



# City of Palo Alto

## City Council Staff Report

(ID # 5170)

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**Report Type: Action Items**

**Meeting Date: 11/10/2014**

**Summary Title: Letter of Intent - Junior Museum & Zoo**

**Title: Approval of Letter of Intent for Construction and Operation of the New Junior Museum and Zoo Building by the Friends of the Junior Museum and Zoo in 2019**

**From: City Manager**

**Lead Department: Community Services**

### **Recommendation**

Staff recommends

- a) Council's approval of a Letter of Intent (Attachment A), by which the City and the Friends of the Palo Alto Junior Museum and Zoo (JMZ) will collaborate to develop agreements for the building of a new and enhanced Junior Museum and Zoo facility, and the operation of the new facility for up to 40 years.
- b) Staff seeks the Council's guidance and approval on the guiding negotiation principles, noted on page 4 below.

### **Background**

The Friends of the Palo Alto Junior Museum and Zoo (Friends) have played an integral role in the support and operation of the Palo Alto Junior Museum and Zoo (JMZ) since 1962. From 1962 through 1990, the Friends were referred to as the Junior Museum and Zoo Associates. In 2002, the Friends approached the City to create a public-private partnership with the intention of raising the capital improvement funds required to completely renovate the JMZ facility (CMR 442:02).

In February 2007, a Council Colleague's memo from then Vice-Mayor Klein and Council Members Beecham and Mossar requested that staff work with the Friends to explore the possibility of a new public/nonprofit partnership that would strengthen the ties between the City and the Friends.

Council approved an Agreement for Mutual Cooperation and Support with the Friends of the Palo Alto Junior Museum & Zoo (the Agreement) in November 2007 (CMR 443:07), an agreement extension in January 1 2013 (CMR #3395), and a Second Agreement in December

2013 (CMR #4258) (Attachment B). The current Mutual Cooperation and Support Agreement allows the Friends to use the JMZ facility to benefit the City through the Friends' support of the operations, education-related programs, and activities and opportunities offered by or within the JMZ facility.

The public-private partnership between the City and the Friends was strengthened via the written agreement, because it provided the Friends with a greater opportunity to play a role in planning and decision-making processes, which has led to increased outside funding for the JMZ facility. The Agreement enabled the Friends' board members and staff to work in a more integrated way with the City, for example, by (a) including the JMZ manager as an ex-officio member of the Friends' Board; (b) the Council providing a liaison to the Friends' Board, (currently Council Member Berman); and (c) other City staff working in unison with the Friends' staff to realize mutual goals. Final responsibility for the planning and operation of the JMZ facility continued to lie with the City, but the Friends participated with a higher level of engagement in planning and implementing JMZ activities than in the past.

The inadequacies of the current JMZ facility were documented in several reports. The 1997 Adamson Associates Infrastructure Management Study Report stated that the Junior Museum & Zoo was overdue for a major renovation. It was recommended that the building be scheduled for a seismic upgrade in 1998-99 and that the entire facility be upgraded during this work. The estimated the cost in 1998 dollars of upgrades to bring the facility into mechanical and code compliance was priced at \$733,000. (The mechanical systems were upgraded around 2004 and the roof was replaced in 2011.)

In 2002, a Feasibility Study was conducted by MKThink Team, a consultant hired by the Friends. The Study recognized the conditions of visitor overcrowding at the JMZ facility and carefully evaluated the existing building and site for areas of efficiency and opportunity. Through a gap analysis study, the consultant determined that the program space demands (such as staff offices, classrooms, events and gathering areas) exceed existing JMZ facility accommodations and capacity. The building systems were found to be substandard and to not meet certain code requirements, and the overall coherence and presence of the JMZ facility was also deemed poor.

In December 2011, the Blue Ribbon Infrastructure Task Force's Final Report, identified "Catch Up" (deferred maintenance) in 2011 dollars for the Junior Museum & Zoo at \$221,000. They also reported that they did not include Friends funding as part of their recommendation:

“In Palo Alto, donations from Community members have financed construction or improvements at Lucie Stern Community Center, the Junior Museum, the Arts Center, Lytton Plaza, the libraries, and various athletic and recreation facilities. Although some projects in the catch-up or future new & replacement categories could attract friends co-funding, the Commission did not find reasonable evidence to include friends funding as part of our recommendations.”

In a 2013, a Fundraising Feasibility Study, conducted by March Partners and funded by the Friends, showed that survey respondents overwhelmingly concluded that the rebuilding of the JMZ facility would be essential to the ongoing contribution of the Museum to the community and to JMZ visitors.

In 2014, the Friends completed a conceptual strategic plan and cost estimate to rebuild the JMZ facility. The Friends have been assessing public interest in the construction project (the Project) through a fundraising campaign and evaluating the feasibility of funding the construction of a new building through private contributions and grants.

The City and the Friends are interested in undertaking and completing the Project in accordance with two agreements subject to mutually acceptable terms and conditions, where the City would maintain ownership of the facility and Friends would operate the facility.

The Letter of Intent (the Letter) is intended to facilitate discussion of the key contract terms and conditions relating to the Project, and it requests that the City and the Friends endeavor to negotiate and finalize such agreements within the next twelve months.

### **Discussion**

The Letter recognizes that the City and the Friends (the Parties) wish to collaborate in regard to the Project that would result in the complete rebuilding of the JMZ facility, as well as the operation of the JMZ for 40 years after completion of the Project. The City and the Friends anticipate the costs of the operation of the newly designed JMZ facility will exceed the current City budget appropriations for the JMZ. Further, the City desires to stabilize and reduce long-term its financial support for the JMZ's operations.

The Parties are interested in undertaking and completing the Project as well as the long-term operation of the newly built facility in accordance with two or more agreements subject to mutually acceptable terms and conditions. The Parties will endeavor to

negotiate and finalize the drafting of the following agreements over the next twelve (12) months, as practicable:

- 1) An agreement pertaining to the design and construction of the Project. This design/construction agreement would, for a period of time, grant the Friends a license or permission for access to, and the non-exclusive use and possession of, the Project area of the site (including within Rinconada Park), in order that the Friends may develop this area in order to improve, replace, and rebuild the JMZ to provide enhanced levels of service to the existing Palo Alto community.
- 2) An operations and management services agreement with a term of up to 40 years that will address, among other items, the adequacy of financial resources to be made available in order to facilitate the successful operation of the remodeled JMZ facility. This operations/management services agreement will address the appropriate operating constraints and public benefits.

Staff is requesting Council's direction to staff to negotiate these agreements with the following guiding negotiation principles in mind:

1. Delineate methods for appropriate public and City input to programs and services;
2. Oversight and cooperation of the construction project;
3. Establish a long-term structure for financial and programmatic oversight of the operations;
4. Stabilize and reduce long-term the City's financial support for the JMZ's operation;
5. Outline the possible transition of the operation of the facility to the City at time of lease expiration; and
6. Endeavor to complete negotiations within 12 months.

Both agreements will be subject to the approval of the Palo Alto City Council and the approval as to form by the Palo Alto City Attorney.

Before construction of new facilities, Council will be required to adopt a Park Improvement Ordinance in regard to the Project for any portion of the Project that will be constructed within Rinconada Park, as required by the City Charter and the Palo Alto Municipal Code. Such a Park Improvement Ordinance would be consistent with the draft Rinconada Park Long Range Plan.

Upon the Friends' acceptance of this Letter, the Friends will continue to raise funds for, design and prepare construction documents for, and obtain a construction contractor for the Project. All design and construction work will be reviewed by one or more of the

City's Departments of Community Services, Development Services, Planning and Community Environment, Utilities, and Public Works, and then reviewed and approved, as appropriate by the City's Boards and Commissions, including, but not limited to, the Architectural Review Board, the Parks and Recreation Commission, Planning Commission and the City Council.

Under the terms of this Letter of Intent the Friends will be required to obtain and maintain all required City permits and other authorizations and furnish or caused to be furnish any financial and non-financial security, during the construction, as appropriate, and upon request, to the City, including, but not limited to, insurance, indemnity, lien waivers, performance and payment bonds and covenants.

The Friends will continue to undertake a community outreach and fund-raising program to garner the community's input and support for the Project.

The City will provide reasonable staff support and other assistance, upon request, to the Friends in connection with the execution of the Project. The Friends must pay certain Project permit-related fees and charges that are due and payable to the City's General Fund and also pay all utility services rates, fees and charges that are due and payable to the City's Utilities Enterprise Fund in connection with the construction, operation and management of the Project.

### **Resource Impact**

No additional City resources will be required beyond staff participation, review and oversight of the Project at this time. If the City's staff and Friends' staff reach agreement on the key terms and conditions of these agreements, then as part of Council's approval of these agreements, any resource impacts will be identified for Council's review and approval.

The Friends will be responsible for raising the required funds for the Project and for advocating for the JMZ facility in the community and provide leadership support through their Board of Directors.

### **Policy Implications**

The Letter is not intended to be a binding contract between the Parties with respect to the Project. It is intended to facilitate discussion of the key terms and conditions of the agreements concerning the Project and is only an expression of the basis on which the Parties would enter into the agreements regarding the Project. The City requests the Friends' acknowledgement of this letter in order that the City may develop the key terms and conditions of the draft agreements concerning the Project.

**Environmental Review**

The approval of the Letter of Intent does not qualify as a 'project' under the California Environmental Quality Act (CEQA), California Public Resources Code section 21065 and the CEQA guidelines, Title 14, section 15378, therefore, no environmental assessment is required at this time. This Project will be reviewed under the California Environmental Quality Act as part of the Rinconada Park Master Plan.

The draft Master Plan for Rinconada Park, including the Junior Museum & Zoo Project, must be reviewed in accordance with the California Environmental Quality Act. A separate request for approval of a contract for environmental review services and funding is scheduled to be considered by Council this fall. The request will include funding by the Friends for the JMZ Project portion of the environmental review.

**Attachments:**

- Attachment A - Letter of Intent (PDF)
- Attachment B - Agreement with the Friends JMZ Mutual Cooperation and Support (PDF)

October 10, 2014

Aletha Coleman, President  
Friends of the Palo Alto Junior Museum & Zoo  
1451 Middlefield Road  
Palo Alto, CA 94310

**RE: Rebuilding of the Junior Museum & Zoo at Rinconada Park**

Dear Ms. Coleman:

The City of Palo Alto (the "City") and the Friends of the Palo Alto Junior Museum and Zoo (the "Friends") (previously known as the Junior Museum and Zoo Associates) (each a "Party" and collectively, the "Parties") have enjoyed a long-standing relationship since 1962. In 2013, the Parties entered into a new Mutual Cooperation and Support Agreement for a term of up to six years, as it pertains to the Junior Museum and Zoo. This Support Agreement allows the Friends to use the JMZ to the benefit of the JMZ's patrons and provides for the Friends' support of the operations, education-related programs, and activities.

The City and the Friends now wish to collaborate in regard to a construction project (the "Project") that would result in the complete rebuilding of the existing Junior Museum and Zoo facility ("JMZ") as well as the Friends' operation of the JMZ for 40 years after completion of the Project. The Project will be located within the boundaries of Rinconada Park, Palo Alto, as depicted in the Draft Rinconada Park Master Plan.

The City does not have sufficient funds to rebuild the existing JMZ facility and the Parties anticipate that the costs of the operation of the newly designed JMZ facility will exceed the current City's budget appropriations for the JMZ. The City desires to stabilize and reduce on a long-term basis its financial support for the JMZ's operation and the Friends seek financial support from the City in the initial years of the operation of the rebuilt facility. The Parties envision that the JMZ's mission, core programs, and services would be enhanced with a strong public-private partnership between the Parties, comprised of excellent communication and mutual understanding.

The Parties are interested in undertaking and completing the Project in accordance with two or more agreements subject to mutually acceptable terms and conditions. The Parties will endeavor to negotiate and finalize the drafting of the following agreements over the next twelve (12) months, as practicable:

#### Project Design and Construction Agreement

This design/construction agreement would, for a period of time, grant the Friends a license or permission for access to, and the non-exclusive use and possession of, the Project's construction site (including within Rinconada Park), in order that the Friends may develop this area in order to improve, replace, and rebuild the JMZ to provide enhanced levels of service to the Palo Alto community and JMZ visitors.

#### Operations and Management Services Agreement

This operations/management services agreement will address, among other items, the methods for appropriate public input to programs and services, the structure for financial and programmatic oversight of the operations, the adequacy of financial resources to facilitate the successful operation of the new facility, and the transition of the operation of the facility to the Friends and then possibly back to the City after the expiration of the agreement with the Friends. As part of the development of this operations/management services agreement, the Friends will prepare detailed financial *pro formas* with underlying assumptions and an operational plan which support the successful operation of the new JMZ facility. This agreement will address the appropriate operating constraints and public benefits.

Both agreements will be subject to the approval of the Palo Alto City Council and the approval as to form by the Palo Alto City Attorney. The Council will be required to adopt a park improvement ordinance in regard to the Project for any portion of the Project that will be constructed within Rinconada Park, as required by the City Charter and the Palo Alto Municipal Code.

Upon the Friend's acceptance of this letter, the Friends will continue raising funds for the design and construction of the JMZ facility as well as operating reserves for the operation of the facility and prepare construction documents and an operational plan. The Friends will undertake a community outreach and fundraising program to garner the community's input and support for the Project.

The Friends will be required to obtain and maintain all required City permits and other authorizations and furnish or caused to be furnish any financial and non-financial security, during the construction, as appropriate, and upon request, to the City, including, but not limited to insurance, indemnity, lien waivers, performance and payment bonds and covenants. All design and construction work will be reviewed by one or more of the City's Departments of Community Services, Planning and Community Environment, Development Services, Utilities, and Public Works, and then reviewed and approved, as appropriate by the City's boards and commissions, including, but not limited to, the Architectural Review Board, the Parks and Recreation Commission, the Planning and Transportation Commission and the City Council.

The City will provide reasonable staff support and other assistance, upon request, to the Friends in connection with the execution of the Project.



This letter is not intended to be a binding contract between the Parties with respect to the Project. It is intended to facilitate discussion of the key contract terms and conditions of the two agreements relating to the Project, and it is only an expression of the basis, on which the Parties would enter into the agreements regarding the Project.

The City requests the Friends' acknowledgement of this letter below in order that the City may proceed to develop with the Friends the key terms and conditions of the two draft agreements concerning the Project. Once these key terms and conditions have been identified, the City will undertake to draft the final agreements that will be mutually acceptable to the parties.

Sincerely,

James Keene  
City Manager

Copies to:

Greg Betts, Director, Community Services  
Mike Sartor, Director, Public Works  
Lalo Perez, Director, Administrative Services  
Rhyena Halpern, Assistant Director, Community Services  
Grant Kolling, Senior Asst. City Attorney  
Walter C. Rossmann, Director, Office of Management and Budget  
John Aikin, Manager, Junior Museum & Zoo

The Friends of the Palo Alto Junior Museum & Zoo hereby acknowledge a mutual interest in developing appropriate agreements between the Parties to complete the Project conditions described above.

10/10/14  
Date

Ben Beckham, Vice President  
for Aletha Coleman, President  
Friends of the Palo Alto Junior Museum & Zoo

**Contract No. \_\_\_\_\_**

**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND  
THE FRIENDS OF THE PALO ALTO JUNIOR MUSEUM AND ZOO  
FOR MUTUAL COOPERATION AND SUPPORT**

**Dated as of \_\_\_\_\_, 2013**

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**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND THE  
FRIENDS OF THE PALO ALTO JUNIOR MUSEUM AND ZOO  
FOR MUTUAL COOPERATION AND SUPPORT**

This MUTUAL COOPERATION AND SUPPORT AGREEMENT (the "Agreement"), dated, for convenience, \_\_\_\_\_, 2013 (the "Effective Date"), is entered into by and between the CITY OF PALO ALTO, a California chartered municipal corporation (the "City"), and the FRIENDS OF THE PALO ALTO JUNIOR MUSEUM AND ZOO, a California public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law (the "Friends") (individually, a "Party" and, collectively, the "Parties"), in reference to the following facts and circumstances:

**RECITALS:**

1. The City owns and operates the Junior Museum (the "Museum") and Zoo (collectively, the "JMZ"), located at 1451 Middlefield Road, Palo Alto, CA 94301. The JMZ is a program of the City's Community Services Department (the "Department") and exists within the Department's Arts and Sciences division.

2. The Friends have assisted the City's JMZ staff in supporting and advocating on behalf of JMZ operations, programs and activities over the past thirty-eight years. The Friends intend to benefit the City and the Palo Alto community by providing certain services, which the Parties intend to be rendered in accordance with the general scope of the City's policy on Public/Private Partnerships. By this Agreement, the Friends will, at the direction of the City Manager, or designee, and through the use of both City and/or Department employees and JMZ staff-supervised and unpaid community volunteers, support the operations- and education-related programs, activities and opportunities offered by or within the JMZ.

3. The Parties wish to more closely collaborate and mutually cooperate and support each other in the future, to improve, enhance and sustain the capacity of the JMZ to develop and provide educational opportunities and related services to the Palo Alto community.

4. The Parties entered into a Mutual Cooperation and Support Agreement in 2007 for a three-year term with an option to extend for an additional three-year term. By an Amendment No. One to Agreement, the Parties extended the agreement for the additional three-year term. The Parties desire to renew the 2007 Agreement on the same terms and conditions.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing recitals and the following

covenants, terms, conditions and provisions of this Agreement, the Parties agree:

SECTION 1. TERM; EXTENSION; TERMINATION

1.1 This Agreement will commence on the Effective Date, and the initial term is three (3) years (the “Term”), unless it is earlier terminated by a Party as herein provided.

1.2 The Term may be extended by the Parties for one (1) additional term of three (3) years (the “Extension Term”); provided, however, the City may require the City Council’s approval of the Extension Term.

1.3 A Party may terminate for convenience this Agreement, in whole or in part, by giving the other Party no less than ninety (90) days’ prior written notice.

1.4 This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code (the “PAMC”). This Agreement will terminate without penalty: (A) at the end of any fiscal year in the event that funds are not appropriated for the JMZ program for the following fiscal year; or (B) at any time within a fiscal year in the event that funds are appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section 1.4 will take precedence in the event of a conflict with any other covenant, term, condition or provision of this Agreement and the Exhibits. Nothing in this Section 1.4 is intended to affect the Friends’ rights and remedies as may be available under applicable laws.

SECTION 2. RESPONSIBILITIES OF THE PARTIES

2.1 The responsibilities of the City will include the following:

A. The management of the JMZ facilities, programs and the City’s staff employees, including any and all City-hired contractors, subcontractors, consultants and volunteers. The City will hire, supervise, evaluate and otherwise exercise supervision and control of its employees. The City may permit the Friends’ duly authorized representatives to participate in the interview process for the hiring of a manager of the JMZ (the “JMZ Manager”);

B. The feeding, care and maintenance of the JMZ wildlife residents and basic maintenance and repair of the JMZ facilities as well as the furnishing of internal and external landscaping and utility services to the JMZ;

C. The selection of one or more individuals to serve as the City’s liaison(s) to the Friends’ board of directors and/or any board committees (the “Board”), including (1) a Council Member, if any, who will serve as the official liaison of the City to the Board, and (2) the JMZ Manager, whose duties may include providing assistance to the Friends, including the Board, in selected fundraising activities, as may be directed or approved by the City Manager, or

designee;

D. The review of all community-related activities that the Friends may propose for inclusion in the JMZ programs. All activities of the Friends will be pre-approved by the JMZ Manager, or designee;

E. Develop and provide educational programs relating to JMZ and supervise community volunteers in connection therewith;

F. Manage the JMZ collections and supervise the accessioning, deaccessioning, cataloging, and conservation of the JMZ permanent collection in accordance with City, Department, Museum, state, and federal laws and applicable professional standards; and

G. Any other obligation(s) that the City, Department or the Museum may undertake in accordance with this Agreement, upon reasonable notice to the Friends; provided, however, any such undertaking will be memorialized, in writing, by an amendment to this Agreement, in order that such undertaking will be binding upon the City.

## 2.2 The responsibilities of the Friends will include the following:

A. The supervision and management of its directors, officers, employees, volunteers, contractors, subcontractors and consultants, while they, and each of them, are performing obligations on behalf of the Friends pursuant to this Agreement;

B. The rendering of assistance to the JMZ Manager (through the Board and/or staff), at the JMZ Manager's request, including voluntary attendance and contribution at staff meetings of the JMZ Manager;

C. The provision and staffing of programs to educate the public about the JMZ and its programs and amenities, and the mobilization of volunteers for JMZ projects and programs;

D. The development and implementation of a development plan for the JMZ (the "Friends Plan"), that is consistent with the JMZ strategic plan, referred to in Section 2.3(A), and the annual work plan(s), referred to in Section 2.3(B). The Development Plan will include donor acknowledgment and activities consistent with City policies and practices; and

E. The rendering of other services beyond those spelled out in the annual JMZ Plan and related to the preservation, protection and enhancement of the JMZ, will be approved, in writing, by the JMZ Manager.

## 2.3 The responsibilities of the Parties will include the following:

A. Under the direction of the JMZ Manager, develop a long-term strategic plan to

enhance and improve the vision of the JMZ (the “Strategic Plan”);

B. Under the direction of the JMZ Manager and consistent with the Strategic Plan, develop an annual work plan (the “JMZ Plan”), and, on an annual basis, effective July 1 of each year, establish program, budget, fundraising and administrative and operational priorities and activities for each fiscal year of operations. The JMZ Plan will delineate the rights and obligations of the Parties and identify each Party’s duly authorized representative. The JMZ Plan will include, without limitation, specific cash handling procedures to be followed by the Parties and the dispute resolution procedures for informally resolving differences of opinion of each Party regarding the substance and/or implementation of the JMZ Plan; and

C. In regard to the JMZ Plan, the Parties will review, on a quarterly basis, the status of reaching and/or exceeding the goals of the JMZ Plan, including budget goals. The Parties will evaluate, annually, the JMZ Plan.

2.4 The responsibility of either Party or the Parties in regard to any capital improvement project (“CIP”) for the JMZ will not be established by this Agreement. The Parties agree to reserve for future consideration any existing or future CIP for the JMZ, including the scope of a capital fundraising program and the responsibilities of each Party in regard to thereto. The provision of any CIP may be addressed by amendment to this Agreement or by separate instrument, as determined by the Parties.

2.5 To the extent this Section 2 does not specifically identify the Party who will be primarily responsible for any action or decision in regard to the JMZ, the Parties agree that the City will be the party to assume all rights and obligations in connection with such decision.

### SECTION 3. GENERAL LICENSE TO THE FRIENDS

3.1 The City hereby grants the Friends, its directors, officers, employees, contractors, subcontractors and consultants a nonexclusive license to enter upon and use the JMZ facilities in connection with the Friends’ execution of its individual and/or joint responsibilities established by the JMZ Plan, including, but not limited to, organizing small group meetings and large group/community meetings and events at the JMZ, such as fundraising events, programs, and tours of the JMZ facilities, and using the office space afforded to the Friends for their use at the JMZ facilities in connection with this Agreement. Any use of the JMZ facilities will be approved by the JMZ Manager in regards to program scheduling, space availability, and the functionality of shared JMZ spaces for staff use. The City will provide to the employees of the Friends security card access to the JMZ; any additional cards will be approved by the JMZ Manager, upon request, in writing.

### SECTION 4. INSURANCE

4.1 As of the Effective Date, the Friends, at its sole cost and expense, will obtain and

maintain the following insurance coverage, and as further described in Exhibit "A," acceptable to the City's insurance risk manager (the "Risk Manager") in full force and effect during the Term, insuring not only the Friends but, with the exception of worker's compensation and employer's liability insurance, naming the City as an additional insured, concerning the Friends' participation under this Agreement.

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
A. WORKER'S COMPENSATION	Statutory
B. COMPREHENSIVE AUTOMOBILE LIABILITY	Bodily Injury \$1,000,000 ea. person Property Damage \$1,000,000 each person, including owned, hired, and non-owned automobiles
C. COMPREHENSIVE GENERAL LIABILITY	Bodily Injury \$1,000,000 each person, \$1,000,000 each occurrence, \$1,000,000 aggregate including products, Property Damage \$1,000,000 each occurrence & completed operations, Personal Injury \$1,000,000 each occurrence, broad form contractual, and personal injury.

4.2 Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the City's option, the insurer will reduce or eliminate such deductibles or self-insured retentions as respects the City. The Friends' insurance will be carried in full force and effect on or before the Effective Date. Every insurance policy required by this Agreement will contain the following or substantially similar clauses:

- A. "This insurance shall not be canceled, limited in scope of coverage or nonrenewed until after thirty (30) days written notice has been given to: City of Palo Alto/Junior Museum and Zoo Manager, P.O. Box 10250, Palo Alto, CA 94303".
- B. "All rights of subrogation are hereby waived against the City of Palo Alto and the members of the City Council and elective or appointive officers or employees, when acting within the scope of their employment or appointment."
- C. "The City of Palo Alto is added as an additional insured as respects operations of the named insured at or from the JMZ."



- D. "It is agreed that any insurance maintained by the City of Palo Alto will apply in excess of, and not contribute to, insurance provided by this policy."

4.3 Evidence of Insurance Coverage and/or Changes will be, as follows:

- A. Certificate of Insurance. The Friends agree to deposit with the JMZ Manager before the effective date of this Agreement, certificates of insurance necessary to satisfy the City that the insurance provisions of this Agreement have been complied with, and to ensure that such insurance is kept in effect, with the certificates on deposit with the City, during the Term. Should the Friends fail to provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, the City may purchase such insurance, on behalf of and at the sole expense of the Friends, to provide an additional six-month period of coverage.
- B. Review of Coverage. The City will retain the right, at any time, to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Risk Manager, the insurance provisions in this Agreement do not provide adequate protection for the City and for members of the public using the JMZ, the City Manager, or designee, may require an amount to provide adequate protection as determined by the Risk Manager. The City's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk which exists at the time a change in insurance is required.
- C. Changes in Coverage. The City Manager, or designee, will notify the Friends, in writing, of any change(s) in the insurance requirements; if the Friends does not deposit copies of acceptable insurance policies (or certificates) with the City, to the attention of the Risk Manager, incorporating such changes within sixty (60) days of receipt of such notice, or in the event the Friends fail to ensure that the required insurance coverage is maintained in effect, the City may terminate this Agreement in accordance with Section 1.
- D. No Limit of Liability. The procuring of such required policy or policies of insurance will not be construed to limit the Friends' liability hereunder or to fulfill the indemnification provision and requirements of this Agreement. Notwithstanding the policy or policies of insurance, the Friends will be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Agreement, with the Friends' use of the JMZ.
- E. Acceptability of Insurers. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A:X.

SECTION 5. INDEMNITY

5.1 Except as provided under Section 5.2, the Friends hereby waive all claims, liability and recourse against the City, including the right of contribution for loss or damage of or to persons or property arising from, growing out of, or in any way connected with or related to this Agreement. The Friends will protect, indemnify, hold harmless and defend the City, its officials, officers, employees, representatives and agents, from and against any and all claims, losses, liability, demands, damages, costs, expenses or attorneys' fees, caused by or arising out of the Friends' negligent acts or omissions, or willful misconduct, in the performance or nonperformance of its obligations under the covenants, terms, conditions and provisions of this Agreement. The preceding sentence notwithstanding, no personal liability will attach to any Board member under the provisions of this Section 5 for any negligent action or inaction. In the event the City is named as co-defendant, the Friends will notify, in writing, the City, to the attention of the City's City Attorney (the "City Attorney"), of such fact and it will represent the City in such legal action, unless the City undertakes to represent itself as co-defendant in such legal action, in which event the Friends will pay to the CITY its reasonable litigation costs and expenses, including reasonable attorneys' fees.

5.2 The City will protect, indemnify, hold harmless and defend the Friends, its directors, officers, employees and agents, against any and all claims, losses, liability, demands, damages, costs, expenses or attorneys' fees arising out of the City's negligent performance or nonperformance of its obligations under the terms of this Agreement.

SECTION 6. WAIVER

6.1 The waiver by either Party of any breach or violation of any covenant, term, or condition of this Agreement or of the provisions of the PAMC or other City law, rule or regulation, will not be deemed to be a waiver of any such covenant, term, condition, or provision or of any subsequent breach or violation of the same or any other covenant, term, condition, or provision. The subsequent acceptance by either Party of any consideration which may become due or payable hereunder will not be deemed to be a waiver of any preceding breach or violation by the other Party

SECTION 7. NO PROPERTY RIGHTS

7.1 The Parties agree that this Agreement will not confer any property right upon the Friends, its directors, officers, employees, volunteers, contractors, subcontractors or consultants. Any work performed for the benefit of the JMZ and any improvements placed or constructed at the JMZ will conform to the City's standards and approved by the City Manager, or designee, and will, upon acceptance, become the property of the City.

SECTION 8. ASSIGNMENT

8.1 Neither Party may assign, transfer, or convey this Agreement or any interest that it may have in this Agreement without the other Party's express consent or approval. Any attempted assignment without the required consent or approval will be void and will confer no right, title, or interest in or to this Agreement, or part thereof. In the event of an unauthorized assignment, at the option of the Party not making the assignment, this Agreement may be terminated upon reasonable notice to the Party making the assignment.

SECTION 9. INDEPENDENT CONTRACTOR

9.1 In the exercise of its rights and responsibilities under this Agreement, the Friends act at all times as an independent contractor and not as an employee of the City. Nothing in this Agreement will be construed to establish a partnership, joint venture, group, pool, syndicate or agency between the Parties. No provision contained herein will be construed as authorizing or empowering either Party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf, or in the name of, the other Party in any manner, or to make any representation, warranty or commitment on behalf of the other Party. In no event will either Party be liable for (a) any loss incurred by the other Party in the course of its performance hereunder, or (b) any debts, obligations or liabilities of the other Party, whether due or to become due.

SECTION 10. NONDISCRIMINATION

10.1 The PAMC prohibits discrimination in the employment of any individual under this Agreement because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of that person. The Foundation acknowledges that it has read and understands the provisions of PAMC Chapter 2.30 relating to nondiscrimination in employment and the penalties for violations thereof, and it agrees to comply with all requirements of PAMC Chapter 2.30 pertaining to nondiscrimination in employment, including the completion, execution and submission to the City of the Certification of Nondiscrimination, as described in Exhibit "B."

SECTION 11. NOTICES

11.1 Any notice, request, consent or approval by a Party that is required to be furnished by this Agreement, will be given, in writing, and delivered by personal service, the United States Postal Service, mailed, first class, postage prepaid, or by facsimile transmission, to the following:

To CITY:

City Clerk  
City of Palo Alto  
P.O. Box 10250

To FRIENDS:

Executive Director  
Friends of the Palo Alto Junior  
Museum and Zoo

Palo Alto, CA 94303

1451 Middlefield Road  
Palo Alto, CA 94303-4303

with a copy to:  
Manager, Junior Museum and Zoo  
City of Palo Alto  
P.O. Box 10250  
Palo Alto, CA 94303

## SECTION 12. MISCELLANEOUS

12.1 This Agreement will be governed by and construed in accordance with the laws of the State of California and the Charter of the City of Palo Alto and the Palo Alto Municipal Code. The Parties will comply with all applicable federal, state and local laws in the exercise of their rights and the performance of their obligations under this Agreement.

12.2 All covenants, terms, conditions, and provisions of this Agreement, whether covenants or conditions, will be deemed to be both covenants and conditions.

12.3 This Agreement represents the entire agreement between the Parties and supersedes all prior negotiations, representations and contracts, written or oral. This Agreement may be amended by an instrument, in writing, signed by the Parties. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

12.4 All exhibits referred to in this Agreement are by such references incorporated in this Agreement and made a part hereof. The following exhibits are (or will be) made a part of this Agreement:

Exhibit "A" - Insurance Requirements  
Exhibit "B" – Certification of Nondiscrimination.

12.5 At the request of the City, the Friends will furnish to the City Attorney for the City's review and approval copies of its articles of organization, operating agreement, and other information relating to its organization status.

12.6 The Parties agree that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the Exhibits, or any amendment thereto.

12.7 In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the state courts of California or in the United States District Court for the Northern District of California in the County of Santa Clara, State of California.

12.8 The prevailing Party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action.

12.9 If a court of competent jurisdiction finds or rules that any provision of this Agreement, the Exhibits, or any amendment thereto, is void or unenforceable, the unaffected provisions of this Agreement, the Exhibits, or any amendment thereto, will remain in full force and effect.

12.10 The term "day" means a calendar day, unless a "business day" is specified; for the purposes of this Agreement, "business day" excludes any "Regular Holiday" or "Other Special Day" referred to in PAMC Section 2.08.100 or any Friday that is considered a '9/80' day, when the City does not require employees, electing to work nine (9) business days in a ten-business days biweekly period, to work on such days.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

APPROVED AS TO FORM:

CITY OF PALO ALTO

\_\_\_\_\_  
Senior Asst. City Attorney

\_\_\_\_\_  
City Manager

APPROVED:

FRIENDS OF THE PALO ALTO JUNIOR MUSEUM  
AND ZOO

\_\_\_\_\_  
Director of Administrative Services

\_\_\_\_\_  
Member

\_\_\_\_\_  
Director of Community Services

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

**EXHIBIT "A"**  
**INSURANCE REQUIREMENTS**

**EXHIBIT "B"**  
**CERTIFICATION OF NONDISCRIMINATION**