AUDIT REPORT
Denver Zoo
Cooperative Agreement
January 2017

Office of the Auditor
Audit Services Division
City and County of Denver

Timothy M. O'Brien, CPA
Denver Auditor

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January 19, 2017

AUDITOR'S REPORT

We have completed an audit of the Denver Zoo (Zoo). The purpose of the audit was to assess the Denver Zoological Foundation's (Foundation's) role and activities associated with managing the Denver Zoo as well as the City's and the Foundation's compliance with the Cooperative Agreement (Agreement).

As described in the attached report, our audit revealed that the City and the Foundation have not adequately monitored and maintained their compliance with certain sections of the Agreement relating to financial arrangements. In addition, the audit found that the Foundation should improve its governance by updating internal policies and guidance for the Board of Trustees (Board).

Through official amendments to the Agreement and clearly defined monitoring roles, the City can more effectively oversee and ensure compliance with the Agreement. We also recommend stronger internal guidance that incorporates best practices, such as updates to the bylaws for the Foundation's Board and charters for the Board's committees. Such changes will enable the Foundation to better fulfill its role as an agent for the City in managing and operating the Zoo. Our report lists several related recommendations.

This performance audit is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, *General Powers and Duties of Auditor*, and was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We extend appreciation to Denver Zoo Board members, management and staff members, as well as leadership and personnel within the Department of Parks and Recreation, Department of Public Works, and the Budget and Management Office for their assistance and cooperation with us during the audit.

Denver Auditor's Office

Timothy M. O'Brien, CPA
Auditor

REPORT HIGHLIGHTS

Denver Zoo
January 2017

Scope

The audit assessed the effectiveness of the Denver Zoological Foundation (Foundation) as the City and County of Denver's (City's) agent to manage and operate the Denver Zoo as required by the Cooperative Agreement.

Background

The Denver Zoo was first established in 1896. Until 1956, the City owned, operated and managed the Denver Zoo through the Department of Parks and Recreation (DPR). However, the Foundation assumed the responsibility of managing and operating the Denver Zoo in 1956—per a Cooperative Agreement with the City—after it was organized and incorporated as a nonprofit organization on November 8, 1950. The Denver Zoo's Master Plan states that the Foundation's express purpose is "developing, improving and maintaining the Zoo's gardens and animal exhibits in cooperation with the City and County of Denver."

Purpose

We sought to assess the Foundation's role and activities associated with managing the Denver Zoo as well as the City's and the Foundation's compliance with the Cooperative Agreement.

Highlights

After facing strong opposition to our audit by some Denver Zoo (Zoo) representatives, we eventually obtained the Zoo's full cooperation and successfully completed our audit, which identified two primary areas of concern regarding both the City's responsibilities as established by the Cooperative Agreement (Agreement) and the Foundation's role as the City's agent for managing the Zoo. First, we found that the City and the Foundation have not adequately maintained compliance with certain sections of the Agreement. Second, we found that the Foundation could improve its governance to better fulfill its role as agent for the City in operating the Zoo.

Regarding the Agreement, we found that the Foundation is not reimbursing the City for costs associated with Career Service Authority (CSA) employees working at the Zoo. Furthermore, we found that the City is appropriating monies for the purposes of Zoo utility payments into a City controlled special revenue fund, but is utilizing the money for CSA employees' payroll and benefits expenses, a practice that is inconsistent with the Agreement. We also found that the Foundation did not regularly submit its budget documentation in the past to DPR's Executive Director as required by the Agreement.

Lastly, we found that while the Foundation's Board of Trustees (Board) is following some best practices, the Board could enhance its operating effectiveness by ensuring that all roles and activities of the Board are consistent with internal policies and best practices. Specifically, we found that the Board's bylaws have not been updated since 1998. We also found that the Board lacks a formal, consistent onboarding process to inform and prepare new members for their role and responsibilities and the Board's committees lack charters that clearly define their purpose and authority. In addition, the Board is not conducting a formal evaluation of CEO performance that incorporates input from the overall Board.

We also include an informational piece at the end of the report, entitled Other Pertinent Information, wherein we explain the use of recycled water at the Zoo and explore the regulatory landscape informing such use.

For a complete copy of this report, visit www.denvergov.org/auditor

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INTRODUCTION & BACKGROUND

Overview of the Partnership between the City and County of Denver and the Denver Zoo

More than 150 million people visit zoos and aquariums in the United States per year, and many people have a soft spot for the animals they see there. The Denver Zoo (Zoo) has established itself as a popular landmark as evidenced by its high visitor numbers, and its evolution from housing one lonely black bear in 1896 to caring for a wide variety of animals and carrying out extensive conservation efforts today.

The City and County of Denver (City) owns the land and property on which the Zoo is situated; meanwhile, the Denver Zoological Foundation (Foundation) owns the animal collection and acts as an agent of the City administering and managing those assets. Although the Zoo and the City have long-standing ties, the City had not audited the Zoo in 120 years. In November 2015, the Auditor's Office informed the Foundation of its intent to audit the Zoo. We were met with strong—and uncharacteristic—opposition, despite the fact that the Cooperative Agreement, which governs the relationship between the City and the Foundation, provides the Auditor's Office with broad latitude to audit the Zoo.

In April 2016, after months of unsuccessful negotiations, the Auditor's Office issued a letter to Mayor Michael Hancock and published a press release informing citizens that the Zoo had obstructed the Auditor's Office from conducting an audit as enabled through the Cooperative Agreement and the Denver Revised Municipal Code. Following the issuance of that document, the Zoo and the City resumed discussions, which culminated in the Zoo allowing the Auditor's Office full access to the Zoo's financial and operational information. As a result, the Auditor's Office was able to conduct a broad audit of the Zoo, which is a technique used when auditing an entity for the first time. The Zoo has since been very cooperative in this endeavor and has reported to be developing positive changes to its governance structure as a result.

History of the Denver Zoological Foundation

The Zoo began operating in 1896. Until 1956, the City owned, operated, and managed the Zoo with the help of the Department of Parks and Recreation.

The Foundation was organized and incorporated on November 8, 1950, and has obtained the status of a Colorado nonprofit 501(c)(3) organization. The Zoo's Master Plan states that the Foundation's express purpose is "developing, improving and maintaining the Zoo's gardens and animal exhibits in cooperation with the City and County of Denver."

According to the Zoo's 2015 Annual Plan, the Zoo houses 4,048 specimens representing 601 species, welcomed more than 2 million visitors, employed 465 people, and benefited from nearly 700 volunteers who donated their time to support the Zoo.

The Zoo is currently accredited through 2017 by the Association of Zoos and Aquariums (AZA), which is a nonprofit organization attempting to assure the highest standards of animal care

among its members.[1] In 2011, the AZA awarded the Zoo with the AZA's first sustainability award, in part due to the Zoo being the first zoo in the U.S. to obtain an ISO 14001 certification (in 2009). It is also considered to be the greenest zoo in the U.S. based on its environmental management of zoological operations.

Many zoological gardens in the U.S., like the Denver Zoo, are operated by nonprofit organizations and receive operating support from local governments. For example, the San Diego Zoo, the San Diego Zoo Safari Park, Chaffee Zoo in Fresno, the Woodland Park Zoo in Seattle, the Fort Worth Zoo, the Dallas Zoo, and the Columbus Zoo all reflect this structure. In fact, most U.S.-based zoological gardens accredited through the AZA have transitioned to such a public-private model, which allows for continued financial support from the public sector.

Cooperative Agreement

The public-private relationship that the Foundation and the City have entered into is captured in the Cooperative Agreement (Agreement). There, the Foundation and the City state that all involved parties agree on the following basis of the agreement:

> Denver Zoological Gardens is established and maintained by the Denver Zoological Foundation, Inc., for the people of the City and County of Denver and for the general public in cooperation with the Denver Parks and Recreation Department.

The Foundation has served as the City's agent under the terms and conditions of the Agreement entered into on July 27, 1956, amended on March 29, 1974, and revised most recently on November 4, 1998. The purpose of the Agreement is to plan, establish, manage, and develop the Zoo and its exhibits in cooperation with the City. The Agreement allows the Foundation to maintain, administer, manage, operate, and control a portion of City Park, which it presently occupies. This 93 acre parcel is approximately located at East 23rd Avenue and Steele Street. To provide management of the City's property and buildings, the Foundation functions as an agent for the City as established in the Agreement. An agent in a principal-agent relationship is generally one who acts for, or in place of, another, or is entrusted with the business of another.

At the time the Agreement was issued, most members of the Zoo's management and about 100 staff members were Career Service Authority (CSA) employees.[2] Over time, however, the Foundation decided to hire staff members directly. As a result, the number of CSA employees at the Zoo has decreased annually through attrition. In 2016, the Zoo employed 26 CSA staff members.

[1] "The Association of Zoos and Aquariums (AZA) is a 501(c) (3) nonprofit organization dedicated to the advancement of zoos and aquariums in the areas of conservation, education, science, and recreation. AZA represents more than 230 institutions in the United States and overseas, which collectively draw more than 183 million visitors every year. These institutions meet the highest standards in animal care and provide a fun, safe, and educational family experience. In addition, they dedicate millions of dollars to support scientific research, conservation, and education programs." "About AZA Accreditation," Association of Zoos & Aquariums, accessed December 7, 2016, https://www.aza.org/what-is-accreditation.

[2] According to CSA rules, CSA employees are all employees working for the City and County of Denver except for those employees whose positions are subject to the exceptions in the City Charter.

City Agencies Involved in Managing the Cooperative Agreement

Department of Parks and Recreation (DPR)—Manages and controls all property related to the Zoo according to the Agreement. Specifically, the Executive Director of DPR is "authorized to conduct negotiations for cooperative agreements with private agencies for the development of park and recreational facilities, programs and activities and for the establishment and maintenance of museums, zoological or other gardens...."[3]

In addition, DPR is responsible for reviewing and approving any changes to the Zoo's boundaries. Prior to the 1998 Agreement, the boundaries of the Zoo changed frequently, but recently only two extensions to the Zoo's boundaries occurred.

According to the Agreement, the Executive Director of DPR serves as an ex-officio voting member of the Board of Trustees (Board) and shall be able to serve on each standing and special committee, including the Executive Committee. Moreover, the Agreement specifies that the Foundation shall inform the Executive Director, in writing, of any proposed action by the Board to change the articles of incorporation, bylaws, or other material policy documents governing the Foundation.[4]

Further, Section 8 of the Agreement requires Zoo officials to submit any master plan for operations, programs, or activities located at the Zoo, including permanent improvements or programmatic strategies and associated changes to the Master Plan, to the Executive Director of DPR for review and approval. In addition, the plans for any improvement projects not requiring structural engineering or architectural design work, or improvement projects including nonstructural items as proposed under Section 9(a) that cost more than $50,000 for the completed project, require the review and comment of the Executive Director of DPR at least ten days prior to the commencement of work unless an emergency has occurred.

DPR and the Department of Public Works (PW)—Section 9(b) of the Agreement states that the Foundation, as an agent for the City, may be responsible for projects related to the design, planning, construction, renovation or demolition of buildings that are considered structural projects. For these projects, both Executive Directors must document their approval or disapproval in writing within 30 days. In addition, both Executive Directors can demand cessation of work until evidence is provided that the work conforms to all legal requirements.

Public Works—Conducts small maintenance projects for the Zoo. The Zoo usually does not work with PW on construction projects, but it has used the City's on-call contractors in the past. In addition, the Zoo employs its own construction staff and hires out work to large construction companies with zoo-related experience.

[3] Article IV, Section A4.4-6, Charter of the City and County of Denver.
[4] The Cooperative Agreement uses the outdated term "Manager" when referring to what is now considered to be the "Executive Director" of Parks and Recreation or Public Works.

Budget and Management Office (BMO)—Is indirectly involved in the Agreement by issuing general fund payments into a Special Revenue Fund for utility payments and approving Capital Improvement Program (CIP) funding every year.[5]

City Attorney's Office—Is involved in negotiations related to the Agreement. The City Attorney's Office provides a resource for City agencies when determining how current activities and projects at the Zoo relate to the Agreement. The Office also drafts Funding Agreements when bonds have been issued that involve funding for the Zoo.

Funding from the City and the Scientific and Cultural Facilities District

The Mayor's Proposed 2017 Budget states that the Zoo receives some operational support from the City's General Fund for an adequate supply of water and all other utilities needed to maintain the facility. All appropriations are at the discretion of the City and are not guaranteed; however, the City has been paying a steady amount of money for almost two decades. The Zoo also receives annual funding from the City's CIP, along with other funding sources, such as the Scientific and Cultural Facilities District and bond monies. Table 1 breaks down the Zoo's local and regional funding sources from 2014 to the present.

TABLE 1. Denver Zoo Local and Regional Funding

Funding Source	2014 Actual	2015 Actual	2016 Actual	2017 Estimated
General Fund Transfer	$2,077,700	$2,113,000	$2,139,200	$2,173,120
Capital Improvement Budget*	$300,000	$540,000	$300,000	$300,000
SCFD	$7,095,036**	$8,172,148	$ 8,516,739	$8,568,500

Source: Auditor's Office, using Mayor's budget book Information from 2015, 2016, and 2017.

Note: *The Capital Improvement Project budget funds are recommended amounts according to the Mayor's budgets.
**2014 SCFD funding reflects a proposed budget amount.

Special Revenue Funds—The Zoological Gardens Special Revenue Fund (SRF) provides operational support for an adequate supply of water and utilities to maintain the Zoo's facilities. The transfer also funds a small workers' compensation budget maintained for CSA employees working at the Zoo.

[5] As part of the City's Capital Improvement Program (CIP), BMO manages the City's annual budget process for Citywide capital maintenance and development needs, develops the Six-Year Capital Improvement Plan, and provides analysis for decision making and strategic capital planning efforts with City departments.

Parks and Recreation Capital Improvement Funds—Generally, CIP funds are allocated to the Zoo at the discretion of the City and are not guaranteed. CIP funds for the Zoo are appropriated under DPR.

According to the Mayor's 2015 Budget, CIP funds have been used for maintenance and rehabilitation projects at the Zoo, including roof repairs, perimeter fence replacement, HVAC replacement, and other capital improvement projects. From 2000 to 2011, the Zoo has received approximately $350,000 per year in CIP funding. The Zoo participates in the City's annual budget process but did not request or receive discretionary funds in 2016.[6] In 2015, the Zoo received $240,000 for a discretionary project in addition to the $300,000 in CIP funding.

Scientific and Cultural Facilities District (SCFD)—Since 1989, SCFD has distributed 1/10th of 1 percent in sales and use taxes collected in the greater Denver metropolitan, 7-county area to cultural facilities. The intent is to use these funds for facilities with the primary purpose of educating and entertaining the public in a variety of different cultural areas ranging from art to zoology.

The Zoo is considered a Tier 1 member of SCFD by statute, together with four other major regional institutions: The Denver Art Museum, Denver Botanic Gardens, Denver Museum of Nature and Science, and Denver Center for the Performing Arts.[7] The Zoo has received approximately $8.5 million in SCFD funding in 2016.

Better Denver Bond Program—The City has issued several bond payments to the Zoo in recent decades. For example, the Zoo received $2.2 million in bond proceeds from the Better Denver Bond program to build the Tiger Exhibit. The Zoo provided $300,000 in matching funds, as required by the associated agreement. The Zoo is expected to finish exhibit construction in 2017.

Applicable Laws and Regulations

Prevailing Wage—The City's prevailing wage law requires that an employee be paid the prevailing wage, as established by the Career Service Board, when work is conducted with either City funds or on City property. Specifically, any contract worth more than $2,000 must include specifications that certain trades are paid the prevailing wage. The Chief Financial Officer should not approve a contractor or subcontractor payment until the contractor provides evidence to the Auditor that the required prevailing wages have been paid.

Laws Governing Animal Care in Captivity—The federal Animal Welfare Act (AWA), which was passed in 1966 and updated most recently in 2013, was enacted to provide standards for the treatment of animals, such as ensuring the humane care and treatment of animals in research facilities or exhibitions. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is tasked with protecting and promoting national agricultural health and, specifically applicable to this audit, administers the AWA.

[6] Under the CIP fund guidelines, the City can use CIP monies to pay for contractual payments, annual capital maintenance programs, and discretionary projects.

[7] Tier 1 organizations in the 7-county Denver metropolitan area receive about 65 percent of the SCFD funds compared to members from Tier 2 and Tier 3 organizations. C.R.S. § 32-13-107 (3)(a)(I)(C), "Twenty-four and twenty-four and one hundredths percent shall be distributed to the Denver zoological gardens."

Laws Governing Nonprofit Finances—It appears as if the terms *not-for-profit* and *nonprofit* are used interchangeably. However, different nonprofit organizations, laws, and accounting standards offer nuances as to how these terms can be used. We decided to distinguish between the two terms by using *not-for-profit* when describing an activity and *nonprofit* when referring to an organization.

Nonprofit organizations in Colorado are created under the Colorado Revised Nonprofit Corporation Act and, for the most part, state law governs nonprofits.[8] Additional guidance on the nonprofit's activities is provided through articles of incorporation, bylaws, and board policies. Members of a board such as the Zoo's Board or its Executive Committee need to understand their legal fiduciary duties affecting their activities, such as the duty of care, the duty of loyalty, and the duty of obedience.[9] Colorado law requires directors and officers to perform their duties to the nonprofit organization:

- In good faith,
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances, and
- In a manner they reasonably believe to be in the nonprofit's best interest.[10]

The intent behind fiduciary duty is to ensure a high degree of care and complete loyalty among board members to the nonprofit to protect charitable assets that are held for the benefit of the public, rather than individuals.

Board members are also required to fulfill the duty of care including both decision-making and oversight responsibilities. According to the Colorado Nonprofit Organization, the duty of care is met by such activities as "attending board meetings regularly, entering discussions, reading minutes, understanding the organization's programs, maintaining a careful oversight of finances, and questioning unclear or troubling activity."[11] Moreover, directors and officers are supposed to carry out the purposes, mission, and strategy of the nonprofit organizations. In the Zoo's case, the mission statement is to "secure a better world for animals through human understanding."

The Foundation was formed at the state level as previously discussed and has tax-exempt status related to federal income tax with the Internal Revenue Service (IRS). To be recognized for tax-exempt status, the organization must meet the necessary conditions—such as purpose, limitations on spending, and internal safeguards—to qualify as a charity. It also provides information about board members and key employees. If an organization fails to be in conformance with applicable standards, it may lose its tax-exempt status.

[8] C.R.S. §§ 7-121-101 to 7-121-137.
[9] The duty of loyalty requires members to place the interests of the organization before their own interests or those of related parties and to avoid the use of organizational opportunities for personal gain. By complying with federal, state, and local law and following the organization's governing documents and mission, members meet their duty of obedience.
[10] C.R.S. § 7-128-401 (1).
[11] "Principles & Practices for Nonprofit Excellence in Colorado, 2015," Colorado Nonprofit Association, accessed October 18, 2016, https://www.coloradononprofits.org/sites/default/files/attachments/PrinciplesPractices_3rdEdition_1.pdf.

A tax-exempt organization must file an annual information return or notice, such as IRS Form 990.[12] These forms are required to be visible for public scrutiny. They allow the public to learn about an organization's programs and allow states to use the information provided therein to satisfy state income tax filing requirements.

The Colorado Zoological Trust (CZT) was created to manage the zoo's endowment funds and has its own board of trustees. Its purpose is to invest, manage, and distribute the endowment funds raised in support of the Zoo. CZT allows donors to establish either an operating fund that can be used to support operating functions of the Zoo or an endowment.

The following principles are central to understanding the operations of a nonprofit organization, such as the Zoo:

- **Contribution**—The FASB ASC Glossary defines contribution as "an unconditional transfer of cash or other assets to an entity or settlement or cancellation of its liabilities in a voluntary nonreciprocal transfer by another entity acting other than an owner....In a contribution transaction, the value if any, returned to the resource provider is incidental to potential public benefits."[13]
- **General Endowment Fund**—This fund receives donor contributed funds that are not restricted as to purpose, but are to be held in perpetuity with only earnings to be used at the CZT board's discretion. Basically, the general endowment fund is where donor funds go where the corpus is to remain intact and only earnings are spent and where no donor restrictions are imposed on the contributions. The most common type of funds to be added to the general endowment fund are received as a result of a bequest. Assets within the general endowment fund are categorized as *principal* and *income*. Income is defined by the CZT board to include changes in market value, realized gains/losses, stock dividends, stock splits, dividends, and interest—all of which may be used by the CZT board for Zoo operations.
- **Board Designated Endowment**—Means that, for example, 5 percent of a fund's value may be spent annually. As a result, 5 percent of the value of the fund is moved annually from temporarily restricted assets to unrestricted net assets when the funds are moved from CZT's books to the Foundation's books. The 5 percent is a ceiling and the distributed percentage can be less depending on market returns. Since these are Board designated funds, they are reported as unrestricted—only external parties can cause funds to be accounted for as temporarily or permanently restricted.
- **Named Endowment**—A restricted endowment fund originates with a donor and is formally opened through the execution of an appropriate gift agreement for specific endowment funds. The gift agreement associated with an endowment bequest reflects the donor's wishes concerning the use of the gift and provides assurance that the fund will be used in accordance with those wishes.

  The restricted endowment is protected by the Uniform Prudent Management of Institutional Funds Act (UPMIFA). This act defines what the law means by prudent investing and spending, implementing a total return spending policy as the preferred

[12] "Form 990 Resources and Tools," Internal Revenue Service, accessed December 12, 2016, https://www.irs.gov/charities-non-profits/form-990-resources-and-tools.
[13] FASB Glossary, accessed December 12, 2016, https://asc.fasb.org/glossarysection&trid=2209788.

means of making funds available for whatever purpose was defined by the donor of the fund. By this means, the corpus is protected over time.

- **Split-Interest Agreements**—A donor makes an initial transfer of assets to a trust, a fiscal agent, or directly to the nonprofit organization, in which the nonprofit has a beneficial interest but is not the only beneficiary. The terms of the agreement may allow the donor to revoke the gift in certain instances, or it may be irrevocable. The most common type of split-interest agreement states that the donor will receive a fixed payment every year for a certain number of years or for the remainder of the donor's life. There are six widely used types of split-interest agreements. Of those, a charitable remainder trust, a charitable gift annuity, and a pooled (life) income fund are examples of split-interest agreements, in which the Zoo currently holds a beneficial interest. The remaining three types of split-interest agreements are a charitable lead trust, a perpetual trust held by a third party, and a gift of real-estate with a retained life interest.

SCOPE

The audit assessed the effectiveness of the Denver Zoological Foundation (Foundation) as the City's agent to manage and operate the Denver Zoo as required by the Cooperative Agreement (Agreement). The audit also reviewed federal and state requirements regarding the Denver Zoo's use of recycled water.

OBJECTIVE

The objective of the audit was to assess the degree to which the Foundation fulfills its obligation as the City's agent to manage and operate the Denver Zoo by analyzing the governance of the Foundation's Board of Trustees; reviewing the Foundation's and the City's compliance with certain provisions of the Agreement; and assessing the Zoo's use of City funds and the Zoo's internal controls regarding external funding sources. The audit also included a review of the Zoo's use of recycled water and applicable federal, state, and local regulations regarding the use of recycled water.

METHODOLOGY

We utilized several methodologies to gather and analyze information related to the audit objective. The methodologies included, but were not limited to:

- Interviewing leadership and management of the Denver Zoo, including the Chief Executive Officer, Chief Financial Officer, Senior Director of Finance and Accounting, Senior Vice President for Human Resources and Staff Development, Senior Vice President for Design and Campus Management, and the Director of Development
- Interviewing key members of the Denver Zoo staff, including the Grants Management Team, the Development Team, and the Financial and Accounting Team
- Interviewing executive management and key staff members within the City's departments of Parks and Recreation, Public Works, Finance, and Budget and Management Office regarding their responsibilities for various aspects of the City's Agreement with the Denver Zoo
- Interviewing Assistant City Attorneys who drafted the Agreement or serve as a point of contact for the Agreement
- Interviewing Auditor's Office Prevailing Wage Investigators regarding projects at the Denver Zoo that are subject to the prevailing wage ordinance
- Interviewing nine current and former members of the Foundation's Board of Trustees
- Interviewing staff members from Denver Water and the Colorado Department of Public Health and Environment regarding local and state requirements for the use of recycled water

- Interviewing U.S. Department of Agriculture Animal and Plant Health Inspection Service's Inspector for the Denver Zoo
- Analyzing a sample of invoices and expenditures related to Denver Zoo utility payments
- Evaluating the City's process for reviewing the Denver Zoo budget
- Comparing City and Denver Zoo records to ensure compliance with record keeping requirements as outlined in the Agreement
- Reviewing City and Denver Zoo lists of projects subject to prevailing wage requirements
- Evaluating the Foundation's compliance with certain accounting practices standardized by the Financial Accounting Standards Board
- Performing sampling and testing of transactions related to grants, endowment fund distributions, contributions, and split-interest agreements
- Evaluating the design and implementation of internal controls for the Foundation's contributions, endowment funds, and split-interest agreements
- Performing a review of the waste-to-energy project accounting treatment
- Reconciling financial data across multiple years between the City and the Denver Zoo to ensure proper expenditures of restricted funds
- Evaluating criteria from the Association of Fundraising Professionals related to the Foundation's grants
- Comparing Agreement provisions and requirements against other similar agreements that govern the management of other zoos managed by third parties including the Woodland Park Zoo, Houston Zoo, Columbus Zoo, Ft. Worth Zoo, Dallas Zoo, San Antonio Zoo, and San Diego Zoo
- Reviewing bylaws and other governing documents for the Foundation's Board of Trustees
- Analyzing Board of Trustees meeting minutes between 2014 and 2016 to identify roles and responsibilities of the Board and to identify attendance patterns
- Conducting best practices research regarding the role, responsibilities, and governance provided by nonprofit Boards
- Reviewing the Foundation's process for hiring the Denver Zoo Chief Executive Officer (CEO) and conducting regular evaluations of the CEO
- Reviewing and analyzing local, state, and federal regulations and requirements regarding the use of recycled water

FINDING

The Denver Zoological Foundation Could Improve Its Role as Agent for the City to Manage and Operate the Denver Zoo

After announcing our audit of the Zoo in November 2015, we faced strong, and unusual, opposition from some Denver Zoo (Zoo) representatives, and a lack of cooperation with our audit. However, after months of negotiations, we obtained the Zoo's cooperation and re-initiated the audit in April 2016. Through our audit, we found that although the Denver Zoological Foundation (Foundation) follows accounting rules and some best practices regarding Board of Trustees (Board) activities, the City and County of Denver (City) and the Foundation have not adequately complied with sections of the Cooperative Agreement (Agreement).

Specifically, we determined that both the City and the Foundation are not in compliance with four provisions of the Agreement, and that both parties could enhance monitoring practices to better comply with the Agreement. However, we noted that the Foundation's accounting practices are in line with Generally Accepted Accounting Principles (GAAP) in regard to the test work we performed involving Zoo grants, endowments, split-interest agreements, and an impairment of a large Zoo asset. Lastly, the Foundation's Board can improve its governance practices to ensure that it complies with internal policies and best practices.

The City and the Denver Zoological Foundation Have Not Adequately Complied with Aspects of the Cooperative Agreement

Under the Agreement, the Foundation acts as the City's agent for the purposes of planning, establishing, re-establishing, managing, operating, and developing the City's zoological gardens and exhibits. The Department of Parks and Recreation's (DPR's) Executive Director is responsible for various aspects of the Agreement, including conducting negotiations with private agencies for the development of park and recreational facilities, programs, and activities and for the reestablishment and maintenance of the various zoological or other cultural entities. Additionally, the Budget and Management Office (BMO) is indirectly involved as it issues general fund payments for the Zoo's utility costs and approves annual Capital Improvement Program (CIP) funding, which the Zoo typically receives.

The audit team found that both the City and the Foundation are out of compliance with certain terms of the Agreement. For example, the City and the Foundation have exhibited inconsistent monitoring and compliance practices related to multiple sections of the Agreement. Monitoring and compliance activities include ensuring that the requirements of the Agreement are met and that any changes to the Agreement are approved by the required parties as outlined in the Agreement and the City's Executive Order 8.

Four Areas of Non-Compliance Were Identified within the Cooperative Agreement

Auditors analyzed the City's and the Foundation's compliance with select provisions from the Agreement, specifically those sections that involve an exchange of funds between both parties or an oversight role for DPR. As a result, we found several areas that require enhanced monitoring and compliance practices. The examples of non-compliance with the Agreement were apparent in four areas. First, we found that the Foundation is not reimbursing the City for costs associated with Career Service Authority (CSA) employees working at the Zoo. Second, we noted that the City is not providing funding for the utility costs of the Zoo. Third, we learned that the Foundation has not regularly submitted its annual budget to the City prior to its approval by the Foundation, as required by the Agreement. Lastly, we found that both the City and the Foundation are unclear about the requirements listed in the Agreement related to increasing Zoo membership fees.

The City Is Not Reimbursed by the Foundation for CSA Employees Working at Denver Zoo—The City pays the wages and overtime costs of, and benefits for, CSA employees who work at the Zoo. However, the Agreement specifies that the Foundation will reimburse the City for these personnel costs.[14] This reimbursement involved 46 full-time employees in 2011, but has declined to 26 full-time employees as of 2016. More specifically, the City's expenses related to CSA employees working at the Zoo totaled $2.6 million in 2014, $2.1 million in 2015, and $1.9 million in 2016. However, based on discussions with City and Zoo officials regarding this reimbursement mechanism, we found that the City is paying for the costs of CSA employees working at the Zoo, and the Foundation reimburses the City only when funding in the City's Zoological Gardens Special Revenue Fund (SRF) account is not sufficient to pay for expenses at the Zoo due to inaccurate budget estimates. We found no evidence that the Agreement was formally amended to allow for this adjusted practice. According to Executive Order 8 and Section 26 of the Agreement, deviations from the Agreement must be approved and documented.[15] Specifically, Executive Order 8 states that "any modification of contract language, or that of the Agreement, must be approved by the City Attorney's Office."

> *Executive Order 8 states that "any modification of contract language, or that of the Agreement, must be approved by the City Attorney's Office."*

The City Is Not Providing Funding for Utility Costs of the Denver Zoo—In addition to the Agreement specifying that the Foundation will reimburse the City for wages, overtime, and benefits costs of CSA employees working at the Zoo, the Agreement further specifies that the City shall provide funding for all utilities needed to operate the Zoo, including gas, electricity, sewer, and water. According to Zoo documentation, its utility costs ranged from about $2.1 million in 2014 and 2015, to $2 million in 2016.[16]

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[14] The Agreement requires the Zoo to use admission fees to first cover the wages and benefit expenses for CSA employees, followed by other purposes recognized under the Agreement.

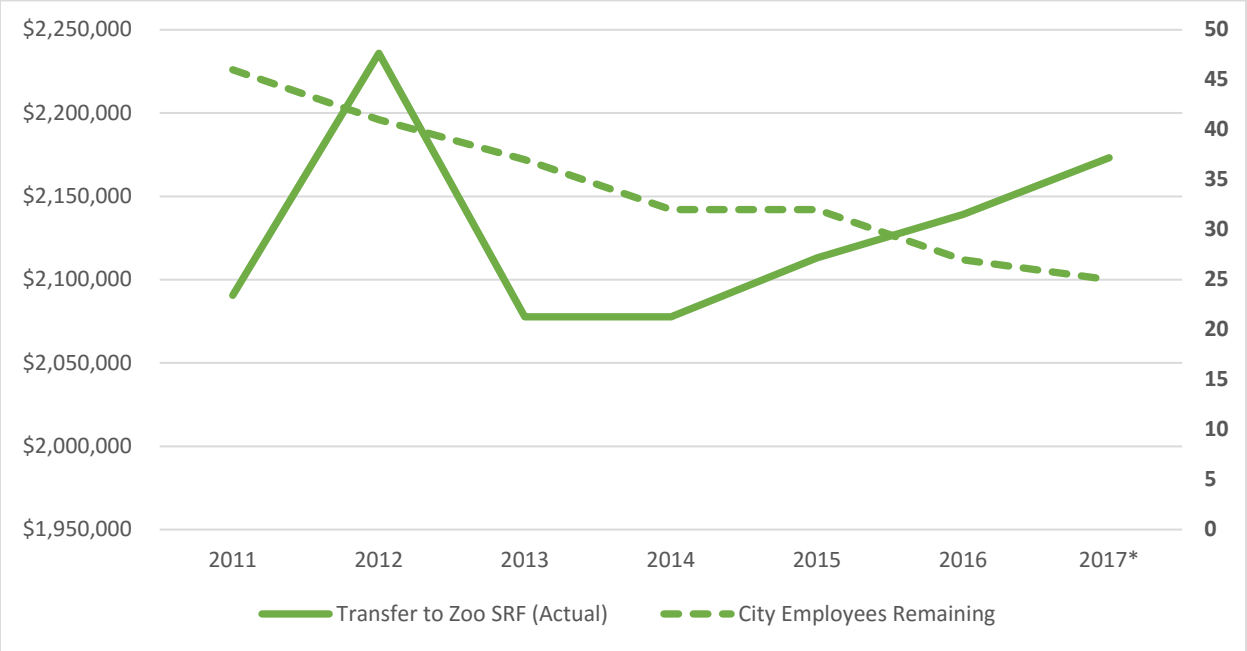
[15] Executive Order 8 outlines the City's policy and requirements regarding acquiring and monitoring contracts.

[16] The utility costs for 2014 to 2016 were $2,061,299, $2,126,279, and $1,991,538 respectively. The 2016 number does not include all expenses for December of 2016. The Zoo's 2016 utility cost information could not be validated for accuracy by auditors due to timing.

The utilities payment process, in conjunction with the employee reimbursement process, has historically been viewed as a swap of funds, as follows: The City paid the costs of the CSA employees working at the Zoo as well as the costs of utilities to run the Zoo facilities and, in exchange, the City was reimbursed by the Foundation for the CSA employee expenses. (See the Appendix for an illustration of this process.) However, we found that, in addition to the Zoo not reimbursing the City for the CSA employee costs, the City no longer pays the utility costs of operating the Zoo; instead, the Zoo is paying all utility costs. According to City and Zoo officials, this change in practice was an informal decision by City and Foundation officials. However, similar to the CSA employee expenses, we found no evidence of a documented amendment to the Agreement or documented reasoning for why this change to the utility payment process occurred.

Although the changes to the Agreement related to CSA employee and utility costs were informal and represent areas of non-compliance, auditors recognize that these changes simplified the administrative responsibilities of both the City and the Foundation. However, this simplification has created a problem for the City. Specifically, the City's responsibility to pay CSA employees working at the Zoo should be a shrinking liability. However, the current budget process is based on a growing variable, annual utility estimates, instead of the number of CSA employees still working at the Zoo. As a result, there is a growing balance of City monies generated by the anticipated cost of utility payments, in the Zoological Gardens SRF. SRFs are used to account for the proceeds of revenue sources that are restricted or committed by law or administrative action to expenditures for specific purposes. Put simply, the City is paying for CSA employees based on an estimate of utility costs rather than the actual employee-related expenses. Figure 1 illustrates this inverse relationship between the SRF and the number of CSA employees working at the Zoo over time.

FIGURE 1. Utility Funding Provided to the Zoo and CSA Employees Working at the Zoo, 2011 – 2017



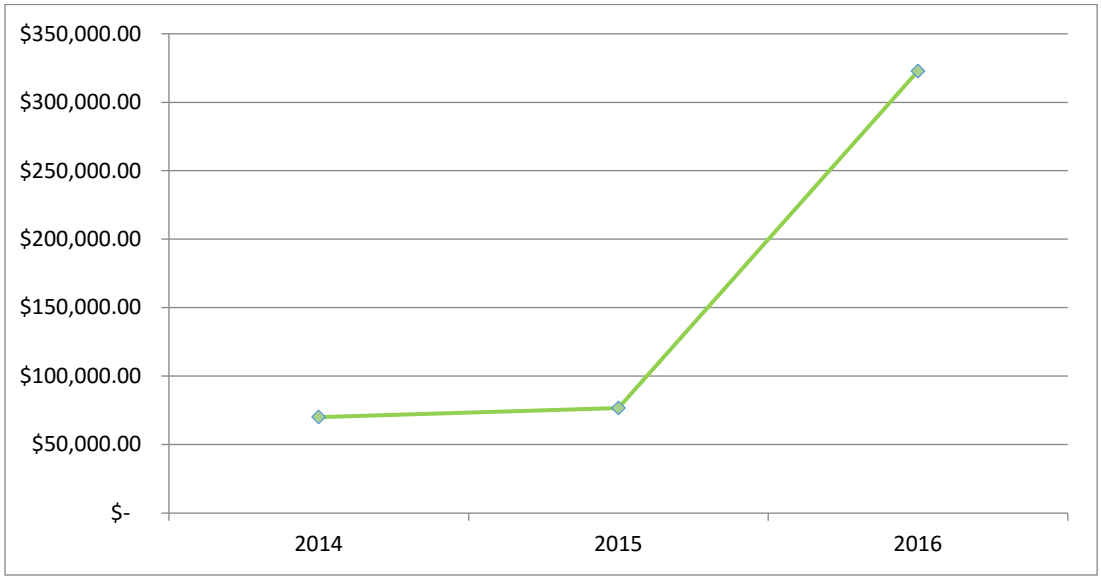
Source: Mayor's 2016 Budget.

Note: More recent data from the Zoo suggest that as of January 1, 2016, the number of CSA employees working at the Zoo in 2016 was 26, not 27 as shown in the Mayor's 2016 Budget. 2017 data are estimations.

Complicating matters further, the Zoological Gardens SRF in question is used by the City for internal accounting purposes only. After the Governmental Accounting Standards Board's (GASB's) Statement 54 was updated in 2010, the City decided to reclassify the Zoological Gardens SRF and report it under the General Fund for financial reporting purposes to guarantee compliance with the financial reporting requirements of GASB Statement 54, which asks for any SRF to have a primary source of revenue that is restricted for specific purposes.[17] As a result, the City determined that this SRF no longer meets the definition of GASB Statement 54.

According to an ordinance from 1955, the Zoological Gardens SRF was designated to provide a purpose for expenditures to support improvement, operation, maintenance and development of the Zoo. The Agreement specifically outlines that the operational support from the City should include an adequate supply of water and utilities needed to maintain the Zoo, and workers' compensation insurance for CSA employees working at the Zoo. Unused funds from the preceding years roll-over into the following year. Figure 2 shows the monies available in the SRF for 2014 through 2016.

FIGURE 2. SRF Year-End Balances for 2014, 2015, and 2016



Source: Auditor analysis of Controller's Office data.

However, we found that the monies within the Zoological Gardens SRF are being expended solely for the costs of CSA employees working at the Zoo. While this may be appropriate within the broad guidelines of the ordinance, it is not in keeping with the requirements of the Agreement. As a result, the monies in this SRF are not used for their designated purpose according to the Agreement. Further, any changes to the Agreement should be documented by the responsible parties, as required by the Agreement. Therefore, the City should analyze whether the Zoological Gardens SRF should be treated as an SRF in the future, and make any necessary changes to this funding mechanism, considering the fact that it is reclassified into the General Fund for financial reporting purposes and the age of the 1955 ordinance that established the SRF.

[17] GASB establishes accounting and financial reporting standards for U.S., state, and local governments that follow GAAP.

The Foundation Is Not Regularly Submitting Its Annual Budget to the City—The third area of non-compliance we identified relates to communication between the City and the Foundation. In addition to the financial responsibilities outlined in the Agreement, Section 21 requires the Foundation to submit an annual budgetary proposal to the DPR Executive Director for review prior to being adopted by the Foundation's Board. We reviewed the annual budget documentation submitted by the Zoo to the City for the last three years and noted that only once (in 2014) did the City receive the Zoo's budget prior to its adoption by the Foundation. For 2015 and 2016, the City received the Zoo's budget information after its approval by the Foundation in 2016.

The City and the Denver Zoo Have Misinterpreted Agreement Language—Lastly, we found that the City and the Foundation have misinterpreted language within a section of the Agreement addressing Zoo membership and night fees associated with after-hours events. Specifically, both the City and the Zoo have been operating under the assumption that neither City Council's nor the DPR Executive Director's approval are needed for changes related to membership and night fees. Nevertheless, the Agreement specifically requires that DPR's Executive Director should review and approve any such fee changes.

A Lack of Clarity Regarding Roles and Responsibilities Has Hindered the City's Oversight of the Agreement

The four areas of non-compliance we identified regarding the Agreement are indicative of the need to document and formalize the roles and responsibilities of both the City and the Foundation to ensure adequate monitoring of the Agreement going forward. Informal changes to the Agreement, and a clear violation of the Agreement's requirements, raise questions related to the City's monitoring and compliance efforts. Furthermore, ensuring a healthy relationship between the City and the Foundation involves holding each party accountable and ensuring that each party receives their share of the benefits outlined in the Agreement. The lack of compliance with the Agreement potentially causes an undue burden on the City as it relates to the appropriations made to the Zoological Gardens SRF each year. Specifically, the City may not be able to utilize funds that are restricted to this SRF and dedicated accordingly to the Zoo's employee payroll. Furthermore, if the Foundation does not formally submit its budget to DPR's Executive Director during its annual budget process before finalizing the budget, the City loses the opportunity to comment on and recommend any changes to the Foundation's proposed budget, creating a lack of transparency between both parties.

Therefore, we recommend that the Foundation, in conjunction with DPR's Executive Director, work with key City agencies, such as the City Attorney's Office and BMO, to develop a plan of action with designated milestones to enable an official review and update of contractual language within the Agreement to reflect the current practices among all involved parties. In addition, we recommend that the City and the Foundation formally outline all roles and responsibilities related to the Agreement.

The Agreement Lacks Provisions Regarding Animal Health and Safety

In addition to the areas of non-compliance we identified in the Agreement, we noticed a lack of specific provisions pertaining to animal health and welfare. Although the Zoo has been an accredited member of the Association of Zoos and Aquariums (AZA) since 1976, we found no

evidence of a requirement within the Agreement for the Zoo to retain AZA accreditation or to maintain its license from the U.S. Department of Agriculture (USDA). We determined that the cause of these omissions was an oversight on the part of the City during the drafting of the Agreement.

AZA accreditation provides a layer of public trust by ensuring that an accredited organization meets the standards of best practice established by the AZA Accreditation Commission. Furthermore, AZA accreditation requires intense multi-day site inspections, and in-person hearings involving the organization and the Accreditation Commission. In addition, as an exhibitor of captive animals, the Zoo must maintain its USDA license that demonstrates its adherence to requirements in the federal Animal Welfare Act (AWA).

Only one other benchmark zoo agreement did not contain a provision on maintaining the health and safety of animals.

After analyzing nine other similar agreements from benchmark zoos, we found that only one did not contain a provision on maintaining the health and safety of animals through specific requirements that the zoo maintain its AZA accreditation and USDA license. The other eight zoo agreements either had specific language about the importance of maintaining the health and safety of animals broadly, or they contained language requiring the maintenance of AZA accreditation and a USDA license. For example, the Fort Worth Zoo agreement states that "the City desires to provide for the continued proper health and care of the animals at the Zoo and maintain the Zoo's accreditation with a national zoological association." In addition, the agreement between the City of Fort Worth and the Fort Worth Zoological Association states that "the Zoo association agrees to exercise best efforts to meet and fulfill all of the standards, rules and regulations of the United States Fish and Wildlife Service and the Department of Agriculture pertaining to animal health and safety and to maintain the Zoo's accreditation with recognized zoological associations."

The lack of a contract provision requiring the Zoo to maintain AZA accreditation and its USDA license is risky. With changes in best practices regarding how animals are held and cared for in captivity, it is critical that the Zoo maintain current standards regarding animal health and safety should there be any questions concerning the Zoo's practices. Therefore, to ensure that the Zoo meets or exceeds professional standards, we recommend that the Foundation, in conjunction with the DPR Executive Director, work with key City officials, such as the City Attorney's Office, to officially review and update the language within the Agreement to include requirements that the Zoo uphold its USDA license and accreditation with a leading national zoological association, such as the AZA.

The Denver Zoological Foundation's Board of Trustees Could Strengthen Its Governance Practices

Audit work found that the Foundation's Board follows some best practices, but its role and activities are not consistent with certain internal policies and additional, relevant best practices. We found evidence that the Board collects meeting minutes, requires conflict of interest statements, receives regular financial updates, and demonstrates Board members' collective fiduciary duty. However, we detected areas in need of improvement in regard to the Board's

governance, particularly related to the Board's bylaws and its compliance with the Agreement and best practices.

The Foundation's Board, as an agent of the City, must provide proper oversight of Zoo operations. Not only are Board members tasked with being agents of the land and property the City owns, but they also have specific responsibilities to the Foundation. Board members help to define and support the Foundation's mission, vision, and values, develop strategies to accomplish the Foundation's goals, and to protect the Foundation's charitable assets for the benefit of the public.

Board's Fiduciary Responsibility: The Foundation's Accounting Practices Appear to Be Compliant with Generally Accepted Accounting Principles

Aside from local and regional taxpayer monies, the Foundation receives contributions from private donors and corporations such as grants, endowments, and contributions from split-interest agreements. The Financial Accounting Standards Board (FASB) regulates the accounting and reporting practices for all non-governmental, nonprofit organizations; as such, FASB standards apply to the Foundation. FASB's Accounting Standards Codification (ASC) organizes nongovernmental GAAP using a topic-based model. ASC topic 958 *Not-for-Profit Entities* is FASB's industry specific authoritative guidance for the majority of not-for-profit GAAP. Using the guidance set forth in ASC topic 958, we evaluated whether the Foundation is following GAAP in relation to contributions, grants, endowments, and split-interest agreements. In addition, using the guidance set forth in ASC topic 360 *Property, Plant, and Equipment*, the audit team evaluated whether the Foundation followed GAAP in relation to the impairment write-off of approximately $1.7 million for its waste-to-energy plant.

The Foundation receives contributions in multiple forms, including cash, securities, property, or even services. However, audit work focused solely on assessing the Foundation's internal controls related to cash contributions based on the heightened inherent risk when dealing with cash contributions. ASC 958-605 addresses how nonprofits measure and record contributions, including grant funds.

Contributions—We assessed the accounting treatment of cash contributions, and grant awards received from government agencies, corporations, and foundations. According to Foundation staff members, the Foundation follows the Colorado Common Grant Procedures, which include structure and standardization in the form of a Common Grant Application and a Common Grant Report. We tested, on a sample basis, whether the Foundation was in compliance with ASC 958-605 with regard to the following objectives:

- Ensuring that cash contributions and grants are valid, unconditional contributions and are appropriately valued;
- Ensuring that cash contributions and grant funds with imposed restrictions are properly identified and accounted for; and
- Ensuring that compliance with grant agreements and grant reporting requirements is upheld.

Endowments—The Foundation may receive cash contributions upon which the donor imposes a permanent restriction. In such an instance, *permanent* means that the principal contributed, or

corpus, must remain intact in perpetuity with only the earnings on the principal permitted to be expended. Contributions that have these characteristics are called endowments.[18] ASC 958-605 and ASC 958-205 provide guidance on how nonprofits measure and record contributions with permanent restrictions as well as how they are presented in the financial statements. We evaluated whether the Foundation was in compliance with ASC 958-605 and ASC 958-205 with regard to the following measures:

- Ensuring that cash contributions with permanent restrictions are properly identified and accounted for;
- Ensuring that distributions from endowed funds are in compliance with the applicable written endowment instrument;[19] and
- Ensuring compliance with any restrictions in the form of use or time restrictions on endowed funds' investment income, gains, or losses.

Split-Interest Agreements—A sub-category of contributions the Foundation receives are those structured as split-interest agreements. These are arrangements between a donor and the Foundation in which the donor contributes assets to the Foundation in exchange for a promise by the Foundation to pay a variable or fixed amount for a specified period of time to the donor or to a beneficiary designated by the donor.[20] Typically, the time period covered by the agreement is either a specified number of years or the remaining life of the donor or designated beneficiary. At the end of the agreement's term, the remaining assets covered by the agreement are retained by the Foundation. ASC 958-605 and ASC 958-30 address how nonprofits measure and record the parts of split-interest agreements, which are the contribution portion, the asset portion, and the liability portion. We evaluated whether the Foundation was in compliance with ASC 958-605 and ASC 958-30 with regard to the following measures:

- Ensuring that documentation supports the determination of assets, liabilities, revenues, and contributions receivable of split-interest agreements;
- Ensuring that assets and liabilities of split-interest agreements are measured using appropriate measurement methods; and
- Ensuring that distributions under split-interest agreements are accurate and represent valid distributions.

Lastly, in 2015, the Foundation incurred a significant capital asset impairment related to its waste-to-energy plant. The term impairment is usually associated with a long-lived asset such as machinery or equipment that has a market value which has significantly decreased. In this case, the Zoo spent a significant amount in capital expenditures for its waste-to-energy plant and then experienced a dramatic drop in the plant's value due to the project being abandoned prior to completion. Outside of the plant's intended purpose, there is no income generating function the asset can be used for. As a result, the asset was removed from the accounting records.

[18] "FASB Glossary," Financial Accounting Standards Board, accessed December 2, 2016, https://asc.fasb.org/link&sourceid=SL6101913-113150&objid=84237235.
[19] Agreement between donor, the Foundation, and the CZT outlining donation date, how the donated assets will be administered, distribution prohibitions and requirements, and restrictions related to the use of earnings.
[20] "FASB Glossary," Financial Accounting Standards Board, accessed December 2, 2016, https://asc.fasb.org/glossarysection&trid=2209750&id=SL2458488-112854.

The Zoo's Waste-to-Energy Plant Was Terminated and Written-Off—This plant was an attempt to use an innovative approach to convert all of the zoo's waste into small pellets that would be burned in a gasifier to create syngas and ash. The heat created in this process was intended to provide heating to adjacent buildings, and the syngas could have been used to create energy by propelling a micro-turbine. This project would have allowed the Zoo to not only reduce its waste but also create its own energy. However, the plant was never finished, and in 2015 the decision was made to terminate the project. The impairment occurred because the fair value of the waste-to-energy plant dropped below the value the Foundation had recorded in its financial statements. At the end of 2015, the Foundation determined that the fair value of the waste-to-energy plant was zero and, as such, removed the entire amount from its financial statements. Since then, the Foundation has not been successful in either finding a partner institution to continue the development of the waste-to-energy plant or selling the plant to an interested party. The total cost of the waste-to-energy plant was approximately $3.5 million, and the total amount written-off was approximately $1.7 million. If the Foundation does not think the project cost meets the classification of a capital asset, then the cost is recorded as an expense in the period in which it was incurred. These expenses represent the difference between the total cost and the $1.7 million write-off. ASC 360 addresses how and when an asset should be tested for impairment and how the actual impairment adjustment is to be measured and recorded. We evaluated whether the Foundation was in compliance with ASC 360 with regard to the following measures:

- Ensuring the reasonableness of assumptions used in the testing for impairment process;
- Ensuring the appropriateness of the write-down method used and the calculation of the write-down;[21] and
- Ensuring the reasonableness of the estimation included in the write-down for the Foundation's disposal costs to dispose of the asset.

Additionally, on a sample basis, the audit team tested whether contributions made for the restricted purpose of the waste-to-energy plant were properly accounted for, used for their intended purpose, and compliant with any donor agreements.

Based on the results of audit work covering contributions, grants, endowments, split-interest agreements, and the impairment of the waste-to-energy plant, it appears that the Foundation's accounting practices are compliant with GAAP.

Despite these observations, we found that certain Board practices are not consistent with internal and contract requirements or best practices.

Denver Zoological Foundation Should Improve Its Compliance with Internal Policies and Best Practices

Although the Foundation's Board follows governance-related best practices in some areas, the Board is not consistently following its own policies and other best practices related to Board member training, quorum requirements, and formal evaluations of the Chief Executive Officer. Examples of best practices used by the Board include documenting Board meetings, obtaining

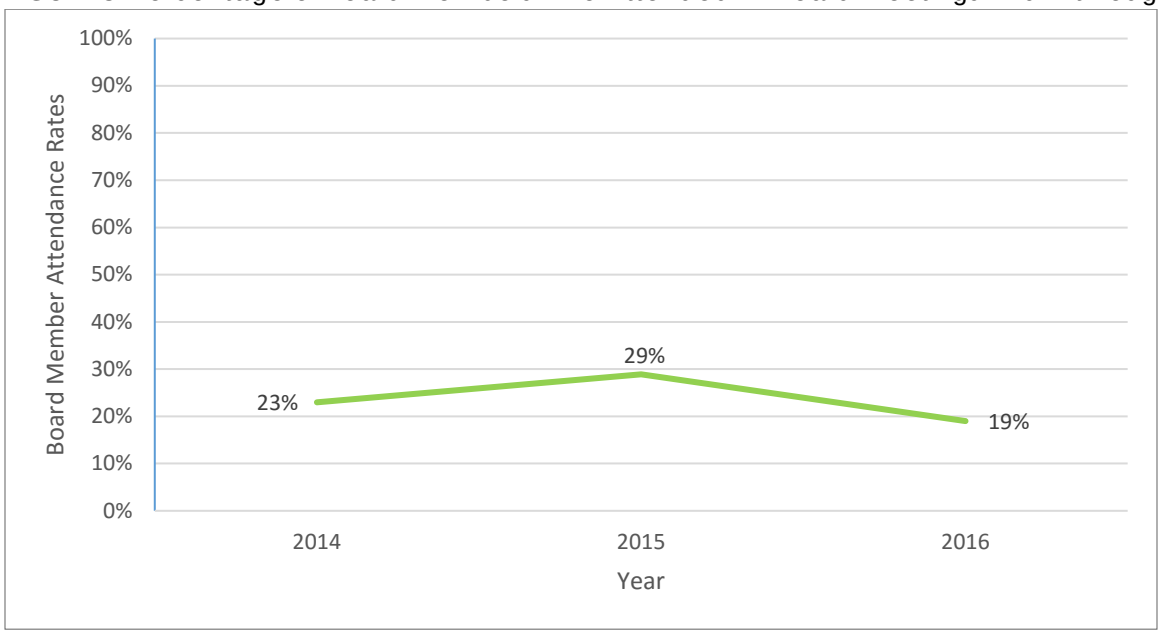
[21] A write-down is the method the Foundation used to adjust the waste-to-energy plant asset value down in its accounting records because it was overvalued compared to the market value.

conflict of interest statements from Board members, and providing financial updates at each Board meeting.

A nonprofit corporation in Colorado is required to keep minutes that include actions taken by the Board. Consistent with this recommended practice, the Board records minutes from its regular meetings.[22] Minutes are important to provide transparency into why certain decisions were made and what was discussed during the meetings. Recording meeting minutes also allows for an assessment of whether Board members uphold their duties. In addition, the Board collects conflict of interest statements from all Board members, which helps to prevent the occurrence of a conflict between a Board member's business and the Zoo's decisions. Finally, the Board receives financial updates at every meeting, which is consistent with the Board's fiduciary duties to maintain oversight over the Zoo's finances. However, we identified other areas in which the Board can improve its governance practices to better comply with internal guidance, such as its bylaws and the Agreement, as well as best practices.

The Denver Zoological Foundation Should Assess Its Bylaws to Increase Attendance—Audit work found that Board members are not consistently attending meetings as required by the Foundation's bylaws. The bylaws state that active Board members must attend at least six regular meetings during the year.[23] Based on a review of the Board's meeting minutes from 2014 through 2016, some Board members do not adhere to the attendance requirements. The Board currently has six meetings per year, but only 23 percent of Board members attended all six meetings during 2014, only 29 percent attended all six meetings in 2015, and only 19 percent attended all meetings held in 2016, as of November as shown in Figure 3.[24]

FIGURE 3. Percentage of Board Members Who Attended All Board Meetings – 2014 through 2016



Source: Auditor analysis of Board meeting minutes.

[22] C.R.S. § 7-136-101.
[23] According to the bylaws, active trustees shall be removed if the member fails to attend at least six regular meetings during any calendar year.
[24] The Board previously met twelve times a year.

In fact, the number of members attending 2 or fewer meetings has increased from 28 percent in 2014 to 33 percent in 2016, and the number of Board members who failed to attend any Board meetings has steadily increased from 4.7 percent in 2014 to 22 percent in 2016.

City Representation on the Board Is Not Fully in Compliance with Cooperative Agreement and Bylaws Requirements—The Agreement stipulates that 4 of the 39 voting members of the Board should be appointed by the Mayor; further, if the size of the Board increases beyond the current threshold of 39 members, the number of City members should increase proportionately. The Board currently has four mayoral appointees—as required by the Agreement—two of which attended all meetings in 2016. However, the other two appointees have attended fewer meetings over the last two years, indicating a lack of engagement. For example, one appointee attended only 60 percent of the meetings in 2016, a decrease from the 75 percent attendance rate for 2015. The other appointee attended only 20 percent of the Board meetings in 2016 after having attended 50 percent of the meetings in 2015. The low attendance rates for these two mayoral appointees are not consistent with the Board's bylaws that require active Board members to attend six regular meetings during the calendar year—or 100 percent of all Board meetings—to continue serving on the Board, unless circumstances warrant continued service on the Board. Further, the Colorado Nonprofit Association states that meeting Board members' duty of care—which includes ensuring the prudent use of assets and providing oversight for all activities—requires regular attendance at Board meetings.[25] Also, the Colorado Secretary of State specifies that the duty of care requires directors to devote the necessary amount of time and attention to the affairs of the nonprofit so they can make reasonable and informed decisions.[26]

In addition, there is no City representation on the Board's Executive Committee. Section 16 of the Agreement specifies that the Executive Director of DPR should serve as a voting member of the Board. In addition, the DPR Executive Director and all mayoral appointees are eligible to serve on each of the Board's standing and special committees, including the Executive Committee.[27] However, none of these City representatives, including the Executive Director of DPR, currently serve on the Executive Committee and no City representatives have been a member of the Executive Committee since 2014, the earliest year of meetings we reviewed. Additionally, since 2014, fewer mayoral appointees have been members of the standing and special committees. Specifically, all four members belonged to a committee in 2014 but only one appointee served on a committee in 2016.

[25] "Principles & Practices for Nonprofit Excellence in Colorado, 2015," Colorado Nonprofit Association, accessed October 18, 2016, https://www.coloradononprofits.org/sites/default/files/attachments/PrinciplesPractices_3rdEdition_1.pdf.
[26] "Fiduciary Duties of Nonprofit Directors and Officers in Colorado," Colorado Secretary of State Board Education Topics, accessed September 30, 2016, http://www2.cde.state.co.us/artemis/smonos/s12n732014internet/s12n7320141internet.pdf.
[27] According to the Board's bylaws, the following committees are considered standing (permanent) committees: Executive Committee, Finance and Audit committee, and the Nominating committee. At any time, the Chairman of the Board may submit to the Board a request to create any other ad hoc special committee. Current examples of special committees include the Master Plan committee, Conservation and Animal Collection committee, and Guest Experience and Education committee.

This lack of engagement by some Board members, including City representatives, is largely due to inadequate guidance regarding Board responsibilities and processes. For example, there are no charters, as recommended by best practices, that document the role and responsibilities of the Board, Executive Committee, and other standing and special committees.[28] Further, low attendance rates by some Board members suggest that the Board is not adequately fulfilling its duty of care responsibility, which requires Board members to make meeting attendance a priority.[29] This dwindling engagement on the Board and its committees by two mayoral appointees and a complete lack of City representation on the Executive Committee reduces the City's involvement in and oversight of Zoo operations.

Low attendance rates and lack of City representation suggest that the Board may not be adequately fulfilling its duty of care responsibility.

These circumstances contradict the intent of the Agreement, which requires that 10 percent of the Board be made up of City representatives and stipulates that all City members can serve on the Executive Committee. In addition, reduced involvement by City representatives limits the City's ability to monitor its interest in the City assets associated with the Zoo, including the property, buildings, and funding provided to the Zoo. To address these deficiencies, we recommend that the Board assess its current attendance requirement in the bylaws and revise as needed while maintaining a requirement for Board members to attend most meetings each year. In addition, we recommend that at least one City representative should serve as a member of the Foundation's Board of Trustees' Executive Committee as allowed by the Agreement. At a minimum, the Executive Director of the Department of Parks and Recreation should serve on the Executive Committee or designate a mayoral appointee Board member to serve on the Executive Committee.

Board Member Providing Legal Advice While Serving on the Board—As explained in the Introduction and Background section of this report, the Zoo initially exhibited resistance to audit activities. During this period of resistance, a Foundation Board member, who was also an attorney, was providing legal advice to the Board regarding the audit, specifically counseling the Board to not cooperate with audit team requests. In fact, several Board members reported concerns regarding a conflict of interest connected with the legal advice they received from the attorney-Board member to not cooperate with the audit.

According to the Colorado Rules of Professional Conduct (CRPC), "virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an ethical person [...]. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the CRPC rules." Further, CRPC's Rule 1.7 states that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest."[30] In addition, CRPC stipulates that a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be

[28] The rules and regulations enacted by an association or a corporation to provide a framework for its operation and management.
[29] "Leading with Intent: A National Index of Nonprofit Board Practices-January 2015," BoardSource, accessed September 30, 2016, https://www.councilfornonprofits.org/tools-resources/ethics-and-accountability-nonprofits.
[30] Colorado Rules of Professional Conduct § 1.7 (2016).

materially limited as a result of the lawyer's other responsibilities or interests—in this case, the attorney's role on the Board.

Although this attorney-Board member resigned from the Board during the spring of 2016, these circumstances raise questions concerning whether a serving Board member was exposed to conflicting responsibilities due to a lack of clarity in the Agreement and Foundation bylaws. This problem could have been prevented if the Board's bylaws provided more clarification regarding the responsibilities of Board members and the appropriate way to access independent legal advice. Instead, the audit was delayed several months as a result of the advice provided to the Board, which not only was not in the best interest of the Foundation but it was also not consistent with the unambiguous audit provision included in the City's Agreement with Denver Zoo that allows the Auditor's Office to "perform whatever audit or check the City may require, including a financial audit and a check for compliance with this Agreement." As a result, we recommend that the Board revise its bylaws to outline the required process for obtaining independent legal advice when necessary to avoid the potential for conflicts of interest.

The Board Does Not Follow Some Best Practices Associated with Onboarding and Overall Governance—In addition to the identified gaps related to compliance with bylaws and Agreement requirements, we also found that the Board does not follow best practices in some areas. Although we did not interview all Board members and do not intend to extrapolate the results from these interviews to the entire Board, the input received from the Board members we spoke with along with documentary evidence and best practices research, indicate that aspects of the Board's governance should be improved.

First, the Board lacks a formal and consistent onboarding and training process for new Board members. Some Board members reported receiving some type of orientation, whereas others stated that they received no orientation. For example, two Board members described a brief orientation session that provided an overview of the Zoo's operations, how the Zoo raises money, and the need for Board members to assist with fundraising. However, most of the nine current and former Board members we spoke with reported that not only did they not receive any formal training or orientation but they also were not provided with copies of the Foundation's bylaws or the Agreement between the City and the Foundation. According to training documentation provided by the Zoo, Board members who joined in 2014 and 2015 went through an orientation session that introduced new members to members of the Zoo's executive staff. However, documentation and Board members' feedback show that the members who joined the Board in the last year did not receive any formal training or orientation regarding their role on the Board. During the audit, the Zoo provided materials documenting plans to develop a more formal training program in 2017 that should provide new members with key documents, such as the bylaws and Agreement and guidance on the expectations and role of Board members.

Best practices suggest using a formal orientation for new Board members to ensure that they are aware of their responsibilities to the Zoo and the City. Specifically, BoardSource, a national organization working to strengthen nonprofit board leadership, recommends a formal orientation program that ensures all Board members receive relevant and consistent information about their governance responsibilities and the organization. In addition, the Colorado

Nonprofit Association specifies that Board members should be provided with an orientation that includes a Board manual with the following information:

- A history of the organization;
- Governing and planning documents and policies;
- An overview of Board member responsibilities;
- Financial reports;
- Fund development strategies; and
- Legal obligations.

To ensure that Board members are fully aware of their role and responsibilities, we recommend that the Foundation continue to develop its new member orientation and training program to include important elements such as the history of the Zoo, all governing documents and policies, an overview of member responsibilities and legal obligations, and financial information.

Second, we found that most of the Board members we met with are unsure of the role of the Executive Committee as compared to the role of the Board as a whole. Members also reported a lack of transparency regarding decision-making. Specifically, they conveyed to the audit team that they perceive that the Executive Committee is a very powerful group that often makes decisions without Board involvement. This lack of clarity regarding the role of the Board versus the Executive Committee is largely due to the lack of specific guidance on the role of the Executive Committee as shown in the following section in the bylaws:

> **Section 15.1 Executive Committee**. Subject to the limitations stated in Section 14, the executive committee shall exercise all of the powers of the Board for all affairs of the Foundation not otherwise delegated to another committee by board resolution. The chairman of the board shall serve as the chair of the executive committee. The immediate past chairman of the board, president, and the executive vice president shall also all serve as ex-officio members of the executive committee. Two-thirds (2/3) of the members of the executive committee shall constitute a quorum, and when a quorum is present, a vote of a majority of all the members present shall decide any question brought before the committee.

Although Section 15.1 of the bylaws provides some guidance for the Executive Committee, a best practice for any Board committee is to have a charter. The Colorado Nonprofit Association recommends that each committee have a chairperson, and a charter or description of its authority and purpose. Additionally, the National Council of Nonprofits specifies that successful committees require clarity of purpose, coordination, and strong communication. To be consistent with this guidance, we recommend that the Board develop charters or other guiding documents for the Board, Executive Committee, and other standing committees that clearly document the authority of each respective body and the responsibilities of committee members.

Third, we identified a weakness with the quorum requirement for the Board to conduct business, which requires that one-third of the Board members be present to vote on issues brought before the Board.[31] The bylaws specify that the Board's size should be between 24 and 39 members, allowing as few as 8 to 13 Board members to be present to conduct business. Although this quorum size is allowed by state law, a low quorum requirement potentially allows a small group of Board members to engage in non-representative activities and steer the direction of an organization.[32] Both the Colorado Nonprofit Association and the consulting firm Core Strategies for Nonprofits assert that a majority of Board members must be present to satisfy the statutory default of a quorum.[33] Increasing the number of Board members involved in the voting process increases the potential for more questions to be asked, policies to be created, and issues to be resolved, all of which collectively reduces the chance that a small group of Board members can run the organization.

A low quorum requirement potentially allows a small group of Board members to engage in non-representative activities and steer the direction of an organization.

Fourth, the bylaws allow the CEO of the Zoo to vote on Board decisions. Given that the bylaws require only one-third of Board members to be present to conduct official business, the CEO can have a significant impact on the decisions of the Board as a voting member. The Colorado Nonprofit Association asserts that while a CEO may be a member of the Board, he or she should be an ex-officio member without official voting status. BoardSource echoes this guidance, stating that while allowing CEOs to serve on the Board acknowledges their leadership role in the organization and puts them on similar footing with other Board members, they should be nonvoting members of the Board to avoid actual or perceived conflicts of interest, questions concerning accountability, and the potential for blurred lines between oversight and execution.[34]

Fifth, the Board does not conduct a formal evaluation of the CEO's performance that involves input from the entire Board. Instead, Board members stated that an informal review is performed of the CEO's performance by the current and past Chair of the Board's Executive Committee. The Colorado Nonprofit Association, National Council of Nonprofits, and Center for Nonprofit Management all recommend that a CEO's performance should be evaluated annually and include input from the entire Board, or at the very least the Executive Committee, to ensure that there is sufficient input and that the evaluation is conducted fairly.[35]

Underlying these deficiencies in the Board's governance practices is the fact that the Board's bylaws have not been amended or updated since 1998 even though the Colorado Nonprofit Association recommends that a board review its mission, bylaws, and policies annually. It is important for the Board to follow best practices and ensure that their bylaws are up to date. To

[31] A quorum is the minimum number of members of an assembly or society that must be present at any of its meetings to make the proceedings of that meeting valid.
[32] C.R.S. § 7-128-205.
[33] "Resources: Defining Your Quorum," CoreStrategies for Nonprofits, Inc., accessed October 19, 2016, http://www.corestrategies4nonprofits.com/nonprofit_core/Defining_Your_Quorum.
[34] "Leading with Intent: A National Index of Nonprofit Board Practices-January 2015," BoardSource, accessed September 30, 2016, https://www.councilfornonprofits.org/tools-resources/ethics-and-accountability-nonprofits.
[35] "Principles & Practices for Nonprofit Excellence in Colorado, 2015," Colorado Nonprofit Association, accessed October 18, 2016, https://www.coloradononprofits.org/sites/default/files/attachments/PrinciplesPractices_3rdEdition_1.pdf.

improve the Board's governance practices, we recommend that the Board incorporate best practices into the Board bylaws or other governing documents, such as conducting and documenting regular reviews of Board bylaws and governing documents, requiring a majority of Board members to be present for a quorum, disallowing the Chief Executive Officer to act as a voting member of the Board, and conducting and documenting formal evaluations of the Chief Executive Officer using a process that includes input from all Board members. Following this widely accepted guidance will help the Board operate more effectively and efficiently. It will also help Board members be more aware of their responsibilities and the responsibilities of the committees.

RECOMMENDATIONS

We offer the following recommendations to assist the Denver Zoo and the City with improving compliance with the Cooperative Agreement and to boost the Foundation's ability to strengthen its governance over Denver Zoo operations.

1.1 **Amend Cooperative Agreement** – The Foundation, in conjunction with the Department of Parks and Recreation, should work with the City's Budget and Management Office and the City Attorney's Office to develop a plan of action with designated milestones to enable an official review and update of contractual language within the City's Cooperative Agreement with the Foundation to (1) ensure that current practices are formally documented and followed and (2) add a provision requiring that the Denver Zoo maintain its USDA license and accreditation with a leading national zoological association, such as the Association of Zoos and Aquariums, to ensure the health and safety of the zoo animals.

Auditee Response: Agree, Implementation Date – July 1, 2017

Denver Zoological Foundation (DZF) and the Denver Department of Parks and Recreation (Parks and Recreation) have taken steps during the past year to strengthen the documentation processes between the entities to ensure we meet not just the spirit, but the letter of the Cooperative Agreement.

A relationship built on trust and respect with DZF and Parks and Recreation over many years may have resulted in the loss of some formalities. However, we believe both organizations have lived up to the intent of the Agreement, with DZF working diligently to keep the City informed on key items and issues as outlined in the guiding document.

Denver Zoo currently operates in accordance with the United States Department of Agriculture (USDA) and Association of Zoos and Aquariums (AZA) requirements and is fully supportive of the inclusion of language formally noting such in the Cooperative Agreement.

Leaders at DZF and Parks and Recreation believe the timeliest approach to addressing the areas for improvement is the creation of a formal agreement with the engagement of the appropriate City departments (BMO and City Attorney) – to ensure noted items are appropriately noted and clarified.

A full review of the entire language of the Cooperative Agreement is scheduled for 2023, which is when it currently expires, and which will require a lengthy, time intensive process, with numerous stakeholder approvals.

1.2 **Analyze City's Use of Zoological Gardens Special Revenue Fund** - The City should analyze whether the Zoological Gardens SRF should be treated as an SRF in the future and make any necessary changes to this funding mechanism.

Auditee Response: Agree, Implementation Date - Completed

GASB 54 redefined what qualifies as a Special Revenue Fund for financial statement purposes only. When the City implemented this GASB in 2011, there were several special revenue funds where this new definition required that they be reported as General Fund activity in our financial statements. While we comply with the GASB for our audited financial statements, this in no way prohibits us from continuing to separately budget and internally report these as special revenue funds in our accounting system. The Zoo SRF was part of this assessment in 2011, and we determined that maintaining the SRF allows for the appropriate controls and transparency. We are able to control the budget for these individual funds and easily review their activity. This SRF is under the expending authority of the Director of Parks and Recreation and complies with the fund's establishing ordinance.

1.3 **Define Monitoring Roles** – The Foundation and the Department of Parks and Recreation should work together, with the City Attorney's Office as necessary, to clearly define the roles and responsibilities in a policy document that includes measures to strengthen monitoring practices.

Auditee Response: Agree, Implementation Date – May 1, 2017

Suggested process favored by DZF and Parks and Recreation is noted in Recommendation 1.1. Several monitoring activities were updated during 2016 to make the review and approval process more formal and have already been implemented (e.g., approvals of any price changes at the Zoo and written documentation of Parks and Recreation review of the budget submitted to the Board of Trustees) and these activities will continue in 2017.

1.4 **Assess and Revise Board Member Attendance Requirement** – The Foundation's Board of Trustees should assess the current Board member attendance requirement in its bylaws, and revise as needed, with the goal of improving Board member attendance rates.

Auditee Response: Agree, Implementation Date – September 1, 2017

Ensuring adherence to best practices is of the utmost importance to the Denver Zoological Foundation. The Board of Trustees' Governance Committee is reviewing all aspects related to strengthening Zoo governance – including bylaws and related components – to ensure we utilize the highest standards which support the Foundation and meet the Zoo's mission. To that point, an outside consultant has been secured to assist with integrating best practices, with a target overall completion date of August 31, 2017. Attendance requirements for Board of Trustee members will be addressed as part of this process.

1.5 **City Representation on the Executive Committee –** At least one City representative should serve as a member of the Foundation's Board of Trustees' Executive Committee as allowed by the Cooperative Agreement. At a minimum, the Executive Director of the Department of Parks and Recreation should serve on the Executive Committee or designate a mayoral appointee Board member to serve on the Executive Committee.

Auditee Response: Agree, Implementation Date – February 1, 2017

As noted, the Cooperative Agreement provides for the Executive Director of Parks and Recreation to attend meetings of the DZF Executive Committee. Denver Zoo and Parks and Recreation are supportive of the Executive Director serving as a formal member of the Executive Committee and will implement that immediately.

1.6 **Formal Board Member Training** – The Foundation's Board of Trustees should continue to develop its new member orientation and training program to include important elements such as the history of the Zoo, all governing documents and policies, an overview of member responsibilities and legal obligations, and financial information. This training program should be consistently used to ensure that new Board members are familiar with bylaws, other guiding documents, and the Cooperative Agreement with the City.

Auditee Response: **Agree, Implementation Date – April 1, 2017**

Ensuring adherence to best practices is of the utmost importance to the Denver Zoological Foundation. A more robust on-boarding process was studied during 2016 and is now ready for DZF Board review – we anticipate its adoption in the first quarter of 2017 with the intent to present to both current and new Board of Trustee members by end of June 2017.

1.7 **Document the Authority of the Board and Its Committees** – The Foundation's Board of Trustees should develop charters, or other guiding documents, for the Board, Executive Committee, and other standing committees, that clearly document the authority of each body and the responsibilities of committee members.

Auditee Response: Agree, Implementation Date – September 1, 2017

Ensuring adherence to best practices is of the utmost importance to DZF. Updating existing charters, or creating charters for newly formed committees, is currently in process and will be coordinated with the Board consultant process described under recommendation 1.4.

1.8 **Incorporate Best Practices in Bylaws and Governing Documents** – The Foundation's Board of Trustees should include the following best practices in its bylaws or other governing documents: (1) conduct and document regular reviews of Board bylaws and governing documents, (2) require a majority of Board members for a quorum, (3) outline the required process for obtaining independent legal advice when necessary to avoid the potential for conflicts of interest, (4) disallow the Chief Executive Officer from acting as a voting member of the Board, and (5) conduct and document formal evaluations of the Chief Executive Officer using a process that includes input from all Board members.

Auditee Response: Agree, Implementation Date – September 1, 2017

As noted in the narrative for Recommendation 1.4, the DZF's Board of Trustee's Governance Committee is reviewing all components of the organization's governing

documents, inclusive of bylaws and those practices noted above, to ensure adherence with best practices. As noted earlier, a professional consultant has also been retained to assist in this process.

OTHER PERTINENT INFORMATION

The Other Pertinent Information section is intended to provide the reader with additional content on a subject that was not the primary focus of the audit. This section does not require any official response from the auditee; however, it adheres to the Auditor's Office's citizen-centric philosophy of using audit reports to inform the citizenry of potential risks to their community. The following informal sections provide an overview of federal and state requirements regarding zoo animals' access to potable water and the allowable uses of recycled water in Colorado.

Federal and State Laws Govern Different Aspects of Animal Care

At the federal level, the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) monitors the humane treatment of captive animals, specifically the manner in which they are housed, handled, fed, and watered. In addition, the U.S. Environmental Protection Agency (EPA) enforces the Safe Drinking Water Act (SWDA) that gives individual states the ability to set and enforce their own drinking water standards if the standards are, at a minimum, as stringent as EPA's national standards.

At the state level, the State of Colorado has no jurisdiction over the housing and treatment of captive animals, but it does regulate the use of recycled water, or reclaimed water as it is also known, which has been used by the Denver Zoo (Zoo) for more than a decade. Recycled water is created from the treatment of municipal wastewater and is highly regulated. Specifically, recycled water has been used by the Zoo for irrigation purposes since 2004 and for zoo operations—specifically exhibit cleaning—since 2005. As of 2011, the Zoo used recycled water for other purposes including exhibit pools and animal drinking water. Although the Zoo ceased providing recycled water for the purposes of direct animal consumption in 2015, it continues to be used for irrigation, exhibit cleaning, mechanical closed loop heating and cooling systems, and exhibit pools.

The Zoo currently uses recycled water for irrigation, exhibit cleaning, mechanical closed loop heating and cooling systems, and exhibit pools.

Federal Law Regulating Animal Care Requires the Use of Potable Water

The Animal Welfare Act (AWA), which imposes standards and requirements for those individuals and facilities housing animals, requires that animals be provided with potable water continuously or for specified periods of time while being housed or transported. The AWA does not address other uses of water, such as exhibit pools, or the type of water that must be provided for these other uses. In addition, the AWA does not address recycled water or whether any categories or uses of recycled water are safe for use around animals.

APHIS, a component of the USDA, is responsible for enforcing the AWA requirements related to housing and transporting animals.[36] Any individual or organization acting as a dealer, exhibitor, or operator of an auction sale—with a few exceptions—must obtain a valid USDA license.[37] USDA inspects each facility to ensure compliance with standards and regulations prior to issuing a license; subsequent inspections can occur at the discretion of the USDA's Secretary of Agriculture. In the case of Colorado, inspections typically occur once a year unless USDA receives a complaint about a facility that triggers additional inspections. In other cases, if the facility is so large that a complete inspection cannot be completed in one day—as is the case for the Denver Zoo—the inspector will visit the facility on multiple occasions.[38]

The State of Colorado Governs the Use of Recycled Water

Recycled water is regulated by the Colorado Department of Public Health and Environment (CDPHE) through Regulation No. 84 (the Regulation), as promulgated by the Colorado Water Quality Control Act and Colorado Revised Statutes (C.R.S.).[39] The Regulation establishes the requirements, prohibitions, standards, and concentration limits associated with the use of recycled water to protect public health and the environment while promoting the use of recycled water. Recycled water is increasingly viewed as an alternative source of water as it provides a dependable, locally controlled water supply and an alternative to diverting water from the environment and vital ecosystems that depend upon it.

Among other things, the Regulation establishes three categories of recycled water that are defined by certain standards such as the level of *E.coli* and suspended solids that can be present.[40] See Table 2 for these categories and applicable standards that apply at the point of compliance.[41] In addition, Table 2 shows that Category 3 recycled water contains the lowest level of potential pathogens relative to Category 1 and Category 2.

[36] The Animal Welfare Act is intended to (1) ensure animals intended for use in research facilities, for exhibition purposes, or for use as pets are provided humane care and treatment; (2) assure the humane treatment of animals during transportation in commerce; and (3) protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen. It is also designed to regulate the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research, experimental, exhibition purposes or for holding them for sale. 7 U.S.C. §2131-2159.

[37] Examples of those exempt from this license requirement include retail pet stores, individuals who maintain a total of four or fewer breeding female dogs, cats, and/or small exotic or wild animals, and any persons who sell fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises and is not otherwise required to obtain a license.

[38] The Colorado-based branch of APHIS uses a risk-based system to designate the number of inspections for each facility during the year. If issues were identified during previous inspections, the system will likely require multiple visits to the facility the following year.

[39] See C.R.S. sections 25-8-101 through 25-8-703, 25-8-202, and 25-8-205.

[40] The Water Quality Control Commission uses *E.coli* levels as a surrogate measure of the potential presence of bacterial pathogens in recycled domestic wastewater as described in recent research cited by the EPA. The *E.coli* limits referenced in Table 2 are consistent with those recommended by EPA for swimming beaches. These *E.coli* limits assume swimmers may ingest 100 ml of water while in the water. Using criteria established to protect swimmers was thought to provide additional protection for individuals who may be casually exposed to recycled domestic wastewater through irrigation spray.

[41] The point of compliance is the stage after all treatment has been completed.

TABLE 2. Regulation No. 84 Categories of and Standards for Recycled Water

	E. coli Limit	Total Suspended Solids (Daily maximum)	Turbidity (NTU)	Treatment Requirement	Examples of Approved Uses
Category 1	Monthly geometric mean – 126/100ml Single sample maximum – 235/100ml	30 mg/L	Not applicable	Secondary treatment with disinfection	Zoo Operations Evaporative Industrial Processes Restricted Access Irrigation
Category 2	Monthly geometric mean – 126/100ml Single sample maximum – 235/100ml	Not applicable	Monthly average – Not to exceed 3 NTU Individual results – Not to exceed 5 NTU in more than 5% of individual results in calendar month	Secondary treatment with disinfection and filtration	Zoo Operations Evaporative Industrial Processes Restricted Access Irrigation Commercial Laundries Automated Vehicle Washing
Category 3	None detected in at least 75% of samples in a calendar month Single sample maximum – 126/100ml	Not applicable	Monthly average – Not to exceed 3 NTU Individual results – Not to exceed 5 NTU in more than 5% of individual results in calendar month	Secondary treatment with disinfection and filtration	Zoo Operations Evaporative Industrial Processes Restricted Access Irrigation Commercial Laundries Automated Vehicle Washing

Source: CDPHE Water Quality Control Commission Regulation No. 84: Reclaimed Water Control Regulation.

Note: According to the U.S. Geological Survey (USGS), turbidity is the amount of solid particles that are suspended in water that cause light rays shining through the water to scatter. Turbidity makes the water cloudy and is measured using nephelometric turbidity units, or NTUs. Turbidity may represent a health concern as it can provide food and shelter for pathogens. Although turbidity is not a direct indicator of health risk, numerous studies show a strong relationship between removal of turbidity and the removal of pathogens. Suspended solids are small particles of solid pollutants that contribute to turbidity and can be removed by filtration.

Rules Associated with Using Recycled Water

Prior to using recycled water, an entity must obtain a license from Denver Water to tap into its water supply as well as a Notice of Authorization (NOA) from the CDPHE Water Quality Control Division specific to each intended use of recycled water. The NOA documents the terms, limitations, and conditions necessary to ensure compliance with the Regulation, such as the category of recycled water to be used; a description of the approved use; monitoring, reporting, and record-keeping requirements; and a requirement that the user adhere to the User Plan to Comply. Depending on the way in which recycled water is to be used, the User Plan to Comply must describe how the user will follow the Regulation along a variety of factors such as:

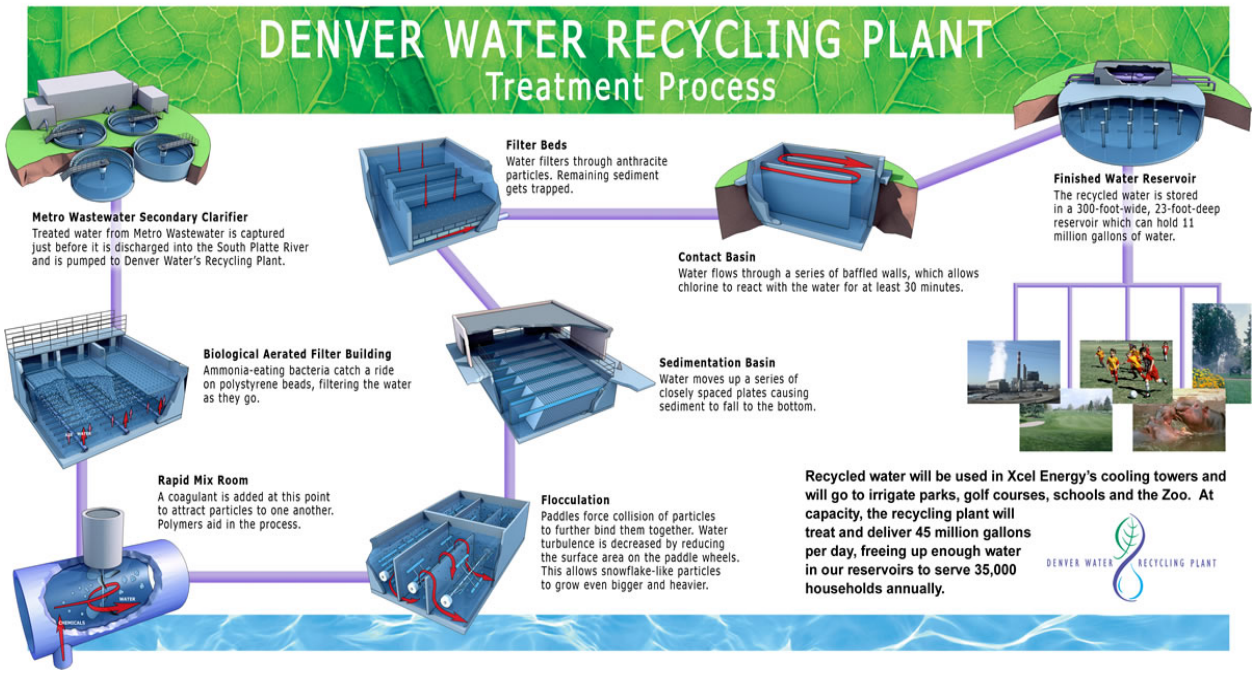
- Confining use to only those authorized areas, operations, or processes;
- Notifying the public that recycled water is being used and not safe for drinking; and
- Marking all new, modified, or replaced piping, valves, controllers, and other equipment, including irrigation systems or equipment for fire protection, to differentiate recycled water from potable water or other piping systems.[42]

When the Regulation was first implemented in 2000, the use of recycled domestic wastewater was limited to landscape irrigation. However, it has been amended four times—most recently in 2013—to add additional requirements and allowable uses for recycled water.

According to the most recent EPA Guidelines for Water Reuse, published in 2012, there are more than 400 approved sites that use recycled water in Colorado. As of 2012, Denver Water's recycled water was used as cooling water for a large electric utility; irrigation of parks, golf courses, and schools; and operations at the Zoo. According to Denver Water representatives, their recycled water meets 1980's drinking water standards. Figure 4 demonstrates Denver Water's treatment process for recycled water.

[42] For a complete list of the required contents of the User Plan to Comply, see Regulation No. 84, available using the following link: https://www.colorado.gov/pacific/sites/default/files/84_2013(07)hdr.pdf.

FIGURE 4. Denver Water Recycling Plant Treatment Process[43]



Source: Denver Water website.

According to a 2013 study of recycled water use in zoos and wildlife facilities, Colorado is the only state in the U.S. that specifically approves the use of recycled water for zoo operations.

The Regulation Allows the Use of All Three Categories of Recycled Water in Zoo Operations

According to the Regulation, each category of recycled water is approved for a variety of uses. In some cases, all three categories can be used. For example, the Regulation allows all three categories of recycled water to be used for "zoo operations." Although an exact definition of the activities covered under "zoo operations" is not provided by the Regulation, it provides the following details:

> The Commission approved the use of reclaimed [recycled] domestic wastewater in zoo operations, including the care of captive animals. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture enforces the Animal Welfare Act, which governs the humane care and treatment of warm-blooded and marine animals held in zoos. These entities must be licensed to operate and must comply with the care and treatment standards provided by federal law. Category 2 reclaimed [recycled] domestic wastewater meets or exceeds the water quality standards for zoo animals provided by federal law. Environmental and public health risk from this use is also minimal when proper best management practices associated with zoo management practices are employed. Such practices include

[43] See the following website for more on recycled water and Denver Water's treatment process: http://www.denverwater.org/WaterQuality/RecycledWater/RecycledWaterTreatmentPlant/.

discharging animal wastewater to the sanitary sewer system or other approved disposal mechanism, limited public access to water used for animal holding areas, and habitat wash-down.[44]

As indicated above, the Regulation does not specify how recycled water can be used around animals—whether it is appropriate for exhibit cleaning only or if it can be provided in an exhibit pond for swimming or as drinking water. Further, a representative from CDPHE explained that they do not monitor animal husbandry practices, or how recycled water is used around the animals, as this area falls under the jurisdiction of the USDA and APHIS.[45] Instead, CDPHE's responsibility is to ensure that there are no unpermitted discharges of recycled water to storm water or groundwater from an entity's use of recycled water. For example, at the Zoo, CDPHE monitors ponds holding recycled water to prevent seepage and to ensure that the public is not exposed to recycled water.

Regulation 84 does not specify how recycled water can be used around animals—whether it is appropriate for exhibit cleaning only or if it can be provided in an exhibit pond or as drinking water.

Although the Regulation allows all three categories of recycled water to be used for zoo operations, the Regulation prohibits Category 1 recycled water from being used in commercial laundries, automated vehicle washing, and manual non-public vehicle washing—only Categories 2 and 3 can be used for these purposes. In fact, the only other approved uses for all three categories of recycled water are the following:

- Evaporative industrial processes,
- Non-evaporative industrial processes,
- Non-discharging construction and road maintenance,
- Restricted access landscape irrigation, and
- Non-food crop irrigation and silviculture.[46]

Moreover, the Regulation stipulates that there can be no public exposure to recycled water and only limited and controlled contact with recycled water by trained workers as part of the operations listed above. Said simply, the Regulation imposes greater restrictions on the types of recycled water that can be used to wash vehicles than in Zoo operations—which may expose zoo animals to potentially harmful bacteria or other undesirable contents. Moreover, EPA reports that the most common uses for recycled water are for nonpotable purposes—agriculture, landscape, public parks, and golf course irrigation; cooling water for power plants and oil refineries; industrial process water for paper mills and carpet dyers; toilet flushing; and construction activities. Projects using recycled water for potable purposes include recharging ground water aquifers and augmenting surface water reservoirs; however, this practice of augmenting surface water reservoirs is less common and is still being studied for feasibility.

[44] 5 C.C.R. § 1002-84 (2013).
[45] APHIS' mission is to protect and promote U.S. agricultural health, regulate genetically engineered organisms, administer the Animal Welfare Act, and carry out wildlife damage management activities. To learn more about APHIS, visit the following website: https://www.aphis.usda.gov/aphis/banner/aboutaphis.
[46] Silviculture is a branch of forestry related to the development and care of forests.

Even though the Regulation does not address how recycled water can be used around zoo animals and CDPHE does not regulate the use of recycled water in animal husbandry practices, federal law requires that captive animals have regular access to potable water, or water suitable for human consumption.

Use of Recycled Water at the Denver Zoo

The Zoo began using recycled water in 2004 for irrigation and to clean the lion exhibit in 2005. Since 2011, the Zoo has obtained NOAs to use recycled water for landscape irrigation, closed loop heating and cooling for certain buildings, and zoo operations. According to the Zoo's documentation submitted to meet Regulation requirements, recycled water was used for exhibit pools for the following species: rhinoceros, tapir, and hippopotamus in 2012 and 2013. During the same time period, recycled water was provided as drinking water for the species listed above as well as for the elephants, clouded leopards, and gibbons. Although an analysis of Denver Zoological Foundation (Foundation) Board of Trustees (Board) meeting minutes showed that the Zoo ceased providing recycled water as drinking water for animals in late 2015, pools in the Toyota Elephant Passage exhibit still contain recycled water. Other current uses of recycled water include exhibit cleaning and irrigation.

FIGURE 5. Elephant in Toyota Elephant Passage Exhibit at the Zoo

Source: Denver Zoo website.

Even though the Zoo obtained its license from Denver Water as well as three NOAs for using recycled water for irrigation, in a cooling tower, and for zoo practices, the NOA does not impose any restrictions or rules on the appropriate use of recycled water around the Zoo's animal collections.

According to a case study of the Zoo's use of recycled water documented in the most recent EPA Guidelines for Water Reuse published in 2012, Category 3 water is produced by Denver Water's recycling plant for the Zoo. The report also states that Zoo veterinarians examined the recycled water's composition and determined which animals should be allowed to come into contact with or consume recycled water. In addition, the report explains that Zoo workers complete annual training provided by Denver Water and the Zoo to ensure that their methods of working with recycled water protect the animals, the public, and fellow Zoo employees.

The audit team did not conduct water testing or validate whether the Zoo conducts annual training related to its use of recycled water. However, our research and review of federal and state requirements regarding the use of recycled water demonstrate that there is continuing uncertainty regarding the safety of using recycled water in pools or as drinking water for animals.

The Safety of Recycled Water for Animal Consumption Remains Uncertain

A 2013 study of the use of recycled water in zoos and wildlife facilities conducted by the San Francisco Public Utilities Commission and AECOM found that while sustainability programs within zoos should encourage the use of recycled water, additional research is needed on the potential effects on animals of various levels of exposure to recycled water.[47] In addition, the study recommended initiating discussions between stakeholders, such as veterinary staff, local recycled water providers, and regulatory agencies, regarding the use of recycled water in zoos and wildlife facilities.

Additional research is needed on the potential effects of various levels of exposure to recycled water on animals.

As part of this study, researchers surveyed zoos to determine the prevalence of recycled water use as well as how it is used. Of the 12 facilities that responded to the researchers' survey, only 4 zoos use recycled water, 2 of which are located in the U.S.—the Denver Zoo and the San Diego Zoo Safari Park. According to the study, these four zoos used recycled water primarily for landscape irrigation and cage wash-down; however, the two zoos located abroad also reported using recycled water for moats and ponds. Researchers explained that the Denver Zoo planned to expand its use of recycled water to include new buildings housing elephants, rhinoceroses, and tapirs.

According to the study, the level of exposure, or risk, related to using recycled water in aquatic environments, such as ponds, moats, or tanks, varies. For example, moats that are not part of an animal exhibit present a lower potential risk while ponds or lakes located within the habitats for aquatic birds or mammals represent a higher potential risk, depending on the sensitivity of the animal, since the animal could enter or become largely submerged in the body of water on a regular basis. The study did not address the use of recycled water for direct animal consumption or food preparation because the AWA states that water used for direct consumption by animals must be potable water. EPA's Guidelines for Water Reuse provide additional context for the potential risks associated with animals ingesting recycled water. For instance, the Guidelines state that there should be a waiting period for grazing, or a higher level of disinfection should be used, before animals used for milking are allowed to graze on crops irrigated with recycled water.

Other conclusions from the 2013 study were that more data are needed on chronic and acute toxicity to animals from incidental ingestion or direct environmental exposure to recycled water. Additionally, the prevalence of "emerging contaminants" such as antibiotics, steroids, and estrogen and other hormones needs to be studied as these potential contents are not regulated at the federal, state, or local level. The study also found a lack of regulations or guidelines focused on the use of recycled water in zoos. Most state and federal regulations associated with

[47] Cheryl Munoz, Stephanie Vermande, Derrick Wong, "Recycled Water Use in Zoo and Wildlife Facility Settings," WateReuse Research Foundation, accessed November 29, 2016.

recycled water instead focus on protecting human health. In fact, both the USDA and the Association of Zoos and Aquariums (AZA) have not established guidelines or rules related to the use of recycled water in animal exhibits. Nonetheless, the USDA is charged with enforcing the AWA, which requires potable water—or water that is safe for human consumption—to be provided to animals as part of the humane care and treatment of animals in captivity.

Category 3 recycled water does not meet the federal government's requirements for drinking, or potable, water.

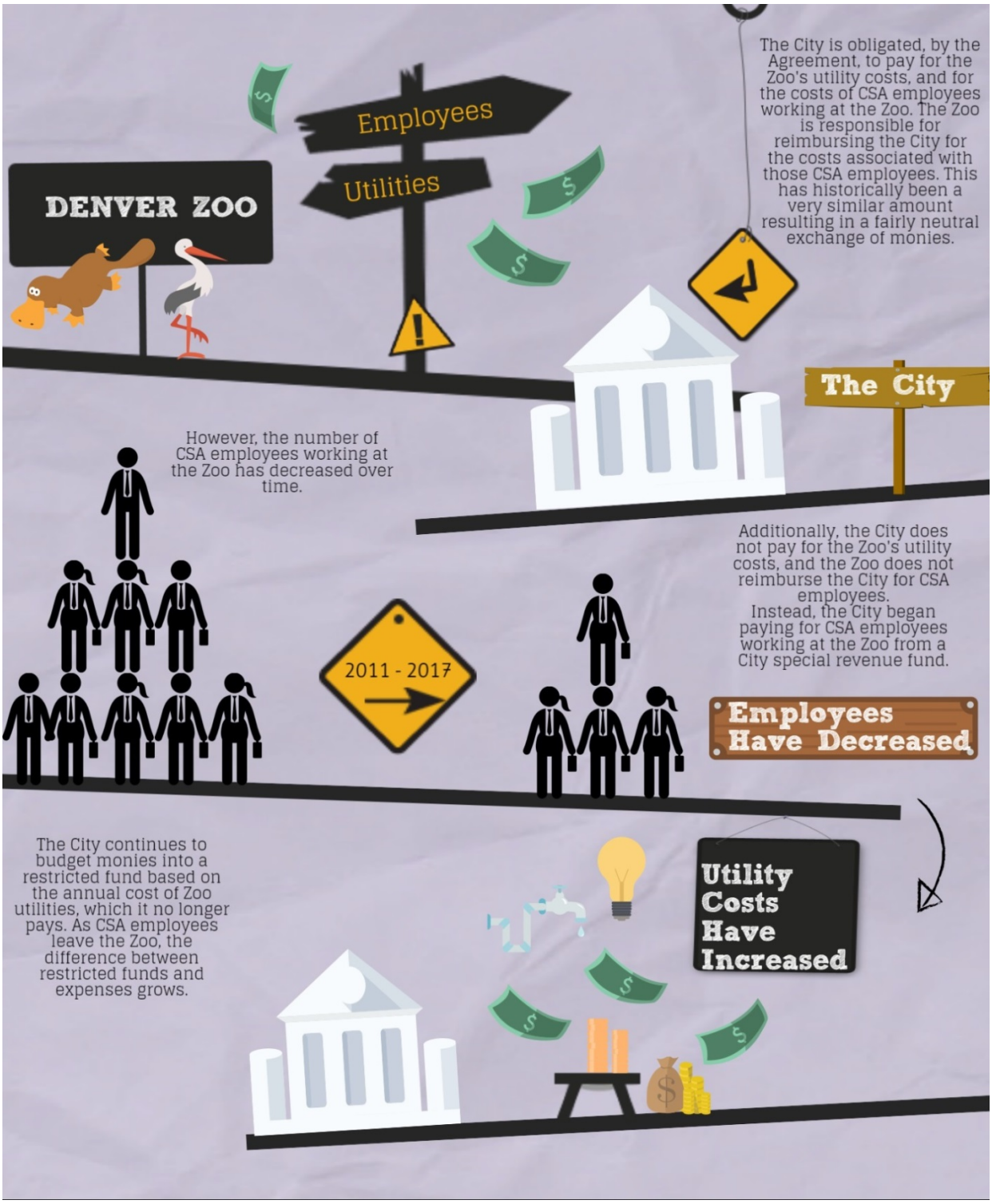
Further, a comparison of the water treatment requirements prescribed by the EPA's Drinking Water Standards with the requirements imposed by the Regulation demonstrates that Category 3 recycled water does not meet the federal government's requirements for drinking, or potable, water. Specifically, as noted in Table 2, Category 3 water can contain *E.coli* whereas the federal standards specify that no fecal coliforms—which include *E.coli*—can be present.

Steps to Improve the State Regulation for Recycled Water

A representative from CDPHE told auditors that CDPHE intends to conduct a triannual review of the Regulation that will likely include a better definition of the activities involved in the Regulation's definition of zoo operations. In light of this research and the current lack of clarity regarding the safety of using recycled water in various zoo operations, this revised definition of zoo operations pertaining to Regulation 84 and further clarification from the USDA regarding the allowable use of recycled water around zoo animals would allow facilities like the Zoo to pursue sustainability goals related to the use of recycled water while ensuring the safety and health of their animal collections.

APPENDIX

Trends in Zoo Utility and CSA Employee Costs Over Time



Source: Audit team analysis of Cooperative Agreement provisions.

AGENCY RESPONSE

January 11, 2017

Auditor Timothy O'Brien, CPA
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. O'Brien,

The Office of the Auditor has conducted a performance audit of the Denver Zoo.

This memorandum provides a written response for each reportable condition noted in the Auditor's Report final draft that was sent to us on December 20, 2016. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING 1
The Denver Zoological Foundation Could Improve Its Role as Agent for the City to Manage and Operate the Denver Zoo.

RECOMMENDATION 1.1
Amend Cooperative Agreement - The Foundation, in conjunction with the Department of Parks and Recreation, should work with the City's Budget and Management Office and the City Attorney's Office to develop a plan of action with designated milestones to enable an official review and update of contractual language within the City's Cooperative Agreement with the Foundation to (1) ensure that current practices are formally documented and followed and (2) add a provision requiring that the Denver Zoo maintain its USDA license and accreditation with a leading national zoological association, such as the Association of Zoos and Aquariums, to ensure the health and safety of the zoo animals.

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	July 1, 2017	Shannon Block President& CEO, DZF 720-377-1416 Happy Haynes Executive Director, DP&R 720-913-0750

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Narrative for Recommendation 1.1
Denver Zoological Foundation (DZF) and the Denver Department of Parks and Recreation (Parks and Recreation) have taken steps during the past year to strengthen the documentation processes between the entities to ensure we meet not just the spirit, but the letter of the Cooperative Agreement.

A relationship built on trust and respect with DZF and Parks and Recreation over many years may have resulted in the loss of some formalities. However, we believe both organizations have lived up to the intent of the Agreement, with DZF working diligently to keep the City informed on key items and issues as outlined in the guiding document.

Denver Zoo currently operates in accordance with the United States Department of Agriculture (USDA) and Association of Zoos and Aquariums (AZA) requirements and is fully supportive of the inclusion of language formally noting such in the Cooperative Agreement.

Leaders at DZF and Parks and Recreation believe the timeliest approach to addressing the areas for improvement is the creation of a formal agreement with the engagement of the appropriate City departments (BMO and City Attorney) – to ensure noted items are appropriately noted and clarified.

A full review of the entire language of the Cooperative Agreement is scheduled for 2023, which is when it currently expires, and which will require a lengthy, time intensive process, with numerous stakeholder approvals.

RECOMMENDATION 1.2 **Analyze City's Use of Zoological Gardens Special Revenue Fund** - The City should analyze whether the Zoological Gardens SRF should be treated as an SRF in the future and make any necessary changes to this funding mechanism.		
Agree or Disagree with Recommendation	**Target date to complete implementation activities (Generally expected within 60 to 90 days)**	**Name and phone number of specific point of contact for implementation**
Agree	Completed	Beth Machann City Controller 720-913-5515 Stephanie Adams BMO Director 720-913-5512

Narrative for Recommendation 1.2
GASB 54 redefined what qualifies as a Special Revenue Fund for financial statement purposes only. When the City implemented this GASB in 2011, there were several special revenue funds where this new definition required that they be reported as General Fund activity in our financial statements. While we comply with the GASB for our

audited financial statements, this in no way prohibits us from continuing to separately budget and internally report these as special revenue funds in our accounting system. The Zoo SRF was part of this assessment in 2011, and we determined that maintaining the SRF allows for the appropriate controls and transparency. We are able to control the budget for these individual funds and easily review their activity. This SRF is under the expending authority of the Director of Parks and Recreation and complies with the fund's establishing ordinance.

RECOMMENDATION 1.3
Define Monitoring Roles - The Foundation and the Department of Parks and Recreation should work together, with the City Attorney's Office as necessary, to clearly define the role and responsibilities in a policy document that includes measures to strengthen monitoring practices.

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	May 1, 2017	Charlie Wright CFO, DZF 720-337-1420 Happy Haynes Executive Director, DP&R 720-913-0750

Narrative for Recommendation 1.3
Suggested process favored by DZF and Parks and Recreation is noted in Recommendation 1.1. Several monitoring activities were updated during 2016 to make the review and approval process more formal and have already been implemented (e.g., approvals of any price changes at the Zoo and written documentation of Parks and Recreation review of the budget submitted to the Board of Trustees) and these activities will continue in 2017.

RECOMMENDATION 1.4
Assess and Revise Board Member Attendance Requirement - The Foundation's Board of Trustees should assess the current Board member attendance requirement in its bylaws, and revise as needed, with the goal of improving Board member attendance rates.

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	September 1, 2017	Paul Freeman Chair DZF Governance Committee 720-337-1416

Narrative for Recommendation 1.4
Ensuring adherence to best practices is of the utmost importance to the Denver Zoological Foundation. The Board of Trustees' Governance Committee is reviewing all aspects related to strengthening Zoo governance – including bylaws and related components – to ensure we utilize the highest standards which support the Foundation and meet the Zoo's mission. To that point, an outside consultant has been secured to assist with integrating best practices, with a target overall completion date of August 31, 2017. Attendance requirements for Board of Trustee members will be addressed as part of this process.

RECOMMENDATION 1.5
City Representation on the Executive Committee – At least one City representative should serve as a member of the Foundation's Board of Trustees' Executive Committee as allowed by the Cooperative Agreement. At a minimum, the Executive Director of the Department of Parks and Recreation should serve on the Executive Committee or designate a mayoral appointee Board member to serve on the Executive Committee.

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	In process. February 1, 2017	Happy Haynes Executive Director, DP&R 720-913-0750

Narrative for Recommendation 1.5
As noted, the Cooperative Agreement provides for the Executive Director of Parks and Recreation to attend meetings of the DZF Executive Committee. Denver Zoo and Parks and Recreation are supportive of the Executive Director serving as a formal member of the Executive Committee and will implement that immediately.

RECOMMENDATION 1.6
Formal Board Member Training - The Foundation's Board of Trustees should continue to develop its new member orientation and training program to include important elements such as the history of the Zoo, all governing documents and policies, an overview of member responsibilities and legal obligations, and financial information. This training program should be consistently used to ensure that new Board members are familiar with bylaws, other guiding documents, and the Cooperative Agreement with the City.

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	In process. April 1, 2017	Shannon Block President &CEO, DZF 720-377-1416

Narrative for Recommendation 1.6
Ensuring adherence to best practices is of the utmost importance to the Denver Zoological Foundation. A more robust on-boarding process was studied during 2016 and is now ready for DZF Board review – we anticipate its adoption in the first quarter of 2017 with the intent to present to both current and new Board of Trustee members by end of June 2017.

RECOMMENDATION 1.7 **Document the Authority of the Board and its Committees** - The Foundation's Board of Trustees should develop charters, or other guiding documents, for the Board, Executive Committee, and other standing committees, that clearly document the authority of each body and the responsibilities of committee members.		
Agree or Disagree with Recommendation	**Target date to complete implementation activities (Generally expected within 60 to 90 days)**	**Name and phone number of specific point of contact for implementation**
Agree	In process. September 1, 2017	Paul Freeman Chair, DZF Governance Committee 720-337-1416

Narrative for Recommendation 1.7
Ensuring adherence to best practices is of the utmost importance to DZF. Updating existing charters, or creating charters for newly formed committees, is currently in process and will be coordinated with the Board consultant process described under recommendation 1.4.

RECOMMENDATION 1.8 **Incorporate Best Practices in Bylaws and Governing Document** - The Foundation's Board of Trustees should include the following best practices in its bylaws or other governing documents: (1) conduct and document regular reviews of Board bylaws and governing documents, (2) require a majority of Board members for a quorum, (3) outline the required process for obtaining independent legal advice when necessary to avoid the potential for conflicts of interest, (4) disallow the Chief Executive Officer from acting as a voting member of the Board, and (5) conduct and document formal evaluations of the Chief Executive Officer using a process that includes input from all Board members.		
Agree or Disagree with Recommendation	**Target date to complete implementation activities (Generally expected within 60 to 90 days)**	**Name and phone number of specific point of contact for implementation**
Agree	September 1, 2017	Sherri Koelbel Board Chair, DZF 720-337-1416

Narrative for Recommendation 1.8
As noted in the narrative for Recommendation 1.4, the DZF's Board of Trustee's Governance Committee is reviewing all components of the organization's governing documents, inclusive of bylaws and those practices noted above, to ensure adherence with best practices. As noted earlier, a professional consultant has also been retained to assist in this process.

Please contact Charlie Wright, Chief Financial Officer, at 720-337-1420 with any questions.

Sincerely,

Shannon Block
President & CEO

cc: Valerie Walling, Deputy Auditor, CPA, CMC
Katja Freeman, Audit Supervisor, MA, MELP
Happy Haynes, Executive Director, Department of Parks Recreation
Sheri Koelbel, Board Chair, Denver Zoological Foundation
Pat Green, Executive Vice Chair, Denver Zoological Foundation
Paul Freeman, Co-Chair, Strategic Planning/Governance Committee, Denver Zoological Foundation