

REPAYMENT AGREEMENT

This Repayment Agreement (“Agreement”) is entered into in the City and County of San Francisco, State of California, by and between SAN FRANCISCO ZOOLOGICAL SOCIETY (“SFZS”) and the CITY AND COUNTY OF SAN FRANCISCO (“City”), acting by and through its Recreation and Park Department (“RPD”).

Recitals

WHEREAS, In July 1993, RPD entered into a Lease and Management Agreement (“the Lease”), that authorizes the SFZS to lease and operate the San Francisco Zoo in exchange for a monthly Management Fee, subject to oversight by a Joint Zoo Committee comprised of members of the SFZS Board of Directors and members of the City’s Recreation and Park Commission. The Lease is incorporated herein by reference.

WHEREAS, As summarized in Board Resolution No. _____, the SFZS is facing significant financial challenges and has requested a loan in the amount of up to \$8.5 million (hereafter, “the Loan”), so that it can develop and implement strategies that will help resolve its financial and operational challenges.

WHEREAS, The City is prepared to provide the Loan in the amount of \$6.5 million with a potential additional payment of \$2 million, provided SFZS meets certain milestones set forth in this Agreement and Appendix A, and subject to its promise to fully repay the Loan to the City with interest over ten years in the form of deductions from the monthly Management Fee.

WHEREAS, The Board of Supervisors has approved this Agreement by Resolution No. _____, and has appropriated the initial \$2.5 million needed for the Loan in Ordinance No. _____, and RPD will be seeking an additional appropriation of \$6 million from the Board to cover the remaining funds needed for the Loan; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, the parties agree as follows:

Article 1 Definitions

1.1 **Specific Terms.** Capitalized terms shall have the meaning assigned to them in the Lease, unless otherwise specified.

“Application Documents” shall mean collectively: (a) the Loan proposal submitted by SFZS, including all exhibits, schedules, appendices and attachments thereto; (b) all documents, correspondence and other written materials submitted with respect to the Loan ; and (c) all amendments, modifications or supplements to any of the foregoing approved in writing by City.

“Budget” shall mean the budget attached hereto as part of Appendix A (“Definition of Grant Plan and Budget”).

“Fiscal Year” shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during which all or any portion of this Agreement is in effect.

“Total Repayment Amount” shall mean all of the Loan Funds provided to SFZS under this Agreement, plus interest at 3.7%, assuming a ten-year repayment period.

Article 2 Appropriation and Certification of Loan; Limitations on City’s Obligations

2.1 **Risk of Non-Appropriation of Funds.** This Agreement is subject to the budget and fiscal provisions of the Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. SFZS acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. SFZS assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement. Loan payments will require prior written certified by the Controller, and the amount of City’s obligation shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

2.2 **Automatic Termination for Non-Appropriation of Funds.** This Agreement shall automatically terminate, without penalty, liability or expense of any kind to City, at the end of any Fiscal Year if funds are not appropriated for the next succeeding Fiscal Year. If funds are appropriated for a portion of any Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the Fiscal Year.

2.3 **Supersedeure of Conflicting Provisions.** IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT OR THE LEASE, OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT OR THE LEASE, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

Article 3 Term

3.1 **Term.** The term of this Agreement shall commence on execution of this Agreement and shall expire on [INSERT EXPIRATION DATE], unless earlier terminated as provided herein.

Article 4 Loan Repayment - Consideration

4.1 **Use of Loan.** SFZS may use Loan funds to fund its progress towards the milestones in Appendix A and to fund its general operations but may not use Loan Funds to fund animal acquisitions or capital improvements. Loan Funds may be used for all eligible annual operating expenses. Unallowable expenses are defined in the current version the City's Guidelines for Cost Categorization in Nonprofit Contracts and Grants.

4.2 **Disbursement Procedures.** SFZS may request funding from the Loan as it completes the requirements set forth in Appendix A. SFZS will submit funding requests substantially in the form attached as Appendix B. RPD will review and approve funding requests within 30 days and will return any unapproved funding requests with a brief explanation as to why the request was rejected. RPD shall have no obligation to approve a disbursement until SFZS submits a funding request that demonstrates SFZS is in compliance with Appendix A and that is in all respects acceptable to RPD. RPD may withhold Loan Funds if it determines SFZS has made inadequate progress towards the goals in Appendix A or if there is an Event of Default.

4.3 **Repayment Plan.** Upon determining that it will not be providing SFZS any further payments under this Agreement, RPD shall determine the Total Repayment Amount owed by SFZS. The Total Repayment Amount shall include all of the Loan Funds provided to SFZS under this Agreement plus interest at 3.7%. The parties will agree to a Repayment Schedule that causes payment of the Total Repayment Amount to RPD over ten years. The repayments shall occur in the form of deductions from the monthly Management Fee that RPD pays to SFZS under Section 5 of the Lease. This method of repayment shall not impact any of SFZS's duties or obligations under the Lease. SFZS may not terminate the Lease or this Agreement while any portion of the Total Repayment Amount is outstanding. If RPD elects to terminate the Lease or this Agreement, SFZS shall repay RPD any outstanding balance of the Total Repayment Amount within 60 days or such other schedule agreed to by the parties.

Article 5 Implementation of Loan Terms

5.1 **Implementation of Loan Terms; Cooperation with Monitoring.** SFZS shall diligently and in good faith comply with the terms of this Agreement and Exhibit A. SFZS shall promptly comply with all standards, specifications and formats of City, as they may from time to time exist, related to evaluation, planning and monitoring of SFZS under this Agreement and shall cooperate in good faith with City in any evaluation, planning or monitoring activities conducted or authorized by City.

5.2 **Ownership of Results.** Any interest of SFZS or its agents in any deliverables specified in this Agreement shall become the property of and be promptly transmitted to City. To the extent SFZS creates any other deliverables or work product in connection with this Agreement, SFZS hereby grants City the right to inspect, display, distribute, exhibit, reproduce or otherwise use all such materials, and to retain copies for reference, reporting, and archival purposes. SFZS may retain and use copies of any City-owned deliverables for reference and as documentation of its experience and capabilities.

5.3 **Works for Hire.** If, in connection with this Agreement SFZS or its agents create any artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of City. If it is ever

determined that any such creations are not works for hire under applicable law, SFZS hereby assigns all copyrights thereto to City, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of City, SFZS may retain and use copies of such creations for reference and as documentation of its experience and capabilities. SFZS shall obtain all releases, assignments or other agreements from contractors or other persons or entities to ensure that City obtains the rights set forth in this Agreement.

Article 6 Reporting Requirements; Audits; Penalties for False Claims

6.1 **Regular Reports.** SFZS shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by RPD, in form and substance satisfactory to RPD.

6.1.1 **Annual Economic Statement.** If SFZS is a nonprofit organization that receives a cumulative total of at least \$1,000,000 annually from or through City, to provide direct services to the public, SFZS shall file with City Administrator or otherwise make publicly available in a manner authorized by the City Administrator, an annual economic statement that complies with San Francisco Administrative Code Section 10.1.

6.1.2 **Nonprofit Monitoring.** If SFZS is a nonprofit organization that receives a total of at least \$1,000,000 in funding from City in a fiscal year, SFZS must submit an audited balance sheet and related statement of income and cash flows for that fiscal year certified by an independent accounting firm within six months after the end of the fiscal year in compliance with San Francisco Administrative Code Section 10.6-1.

6.2 **Notification of Defaults or Changes in Circumstances.** SFZS shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

6.3 **Books and Records; Inspection and Audit.** See Sections 15.10-11 of the Lease.

6.4 **Submitting False Claims.** SFZS shall only submit a Funding Request to City upon a good faith and honest determination that the funds sought are for services listed in Appendix A. Any SFZS officer or employee who submits a False Claim as defined under Administrative Code Section 21.G.7(f) shall be liable to City for three times the higher of (A) the amount of damages that City sustains due to the False Claim, or (B) the amount of the False Claim. Any such officer or employee shall also be liable to City for all costs, including attorneys' fees, of a civil action brought to recover any penalties or damages, and may be liable to City for a civil penalty of up to \$10,000 for each False Claim.

6.5 **SFZS's Board of Directors.** SFZS shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in SFZS's bylaws and other governing documents and shall adhere to applicable provisions of federal, state and local laws.

SFZS's board of directors shall exercise such oversight responsibility over this Agreement as is necessary to ensure full and prompt performance by SFZS of its obligations under this Agreement.

Article 7 Taxes

7.1 **SFZS to Pay All Taxes.** SFZS shall pay to the appropriate governmental authority, as and when due, any taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, Appendix A, the Loan or any of the activities contemplated by this Agreement.

7.2 **Withholding.** SFZS agrees that this Agreement shall not impair any obligations it may have to pay City under the San Francisco Business and Tax Regulations Code. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, SFZS acknowledges and agrees that City may withhold any payments due to SFZS under this Agreement if SFZS is delinquent in the payment of any amount required to be paid to City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to SFZS, without interest, upon SFZS coming back into compliance with its obligations.

Article 8 Representations and Warranties

SFZS represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

8.1 **Organization; Authorization.** SFZS is a nonprofit corporation, duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. SFZS has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section. SFZS has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of SFZS, enforceable against SFZS in accordance with the terms hereof. SFZS shall immediately notify City of any change in its eligibility to perform under the Agreement, and upon City request, shall provide documentation to City to demonstrate its compliance with applicable legal requirements.

8.2 **No Misstatements.** No document furnished or to be furnished by SFZS to City in connection with the this Agreement, any Funding Request, or any other document relating to any of the foregoing contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

8.3 Conflict of Interest.

8.3.1 Through its execution of this Agreement, SFZS acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090

et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

8.4 **No Other Agreements with City.** Aside from the Lease, neither SFZS nor any of SFZS's affiliates, officers, directors or employees has any interest, however remote, in any other agreement with City including any commission, department or other subdivision thereof. SFZS shall promptly notify City of SFZS's interest in any other City contracts arising after execution of this Agreement that are substantially related to the services funded under Appendix A. SFZS shall not accept payment from any other City source for matters listed in Appendix A.

8.5 **Eligibility to Receive Funds.** SFZS is not currently suspended, debarred, or otherwise excluded from entering into an Agreement with City pursuant to San Francisco Administrative Code Chapter 28. SFZS will not enter into any contract or subcontract, including but not limited to leases or grants with any entity or individual that has been suspended or debarred as defined in Chapter 28.

Article 9 Indemnification and General Liability

9.1 **Indemnification.** SFZS's obligations under Section 21 of the Lease shall also apply to SFZS's activities arising under this Agreement.

9.2 **LIMITATION ON LIABILITY OF CITY.** CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT OF LOAN ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN, OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

Article 10 Insurance

10.1 **Types and Amounts of Coverage.** SFZS shall continue to maintain insurance as set forth in Section 17 of the Lease. Said insurance shall also apply to activities arising under this Agreement. SFZS shall furnish to City updated certificates of insurance on request. Failure to maintain insurance shall constitute a material breach of this Agreement. Approval of insurance by City shall not relieve or decrease the liability of SFZS hereunder.

Article 11 Events of Default and Remedies

11.1 Events of Default. The occurrence of any one or more of the following events shall constitute an “Event of Default” under this Agreement:

11.1.1 False Statement. Any statement, representation or warranty contained in this Agreement, in the Application Documents, in any Funding Request or in any other document submitted to City under this Agreement is found by City to be false or misleading.

11.1.2 Failure to Provide Insurance. SFZS fails to provide or maintain in effect any policy of insurance required in Article 10 (“Insurance”).

11.1.3 Failure to Comply with Representations and Warranties or Applicable Laws. SFZS fails to perform or breaches any of the terms or provisions of Article 8 (“Representations and Warranties”) or 16 (“Compliance”).

11.1.4 Failure to Perform Other Covenants. SFZS fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by SFZS as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

11.1.5 Cross Default. SFZS defaults under the Lease (after expiration of any grace period expressly stated therein).

11.1.6 Voluntary Insolvency. SFZS (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of SFZS or of any substantial part of SFZS’s property or (e) takes action for the purpose of any of the foregoing.

11.1.7 Involuntary Insolvency. Without consent by SFZS, a court or government authority enters an order, and such order is not vacated within ten (10) days, a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to SFZS or with respect to any substantial part of SFZS’s property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of SFZS.

11.2 Remedies upon Event of Default. Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

11.2.1 Termination. City may terminate this Agreement and/or the Lease by giving a written termination notice to SFZS of the Event of Default and that, on the date specified in the notice, this Agreement and/or the Lease shall terminate and all rights of SFZS

hereunder and under the Lease shall be extinguished. In the sole discretion of City, SFZS may be allowed ten (10) days to cure the default.

11.2.2 **Withholding of Loan.** City may withhold all or any portion of Loan not yet disbursed hereunder, regardless of whether SFZS has previously submitted a Funding Request or whether City has approved the disbursement of the Loan requested in any Funding Request. Any Loan withheld pursuant to this Section and subsequently disbursed to SFZS after cure of applicable Events of Default, if granted by City in its sole discretion, shall be disbursed without interest.

11.2.3 **Offset.** City may offset against all or any portion of undisbursed Loan hereunder or against any payments due to SFZS under any other agreement between SFZS and City the amount of any outstanding Loss incurred by any Indemnified Party, including any Loss incurred as a result of the Event of Default.

11.2.4 **Return of Loan.** City may demand the immediate return of any previously disbursed Loan that have been claimed or expended by SFZS in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

11.3 **Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. City shall exercise this option by giving SFZS written notice that specifies the effective date of termination. Upon receipt of the notice of termination, SFZS shall undertake with diligence all necessary actions to effect the termination of this Agreement on the date specified by City and minimize the liability of SFZS and City to third parties. Such actions shall include, without limitation:

11.3.1 Halting the performance of all work under this Agreement on the date(s) and in the manner specified by City;

11.3.2 Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, services, equipment or other items; and

11.3.3 Completing performance of any work that City designates to be completed prior to the date of termination specified by City.

11.3.4 In no event shall City be liable for costs incurred by SFZS or any of its subcontractors or subgrantees after the termination date specified by City, except for those costs incurred at the request of City pursuant to this section.

11.4 **Remedies Nonexclusive.** Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

Article 12 Disclosure of Information and Documents

12.1 Protection of Private Information. SFZS has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. SFZS agrees that any failure of SFZS to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, City may terminate the Agreement, bring a false claim action against the SFZS pursuant to Chapter 21G of the Administrative Code, or debar the SFZS.

12.2 Public Access and Open Government Provisions; Sunshine. Section 16 of the Lease shall also apply to this Agreement.

12.3 Financial Projections. Pursuant to San Francisco Administrative Code Section 67.32, SFZS agrees upon request to provide City with financial projections (including profit and loss figures) and annual audited financial statements thereafter. SFZS agrees that all such projections and financial statements shall be public records that must be disclosed.

Article 13 Assignment and Subcontracting

13.1 Assignments; Subcontracting. See Section 26 of the Lease.

13.1.1 Limitations. In no event shall SFZS subcontract or delegate the whole of the Appendix A. SFZS shall be responsible for the acts, defaults and omissions of its agents or employees or consultants as fully as if they were the acts, defaults or omissions of SFZS. All references herein to duties and obligations of SFZS shall be deemed to also pertain to such persons to the extent applicable. A default by any such person shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any such person and City.

13.1.2 Terms of Subcontract. Each subcontract shall be in form and substance acceptable to City and shall expressly provide that it may be assigned to City without the prior consent of the subcontractor. In addition, each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of Appendix A. Without limiting the scope of the foregoing, each subcontract shall provide City, with respect to the subgrantee, the audit and inspection rights set forth in Section 6.6 (“Inspection and Audit”). Upon the request of City, SFZS shall promptly furnish to City true and correct copies of each subcontract permitted hereunder.

13.2 SFZS Retains Responsibility. SFZS shall remain liable for the performance by any assignee or subcontractor of all the covenants terms and conditions of in this Agreement.

Article 14 Independent Contractor Status

14.1 Nature of Agreement. SFZS shall be deemed at all times to be an independent contractor and is solely responsible for the manner in which SFZS implements this Agreement.

SFZS shall at all times remain solely liable for the acts and omissions of SFZS, its officers and directors, employees and agents. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between City and SFZS.

14.2 **Direction.** Any terms in this Agreement referring to direction or instruction from RPD or City shall be construed as providing for direction as to policy and the result of SFZS's work only, and not as to the means by which such a result is obtained.

Article 15 Notices and Other Communications

15.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and may be sent by U.S. mail or e-mail, and shall be addressed as follows:

If to RPD or City: <<INSERT NAME OF DEPARTMENT>>
<<INSERT ADDRESS>>
San Francisco, CA <<INSERT ZIP CODE>>
Attn: <<INSERT CONTACT NAME>>
Date: _____

If to SFZS: <<INSERT NAME OF CONTACT>>
<<INSERT ADDRESS>>
San Francisco, CA <<INSERT ZIP CODE>>
Attn: <<INSERT CONTACT NAME>>
Facsimile No. <<INSERT FAX NO. IF FAX NOTICES
DESIRED>>
Date: _____

Any notice of default or data or security breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party at least (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

15.2 **Effective Date.** All communications sent in accordance with Section 15.1 shall become effective on the date of receipt.

15.3 **Change of Address.** Any party hereto may designate a new address for purposes of this Article 15 by giving written notice to the other party.

Article 16 Compliance

16.1 Governmental Conduct Related Contractual Obligations.

16.1.1 **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12G, no funds appropriated by City for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference.

16.1.2 **Limitations on Contributions.** By executing this Agreement, SFZS acknowledges its obligations under section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (b) a candidate for that City elective office, or (c) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of SFZS's board of directors; SFZS's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10 % in SFZS; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by SFZS. SFZS certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the Loan and has provided the names of the persons required to be informed to City department with whom it is contracting.

16.2 **Public Access to Meetings and Records.** If SFZS receives a cumulative total per year of at least \$1,000,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, SFZS shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, SFZS agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. SFZS further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. SFZS acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. SFZS further acknowledges that such material breach of the Agreement shall be grounds for City to terminate and/or not renew the Agreement, partially or in its entirety.

16.3 **Compliance with Other Laws.** Without limiting the scope of any of the preceding sections of this Article 16, SFZS shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

Article 17 Miscellaneous

17.1 **No Waiver.** No waiver by RPD or City of any default or breach of this Agreement shall be implied from any failure by RPD or City to take action on account of such default if such default persists or is repeated. No express waiver by RPD or City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City or RPD of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by RPD or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

17.2 **Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

17.3 **Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

17.4 **Headings.** All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

17.5 **Entire Agreement.** This Agreement and the Application Documents set forth the entire Agreement between the parties and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern. The following appendices are attached to and a part of this Agreement:

Appendix A, Definition of Grant Plan and Budget
Appendix B, Form of Funding Request

17.6 **Certified Resolution of Signatory Authority.** Upon request of City, SFZS shall deliver to City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of SFZS.

17.7 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or

unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

17.8 Successors; No Third-Party Beneficiaries. Subject to the terms of Article 13, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

17.9 Survival of Terms. The obligations of SFZS and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement:

5.2	Ownership of Results		Article 9	Indemnification and General Liability
6.4	Financial Statements		Article 10	Insurance
6.5	Books and Records		Article 12	Disclosure of Information and Documents
6.6	Inspection and Audit		13.4	SFZS Retains Responsibility
6.7	Submitting False Claims; Monetary Penalties		14.3	Consequences of Recharacterization
Article 7	Taxes		Article 17	Miscellaneous
Article 8	Representations and Warranties			

17.10 Further Assurances. From and after the date of this Agreement, SFZS agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

17.11 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first specified herein. The signatories to this Agreement warrant and represent that they have the authority to enter into this agreement on behalf of the respective parties and to bind them to the terms of this Agreement.

CITY

SFZS

By: _____

INSERT NAME OF SIGNATOR

INSERT TITLE

Date: _____

Approved as to Form:
Office of the City Attorney

By: _____

Manu Pradhan

Deputy City Attorney

By: _____

Print Name: _____

Title: _____

Date: _____

Federal Tax ID#: _____

City Supplier Number: _____

Appendix A

1. Financial Sustainability Plan

SFZS will develop, with a specialized zoo consultant, a Financial Sustainability Plan (FSP) to become a long-term financially solvent organization. The FSP shall include a repayment strategy for the City's one-time loan of \$6.5 million and potential reserve payment of \$2 million; an annual budget that balances annual expenses with revenues, taking into account three scenarios regarding Giant Pandas: 1) Pandas arriving as planned and visitation increasing as expected; 2) Pandas are delayed or do not arrive; 3) Pandas arrive but do not provide the expected visitation increase; and a fundraising Plan. The first draft of the FSP shall be submitted to the City's Controller's Office and RPD for their review within six months of the Loan start date. By one year after the Loan start date, SFZS must submit the final draft of the FSP to the City and bring it before the Joint Zoo Committee for approval. The City may request additional edits if the plan does not sufficiently address the required elements.

2. Strategic Plan

SFZS will develop, with a qualified zoo consultant, a 5-year strategic plan for programmatic decisions to improve attendance and revenue that aligns with the financial sustainability plan. This includes any major additions, removals, or renovations of exhibits. The strategic plan will include a vision and priorities for the 5-year cycle starting in 2026-2027; objectives and tactics to achieve these priorities; and metrics that will demonstrate SFZS' success in meeting these priorities. The Zoo will also participate in a separate, long-term visioning process with City staff and other partners, to determine the SFZS's long-term vision, which will also guide the 5-year strategic plan. The first draft of the strategic plan shall be submitted to the City's Controller's Office and RPD for their review within six months of the Loan start date. By one year after the Loan start date, SFZS must submit the final draft of the strategic plan to the City and bring it before the Joint Zoo Committee for approval. The City may request additional edits if the plan does not sufficiently address the required elements. Shortly after loan approval, the City will initiate, and SFZS will participate in, a long-term visioning process.

3. Immediate Expense Reductions

Prior to loan start and disbursement of the first loan payment by the City, SFZS must develop a plan for immediate, meaningful reductions to its ongoing operating expenses to a minimum of 10%. SFZS will share documentation of its planned cost reduction approach with the City prior to loan start.

4. BLA Audit

In December 2024, the Board of Supervisors directed the Budget and Legislative Analyst's Office to conduct a comprehensive performance and management audit of the San Francisco Zoo (M24-125). The audit report was released on May 1, 2026, and contains findings related to SFZS's financial condition, strategic and capital planning, Zoo facilities condition, contracting and procurement, SFZS Board of Directors, and more. SFZS shall address the recommendations

of the audit report regarding SFZS in its Strategic Plan. RPD will evaluate the Strategic Plan and reserves the opportunity to negotiate and impose additional conditions on the SFZS in response to the audit report's recommendations.

5. SFZA Board of Directors

To ensure its Finance Committee is adequately staffed, SFZS will add a board member with extensive financial management experience, including deep knowledge of finances, financial controls, financial planning, financial analysis, risk management, and financial strategy. City will review the qualifications of the additional board member to ensure the required experience is sufficiently met. SFZS will also develop its Board to more meaningfully financially support SFZS, by increasing the Board's financial capacity and doubling its annual contribution goal year to year, until eventually reaching a Board contribution goal of 10% of SFZS's annual operating budget.

6. AZA Accreditation

SFZS must successfully achieve full accreditation by the Association of Zoos and Aquariums (AZA) for the 5-year period beginning in Spring 2027. Upon completion of the process and receiving accreditation, SFZS shall provide the City with proof of successful accreditation. Due to the uncertainty of attendance projections, a loan reserve of \$2 million will be proposed in FY 2027-28 (subject to final Board and Mayoral budget approval). Release of this funding will be at the City's own discretion. SFZS must achieve AZA accreditation and show sufficient progress towards financial sustainability and long-term goals in order for City to release the reserve.

7. No New Liabilities

SFZS shall not take on any new commitments, liabilities or animals until it is determined financially sustainable by the City's Controller's Office, with the following exceptions: (a) Giant Pandas; (b) newly acquired or transferred animals that do not require any capital investments to adjust or improve habitat or living conditions, and do not require any additional staffing resources above and beyond current staffing; (c) new commitments, liabilities or animals for which dedicated outside funding sources have been secured by SFZS, and will not financially impact SFZS's ongoing operation budget. SFZS shall consult with RPD, and the City Controller as needed, to determine whether these exceptions apply.

8. Ongoing Reporting Obligations

On a quarterly basis, after the end of each quarter, SFZS will report to the City on its efforts to maintain and improve the Zoo and its progress towards specific goals for the past quarter. The report will include past quarter's attendance and cost of new attendee recruitment, new members acquisition and cost of acquisition, funds raised (received and pledged) and cost of fundraising efforts per dollar raised, new donors obtained, financial records, expenses and expense reductions, and progress and status of the Giant Pandas capital project and other preparation work; SFZS will also report its fundraising and attendance targets for the following quarter. All materials provided by SFZS must meet standards for quality and thoroughness as determined by City Controller and will be presented before the Joint Zoo Committee.

9. Regular Meetings and Communications

SFZS shall maintain ongoing communication with the City and meet with City staff as requested. SFZS will prepare and provide any requested materials and information in advance of such meetings.

10. Specific Milestones/Conditions/Funding Schedule

Timeline	FY	Funds Released	Milestone Actions
Loan start	2025-26	\$2.5 million	<ul style="list-style-type: none"> • Provide current plans for attendance and fundraising growth, expenditure reductions • Provide loan repayment plan • Begin Visioning process as directed by City
Loan start + 3 months	2026-27	\$0	<ul style="list-style-type: none"> • Hire consultant • Provide first-quarter data
Loan start + 6 months	2026-27	\$1.4 million	<ul style="list-style-type: none"> • Draft FSP and draft strategic plan submitted to RPD and Controller's Office • Second-quarter data
Loan start + 9 months	2026-27	\$1.3 million	<ul style="list-style-type: none"> • Provide third-quarter data
Loan start + 12 months	2026-27	\$1.3 million	<ul style="list-style-type: none"> • Final FSP and strategic plan submitted to City and Joint Zoo Committee • Provide fourth quarter data
By March 2027	2026-27	\$0 (\$2 million in reserve could be released)	<ul style="list-style-type: none"> • Achieve AZA accreditation • \$2 million reserve may be released if City determines sufficient progress towards financial sustainability and long-term goals • Reserve to be allocated in FY 2027-28 budget

Appendix B - Form of Funding Request

FUNDING REQUEST

Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117
Date: _____

Re: Loan Disbursement

Pursuant to Section 4.2 (“Disbursement Procedures”) of the Repayment Agreement between the undersigned (“SFZS”) and the City and County of San Francisco, SFZS hereby requests a disbursement of the Loan as follows:

[Date: Month, Day, Year] _____

Total Amount
Requested in this Request: \$ _____

Total of All Loan
Disbursed Prior to this Request: \$ _____

Summary of milestones completed by SFZS (relevant reports and deliverables to be attached):

SFZS certifies that:

- a. The summary of milestones completed is true and correct.
- b. After giving effect to the disbursement requested pursuant to this Funding Request, the Loan disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 5.1 (“Maximum Amount of Loan”).
- c. The representations and warranties made in the Agreement are true and correct in all material respects as if made on the date hereof;
- d. No Event of Default has occurred and is continuing; and
- e. The undersigned is an officer of SFZS authorized to execute this Funding Request on behalf of SFZS.