk" basis, in an amount equal to 100% replacement cost thereof, against loss from the perils of fire and other risks of direct physical loss, including earthquake and flood damage. Audubon/Contractor shall be responsible for the policy deductible. The policy shall **include as Loss Payee the City**. The Authority shall provide the City with a duplicate original of said Policy.

Coverage shall include all materials, supplies, and equipment intended for specific installation in the Project while such materials, supplies and/or equipment are located at the Project site, in transit or while temporarily located away from the Project site. Coverage shall also include the value of site preparation work, the value of underground property, the cost of debris removal, and the cost of pollutant cleanup as well as removal.

In addition, the following coverage extensions shall be included: delayed opening, loss of earnings, operation of building codes, demolition, contingent liability and increased costs of construction. The policy shall not contain any coinsurance penalty provision or any occupancy clauses.

With respect to the Builder's Risk Policy described herein, the City and Audubon waive all subrogation rights against each other, any contractors and consultants, and any of their subcontractors or subconsultants, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Park, except such rights as they have to proceeds of such insurance held by the City as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity had and insurance interest in the property damaged.

The City reserves the right to purchase this policy for the Project, adding Audubon/Contractor as an additional insured to any such policy. If the City does purchase such a policy, Audubon shall reimburse the City for all of its costs for such coverage.

- (b) Warranty, Repair or Remedy of Defects. Audubon shall obtain a bond from a surety company, acceptable to the City and which names the City as a joint obligee, which for a period of one year after Certification of Final Completion of the Building shall provide for payment for the repair or remedy of defects in the Building which are due to faulty or unauthorized materials or workmanship and for damage to other work resulting from such faulty material and workmanship.

9.3.4 Deductibles. If any of the above required insurance contains a deductible (or self-insured retention amount) the Audubon/Consultant/Contractor shall:

- (a) Disclose such amount; and
- (b) Be responsible for payment of any claim equal to or less than the deductible (or self-insured retention amount).

The City reserves the right to reject insurance policies with a deductible (or self-insured retention amount) in excess of \$25,000 for which adequate financial strength of the Insured cannot be demonstrated to the satisfaction of the City.

9.4 Conditions. The insurance policy or policies, endorsements thereto, and subsequent renewals required under this Article 9 shall:

- (a) Be subject to approval by the City as to company, form and coverage. The insurance company shall be:
 - (i) Rated A-:VII or higher in the A.M. Best's Key Rating Guide; and
 - (ii) Licensed to do business in the State of Washington or be filed as surplus lines by a Washington broker.
- (b) Be primary as respects the City, and any other insurance maintained by the City shall be excess insurance and not contributing insurance with Audubon, and/or its consultants, contractors, inspectors, or other contractors of any kind;
- (c) Be maintained in full force and effect through the Agreement;
- (d) Protect the City within the policy limits from any and all losses, claims, actions, damages, and expenses arising out or resulting from Audubon's and/or any of its consultant's, contractor's, inspector's, or other contractor's performance or lack of performance;
- (e) Name the City as an additional insured pursuant to the requirements of the provisions below related to "Evidence of Insurance"; and

- (f) Include a provision (whether by endorsement or otherwise) indicating that, except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, the insurance shall apply:
 - (i). As if each party insured thereunder (whether as a named insured, additional named insured, or additional insured) were the only party insured by such policy; and
 - (ii) Separately to each insured against whom a claim is made or a suit is brought.

9.5 Evidence of Insurance. In many cases, evidence of insurance may be demonstrated by submitting a copy (photocopy or facsimile acceptable) of the declarations pages of the policy and the additional insured endorsement. The declaration pages shall clearly show the policy effective dates, limits and schedule of forms and endorsements. Any reference to premiums may be blacked out. However at the option of the City, Audubon and/or its designated Contractors, Consultants and Inspectors, as outlined above, may be required to submit a copy of the insurance policy, all referenced endorsements, or both. Certificates of Insurance (ACORD forms) will not be accepted as evidence of insurance. Evidence of insurance for each policy shall:

- (a) Comply with one of the following requirements regarding naming the City as an additional insured, including Completed Operations:
 - (i) Insurance Services Office (ISO) Standard Endorsement: An additional insured endorsement issued on an ISO form CG 20 26 or its equivalent, shall name "The City of Seattle, its officers, elected officials, employees, agents, and volunteers" as an additional insured. The endorsement shall
 - (a) Be signed by an authorized representative of the insurance company; and
 - (b) Include the policy number and name of the insured on the endorsement.
 - (ii) Non-ISO Endorsements: For Non-ISO endorsements, any of the following options are acceptable:
 - (a) A blanket clause (in the policy or endorsement) adding, without undue restriction of coverage, as additional insured anyone for whom Audubon and/or its consultants, contractors, inspectors, or other contractors of any kind, are required to provide insurance under a contract or permit;

- (b) An additional insured endorsement on a non-ISO endorsement form containing the following provision:

"The City of Seattle, its officers, elected officials, employees, agents, volunteers, are an additional insured for all coverage provided by this policy and shall be fully and completely protected to the extent provided in said policy for any and every injury, death, damage and loss of any sort sustained by any person, organization or corporation in connection with any activity performed by Audubon, and/or its consultants, contractors, inspectors, or other contractors of any kind, as outlined above by virtue of the provisions of this Agreement between The City of Seattle and Audubon."

The coverage provided by this policy to The City of Seattle shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to The City of Seattle."; or

- (iii) Any other additional insured endorsement form or clause approved by the City.

9.6 Consultants, Contractors, Inspectors or other Contractors of any Kind Performing Work, or Other Agreements – Additional Insured Provision Requirement of Authority. Audubon shall require that any and all of its consultants, contractors, inspectors, or other contractors of any kind, performing work, or other agreements with respect to the Project, shall name the City as an additional insured, including completed operations, on all liability policies as indicated herein, on ISO Form 20 26 or equivalent. Audubon shall further require in all contracts with respect to the Project, a provision which extends to the City, construction indemnities and warranties granted to Audubon.

ARTICLE 10 INDEMNIFICATION

10.1 Audubon Indemnity. Audubon agrees to defend, indemnify and hold City and its affiliates, directors, officers, employees, agents and independent contractors harmless from any and all damages, costs and expenses (including attorney's fees) incurred in connection with any third party claims arising from any use of donated funds for a purpose other than the purpose originally set forth by the donor, or for any other act or omission of Audubon in connection with fulfilling its obligations under this Agreement. These indemnification obligations shall survive the expiration or termination of this Agreement.

10.2 City Indemnity. City agrees to defend, indemnify and hold Audubon and its affiliates, directors, officers, employees, agents and independent contractors harmless from any and all damages, costs and expenses (including attorney's fees) incurred in connection with claims arising from any act or omission of City in connection with fulfilling its obligations under this Agreement. These indemnification obligations shall survive the expiration or termination of this Agreement.

ARTICLE 11 DEFAULT; TERMINATION

11.1 Defaults in Performance Constitute Material Breach. If either party defaults in performing of any of its obligations herein, in particular obligations relating to the payment of money, the non-defaulting party may declare this Agreement to have been materially breached.

11.2 Process for Termination of Agreement. Either party may terminate this Agreement if the other party has materially breached the Agreement and such breach has not been corrected to the reasonable satisfaction of the dissatisfied party within thirty (30) days after notice of breach has been received. If the nature of the breach is such that more than thirty (30) days are required to remedy the breach, then the breaching party shall not be in default if it commences to cure the breach within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the case of Audubon's monetary obligations, any nonpayment to the City when due shall constitute a material breach that must be corrected within 30 days after notice of the breach has been received or the City may immediately terminate this Agreement.

11.3 Notice of Termination. Notice of termination shall be given in writing by the party terminating this Agreement to the other party not less than five (5) days prior to the effective date of termination.

11.4 Responsibilities of Parties on Expiration or Termination of Agreement. If this Agreement is terminated due to Audubon's default prior to start of construction, then Audubon shall reimburse the City for one hundred percent (100%) of the City's expended financial contribution to the Project. If this Agreement is terminated due to the City's default prior to the start of construction, then the City will reimburse Audubon for one hundred percent (100%) of Audubon's expended financial contribution to the Project. In either case, the parties shall be released from all continuing obligations under the Use and Occupancy Agreement. If this Agreement is terminated due to Audubon's default after construction begins, Audubon shall be obligated to satisfy its commitments as contained in Article 3.2 (Usable Building Commitment) of this Agreement. If this Agreement is terminated due to the City's default after construction begins but before the term of the Use and Occupancy Agreement has commenced, the City shall be obligated to reimburse Audubon for one hundred percent (100%) of Audubon's expended financial contribution to the design and construction of the Building and shall release Audubon from all continuing obligations under the Use and Occupancy Agreement. For purposes of this Article 11.4, the term "financial contribution" shall mean a party's paid or incurred expenses pursuant to the Project Budget as reflected in Exhibit C or as amended by mutual agreement.

11.5 Termination for Contamination or Release of Hazardous Substances. If, during either design or construction, Audubon discovers the existence of any contamination of the Building or the surrounding property or the existence of a Release of Hazardous Material from, on, in, on or beneath the Building or adjacent property, which is the result of any act or omission occurring prior to the commencement of Audubon's construction activities, and not as a result of any act, omission or negligence of Audubon or any of its agents, and such contamination or Release requires Remediation Activities or results in an increase in the Project Budget for the Building, Audubon shall have the right to immediately terminate this Agreement and the City

shall be obligated to indemnify Audubon consistent with Article 7.2 above (City's Environmental Indemnity) and shall release Audubon from all continuing obligations under the Use and Occupancy Agreement.

11.6 Voluntary Termination by Audubon. In the event that Audubon is no longer able to carry out the purposes of this Agreement because of (a) corporate incapacity, (b) lack of funds to design or construct the Building, (c) failure to obtain the necessary permits and licenses from applicable governmental authorities after the diligent pursuit of same, or (d) the discovery of Hazardous Materials in the Building that predate the Commencement Date (in which case, Article 11.5 applies), then Audubon shall have the right to terminate this Agreement upon thirty (30) days written notice to the City. If Audubon terminates this Agreement as provided for herein, the requirements of Article 11.4 above shall apply as applicable; provided that, Article 11.4 shall not be deemed to apply in the event that termination is necessary pursuant to item (c) or (d) of this Article 11.6. For the sole purpose of applying Article 11.4 to this Article 11.6, Audubon shall be deemed the "defaulting party".

ARTICLE 12 NOTICES

All notices or documents required by this Agreement shall be in writing and shall be sufficiently given if either personally 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: Debbi Edelstein, Executive Director
Audubon Washington
1411 4th Avenue, Suite 920
Seattle, WA 98101

With a copy to: General Counsel
National Audubon Society, Inc.
700 Broadway
New York, New York 10003

If to the City: The City of Seattle
Department of Parks and Recreation
Administrator
Contract and Business Resources
P.O. Box 3443
Seattle, WA 98114

With a copy to: Herbye White, Director
Recreation and Support Division
Department of Parks and Recreation
100 Dexter North

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Seattle, WA 98109

or by such other means as the parties agree, or to such other address as either party hereto may specify for itself in a notice to the other.

ARTICLE 13 DISPUTES

The parties shall make reasonable efforts to resolve disputes as expeditiously as possible through negotiations between the Audubon Center at Seward Park program director and the DPR Director of the Recreation and Support Division. If those negotiations are unsuccessful, the matter shall be referred to the Senior Vice President of Audubon Centers and Education and the DPR Superintendent. If the parties cannot resolve any dispute arising under this Agreement, either party may submit the matter to a non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution ("ADR") procedures. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent ADR or legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available.

ARTICLE 14 MISCELLANEOUS

- 14.1 Time of Essence. Time is of the essence in the performance of this Agreement.
- 14.2 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.
- 14.3 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.
- 14.4 Binding Effect. The provisions, covenants, and conditions contained in this Agreement are personal to the parties hereto and are not assignable.
- 14.5 Applicable Law; Venue. This Agreement shall be interpreted under the laws of the State of Washington. Any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be brought in the Superior Court of the State of Washington for King County.

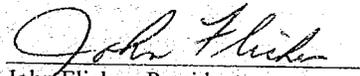
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

- 14.6 No Partnership or Joint Venture Created. 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.
- 14.7 Remedies Cumulative. The parties' rights under this Agreement are cumulative; failure on the part of any party to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The parties 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.
- 14.8 Amendments. No modification of this Agreement shall be binding upon City or Audubon unless reduced to writing and signed by an authorized representative of each of the parties hereto.
- 14.9 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.
- 14.10 Effectiveness of Agreement. This Agreement shall become effective only upon approval by the Seattle City Council and its execution by an authorized representative of each party.
- 14.11 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.
- 14.12 Appendices and Exhibits. The following documents are attached hereto and hereby incorporated into this Agreement as if set forth in full herein:
 - Exhibit "A": Legal Description of Seward Park
 - Exhibit "B": Depiction of Seward Park, including the Building
 - Exhibit "C": Project Budget
 - Exhibit "D": Projected Project Schedule
 - Exhibit "E": Use and Occupancy Agreement
- 14.13 Entire Agreement. This Agreement and all attachments and exhibits pertaining to it 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.

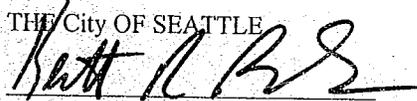
14.14 Non-Liability of Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to Audubon, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Audubon, its successors and assigns under this Agreement, or for any obligation of the City under the Use and Occupancy Agreement. Likewise, no board member, member, officer, employee or other agent of Audubon shall be personally liable to the City, its successors and assigns under this Agreement, or for any obligation of Audubon under the Use and Occupancy Agreement, in the event of any default or breach by Audubon or for any amount which may become due to the City, its successors and assigns, or for any obligation of Audubon under this Agreement.

14.15 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

NATIONAL AUDUBON SOCIETY, INC.


John Flicker, President

9-10-03
Date

THE City OF SEATTLE

Kenneth R. Bounds, Superintendent
Department of Parks and Recreation

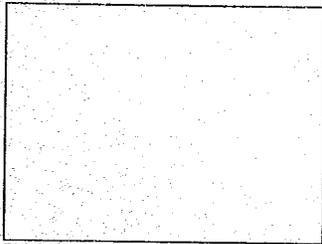
9/12/03
Date

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2003.



(Use this space for notarial stamp/seal)

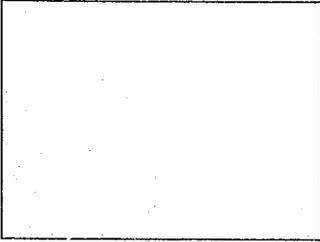
Notary Public
Print/Type Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2003.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Notary Public _____
Print/Type Name _____
My commission expires _____

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT A
LEGAL DESCRIPTION OF SEWARD PARK

GOVERNMENT LOT 3 IN SECTION 14; GOVERNMENT LOTS 1, 2, AND 3 IN SECTION 23; TRACTS 23, 24 AND 25 OF B. W. JOHN'S AND C. H. HANFORD'S 5 ACRE TRACTS, TOGETHER WITH THAT PORTION OF GOVERNMENT LOT 5 LYING SOUTHERLY OF THE SOUTH LINE OF SAID TRACT 23 IN SECTION 23; GOVERNMENTS LOTS 1, 2, AND 3 IN SECTION 24; ALL IN TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., TOGETHER WITH ALL ABUTTING LAKE WASHINGTON SHORELANDS AND INCLUDING ALL BOULEVARDS, STREETS, AND ALLEYS LYING WITHIN THE AFOREDESCRIBED LOTS, TRACTS, AND SHORELANDS.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT C
Project Budget

TOTAL PROJECT BUDGET - COSTS AND FUNDING SOURCE									
	Annex			Hatchery			Total Project		
	City	Audubon	Totals	City	Audubon	Totals	City	Audubon	Totals
Planning	\$17,399	\$6,847	\$24,246	\$7,419		\$7,419	\$24,818	\$6,847	\$31,665
Design	\$34,572	\$229,504	\$264,076	\$51,343		\$51,343	\$85,915	\$229,504	\$315,419
Construction	\$253,606	\$1,136,517	\$1,390,123	\$254,261		\$254,261	\$507,867	\$1,136,517	\$1,644,384
Totals	\$305,577	\$1,372,869	\$1,678,445	\$313,023	\$0	\$313,023	\$618,600	\$1,372,869	\$1,991,468

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

EXHIBIT D
Projected Project Schedule

Activity	2003 by Quarters				2004 by Quarters				2005
	1	2	3	4	1	2	3	4	1
Design Begins			X						
Preliminary Design			X						
Design Development Begins				X					
Construction Document Phase Begins					X				
Final Design					X				
Construction Begins						X	X		
Construction Completed								X	
Building and Hatchery Open									X

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.