

AGREEMENT

between

EAST BAY ZOOLOGICAL SOCIETY, Inc.. and CITY OF OAKLAND

THIS AGREEMENT is made and entered into this 13th day of May, 2005, between the CITY OF OAKLAND, a municipal corporation, hereinafter referred to as "CITY" and EAST BAY ZOOLOGICAL SOCIETY, INC., a California nonprofit public interest corporation (hereinafter referred to as "SOCIETY") for the operation and management of CITY-owned ZOO AND PARK.

WITNESSETH

WHEREAS, the CITY is the fee owner of that certain real property located at 9777 Golf Links Road, Oakland, California and which is described in Exhibit "A", attached and incorporated herein by references (hereinafter referred to as 'ZOO AND PARK"): and

WHEREAS, the ZOO AND PARK are a unique and important asset for the education, enjoyment and recreation of the CITY'S children, students, residents and visitors; and

WHEREAS, the CITY desires to promote and aid in said property's maintenance and improvement as an educational and recreational area consisting of, but not limited to, zoological and botanical gardens for the citizens of the CITY, among others; and

WHEREAS, the SOCIETY desires to maintain, operate and improve said real property consistent with the CITY'S desires; and

WHEREAS, the SOCIETY administers and manages an annual budget in excess of Six Million (\$6,000,000.00) dollars and which continues to grow; and

WHEREAS, the SOCIETY contributes in excess of One Million (\$1,000,000.00) dollars per year to the maintenance, operation, and improvement of the ZOO AND PARK over and above the revenues from the operation of the ZOO AND PARK: NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

IN CONSIDERATION OF THE ABOVE RECITALS AND PERFORMANCE OF THE RESPECTIVE COVENANTS HEREINAFTER DESCRIBED, the CITY and the SOCIETY hereby agree that the SOCIETY shall improve, maintain and operate the ZOO AND PARK, upon the following terms and conditions:

1. FEE INTEREST: The CITY shall retain the fee title to the above-referenced real property.
2. TERM: The term of this Agreement shall be for fifteen (15) years commencing upon execution hereof and expiring on October 31, 2019.
3. MANAGEMENT, IMPROVEMENT AND MAINTENANCE: For purposes of management, improvement, and maintenance, as described in Section 18a, Knowland Park is hereby divided into three (3) areas as shown on the map entitled "Knowland Park Management, Improvements and Maintenance Plan" which plan is attached and incorporated herein by reference as **Exhibit "B"**.
 - a. Upper Area: This area contains approximately 65 acres and is that portion of the ZOO AND PARK that lies between Golf Links Road and Skyline Blvd. The Upper Area is to be maintained in its present natural condition as undeveloped land during the contract period.
 - b. Mesa Area: This area contains approximately 275 acres and is that portion of the ZOO AND PARK that lies southerly of Golf Links Road and northerly of the private property from Golf Links Road westerly to Maggiora. The SOCIETY shall implement improvements to the Mesa Area pursuant to the Master Plan approved by the City Council in December 1998 and the City's Major Conditional Use Permit approved December 16, 1998 (collectively the "Master Plan"). Any planning and development of this area shall be done with the consultation of the neighborhood associations bordering ZOO AND PARK.
 - c. Lower Area: This area contains approximately 150 acres and is that portion of the ZOO AND PARK that is generally developed and contains, among other developments, the zoological collection. The two caretakers' homes, located northeast of the lower meadow, may be rented out by the SOCIETY, however such rental shall be limited to ZOO personnel only. The SOCIETY shall implement improvements to the Lower Area pursuant to the Master Plan approved by the City Council in December 1998. Improvements to be paid for with funds from any tax-exempt bond funds shall be performed in compliance with all agreements between the CITY and the SOCIETY and all documents pursuant to which such bonds were issued.

The SOCIETY agrees that it will not, except by prior approval of the City Council, cause any development of the meadowland area that is inconsistent with ZOO AND PARK uses. The meadowland areas are the two large cultivated turf areas in the lower park. One lies north-easterly of the main entrance to the park and the other southerly of the entrance and north of the zoological collection. The SOCIETY shall be entitled to close the picnic facilities if necessary for security and safety reasons with CITY approval.

4. AGREEMENTS: The SOCIETY and CITY agree that this Agreement supersedes all previous agreements with respect to SOCIETY'S operations in Knowland Park and further confirms the SOCIETY'S right to continue the operation of concessions including food, rides, the Snow Building, and programs, and further confirms the SOCIETY'S responsibility for all financial obligations of such agreements.
5. IMPROVEMENTS AND MAINTENANCE: The SOCIETY shall implement the improvements in the Lower Area as set forth in the Master Plan or any amendments thereto, as approved by the City Council. The SOCIETY shall, during implementation of the improvements, adhere to sound business and legal practices concerning the following areas: design, construction, financing, supervision, building codes, regulations, maintenance, and all other applicable laws. The SOCIETY shall keep the premises free and clear from any and all liens, claims and demands for work performed, materials furnished or operations conducted on said premises.

Any improvements shall be subject to all applicable federal, state, and local permitting and development requirements including, but not limited to, the California Environmental Quality Act, Oakland Planning Code, Oakland General Plan (including the Open Space Conservation and Recreation Element [OSCAR]), and Oakland Municipal Code (including the Creek Protection Ordinance and Grading Ordinance). The SOCIETY shall obtain all necessary permits and regulatory approvals at its sole cost and expense prior to the commencement of any work.

6. FINANCING: The SOCIETY raises funds for the maintenance, operation and improvement of the ZOO AND PARK, over and above the revenues it receives from the ZOO AND PARK programs and activities. In order to implement said improvements, the SOCIETY will be required to raise funds through available means of financing. The SOCIETY shall, with the approval of the City Council, have the right and authority to:

- a. Collect and use in accordance with this Agreement all revenues collected at the ZOO AND PARK;
 - b. Sub-license concession areas to responsible parties for a period of time less than that remaining of the term of the Agreement;
 - c. Charge admission and/or Snow Building rental fees in accordance with paragraphs 11 (c) and (d) below;
 - d. Raise funds in any other lawful manner.
 - e. Make, execute or guarantee indebtedness secured by Society's improvements; but under no circumstances shall such indebtedness be construed as a debt of the City, nor shall it constitute in any way a lien or encumbrance on the fee of said leased premises or any interest of the City in said premises.
7. ACCOUNTING/FUND ACCUMULATION: SOCIETY agrees to comply with City accounting and audit requirements for nonprofit organizations, including any updates and modifications, set forth by the Finance Director, City Auditor and City Administrator during the term of the agreement. The audit provision shall conform to the requirements outlined in Exhibit "C", including the Table of Contract Clauses Related to Financial Responsibilities, and any updates and modifications.
8. ACCESS TO RECORDS: SOCIETY shall provide requested records to CITY within five (5) working days of receipt of CITY's request and shall allow CITY access to books and records at all reasonable times. At the option of the City, SOCIETY shall provide payroll tax reports, sales tax reports, income tax reports, hazardous materials reports, and other reports filed with federal, state and local government.
9. RECORDS RETENTION: SOCIETY shall maintain financial and operational records until the later of five (5) years after the end of the agreement or two (2) years after closure of all disputed matters. Such records during the period of the Agreement and the retention period are to be retained at a site of local administration or a storage site nearby with availability to City parties in interest.
10. FUNDS: During the term of the Agreement, the SOCIETY may accumulate funds received from its operation of the ZOO AND PARK to be used for the following purpose: (1) Regular operation and maintenance as the SOCIETY expands, and 2) Improvements, construction of new exhibits and facilities, and animal acquisitions.

The SOCIETY shall apply funds from the Measure K and Measure G Bond Issues and other funds received from the CITY to the implementation of the Master Plan and the construction of such improvement projects, or other projects approved by the CITY which funds shall be administered by the SOCIETY in accordance with all applicable laws and regulations and in accordance with the applicable bond documents and Master Agreements, if any, with respect to Measure K, Measure G or other funds received from the CITY.

It is the intention of the CITY and the SOCIETY that the improvements in Knowland Park be completed in a timely, continuous and expeditious manner.

In order to expedite capital improvements, the SOCIETY shall submit annually to the City Office of Parks and Recreation ("OPR") within one hundred fifty (150) days after the end of its fiscal year, a capital improvement budget, spending plan, actual expenses and schedule describing its projected development for the current budget year and for the next two (2) following years.

The total amount of money to be spent annually and the scheduling of development shall be the principal responsibility of the SOCIETY. In the event a disagreement arises concerning the schedule, the SOCIETY and OPR shall meet and attempt to resolve such issues at the earliest practical time. Both parties agree to act reasonably and in good faith. In the event that these differences cannot be resolved, final resolution shall rest with the City Council.

11. CHARGES AND FEES:

- a. Goods, Services, Rides: The SOCIETY and/or its licensees may set and determine prices for services, goods and products sold to the public; provided, however, that said prices shall not be more than those charged for similar services, goods and products at comparable facilities, such as San Diego Zoo, Sea World and Six Flags Marine World.
- b. Parking Fees: The SOCIETY may collect and receive parking fees charged to the public. Said fees shall not exceed those charged at comparable facilities, such as San Diego Zoo, Sea World and Six Flags Marine World.
- c. Admission Fees: The SOCIETY may charge and receive admission fees to the ZOO AND PARK. Said fees shall not

exceed those charged by other similar facilities such as the San Diego Zoo, Sea World and Six Flags Marine World. The SOCIETY agrees to allow one free admission day per month for Oakland residents. SOCIETY shall determine which day of the month will be the free admission day and shall notify CITY and public accordingly.

- d. Rental Fees: SOCIETY agrees to offset up to \$3,500 per year in rental fees for qualified non-profit organizations that desire to use rental facilities under the Community Access Grant Program. The Community Access Grant application is attached and incorporated herein by reference as **Exhibit "D"**.
- e. Submittal of New or Revised Fees: SOCIETY shall submit to OPR any proposed new or revised fees no later than 3 months prior to the desired effective date for the fee change. The change would take effect upon City Council action to amend the Master Fee Schedule.

12. SOCIETY SERVICES:

- a. On-Going Services: Society shall provide on-going services consistent with the accreditation standards of the American Zoo and Aquarium Association (AZA), Alameda County Health and any other federal, state or local standards or requirements.
- b. Programs and Entertainment: The SOCIETY will provide programs and entertainment at ZOO AND PARK for the benefit of the public.
- c. Concessionaires: The SOCIETY may enter into agreements with Concessionaires for the sale of food and/or souvenirs, and for the operation of children's rides or animal exhibits. The SOCIETY may enter into agreements with suppliers for goods, food, souvenirs, materials, supplies and services related to the operation of the park. Selection and award of contractors and suppliers shall follow the CITY'S established policies regarding awards of sub-contracts and/or selection of vendors. Improvements by a concessionaire shall be subject to prior approval by the City Administrator. In the event a concessionaire desires to retain ownership of improvements placed or constructed on the real property, they may be allowed to do so by the SOCIETY so long as the CITY'S interest in the land upon which improvements are located is not subordinate

land upon which improvements are located is not subordinate thereto at any time; provided further, that, upon termination of the concession, at the CITY'S option, the premises shall be returned in as good a condition as existed prior to commencement of construction of the improvements. The SOCIETY shall provide OPR copies of all sub-concession agreements and audited financial statements annually.

13. CITY OWNED ANIMALS:

- a. All animals and their issue now owned by the CITY and presently existing at the ZOO AND PARK shall be loaned to the SOCIETY during the term hereof for its use in developing and operating the premises; and the SOCIETY may, on the CITY'S account, buy, sell, trade and breed said animals during the term hereof so long as the proceeds there from are restricted to the acquisition, breeding and care of other animals. Further, all animals and their issue acquired by the SOCIETY subsequent to the execution of this Agreement shall become the property of the CITY. The CITY shall retain legal ownership of all animals and their issue at the ZOO AND PARK. The SOCIETY shall have exclusive control over and be responsible for the care, maintenance and feeding of such animals, or disposing of any deceased animals. All animals at the ZOO AND PARK at the expiration or termination of this Agreement shall be the sole property of the CITY.
- b. Should the SOCIETY, from time to time, receive animals by way of donation from third persons, or should the SOCIETY acquire animals with its own resources, the ownership of said donated animals shall immediately vest in CITY upon transfer of possession to the SOCIETY.
- c. The SOCIETY shall submit to OPR annually a written inventory of all animals. Said annual inventory is due at the beginning of the SOCIETY'S fiscal year.

14. CITY SUBSIDY: In consideration of the services to be performed by the SOCIETY for managing, operating and improving the ZOO AND PARK, and its efforts in raising and administering monies from private donations by local businesses and individuals and national and international funds, and governmental contributions from East Bay Regional Park District to the SOCIETY, the CITY agrees to subsidize the SOCIETY in an annual amount which totals One Hundred Seventy Two Thousand, Four Hundred Fourteen dollars (\$172,414.00) to be

passed through directly to the SOCIETY for zoo operations at the commencement of each fiscal year. The CITY also agrees to employ the one (1) CITY zookeeper until the employee ceases employment at the ZOO AND PARK provided that no contract for service shall result in the loss of employment or salary by any person having permanent status in the competitive service. If the zookeeper ceases to be employed at the ZOO AND PARK, but SOCIETY hires a replacement zookeeper, the CITY shall contribute Forty Thousand dollars (\$40,000) toward the replacement zookeeper costs and expenses. The CITY's subsidy shall not exceed One Hundred Seventy Two Thousand, Four Hundred Fourteen dollars (\$172,414.00), however, should the SOCIETY elect not to hire a zookeeper replacement.

Such subsidy shall not be deducted from nor reduced by County real property taxes allocated by law to the ZOO AND PARK or the SOCIETY, approximately Twenty Three Million Six Hundred Thousand (\$23,600,000.00) dollars plus all interest earned in Measure G bond funds, Ten Million (\$10,000,000.00) dollars in Measure K funds payable to the SOCIETY, or any other monies paid to the CITY for the maintenance, operation or improvement of the ZOO AND PARK by any public or private person or entity. The CITY agrees to pay all such funds to the SOCIETY promptly in accordance with any terms or conditions required by the donor of any such funds.

The CITY recognizes that the SOCIETY must be able to ensure sufficient operating and maintenance funds for the ZOO AND PARK. SOCIETY may request for CITY Council consideration through the CITY's biannual budget process, an increase in CITY subsidy for the operation and maintenance of the ZOO AND PARK during the term of the Agreement. Such request shall be submitted to the City Administrator and OPR between September 1 through November 1 prior to a new 2-year budget. The request should state the requested dollar amount, identify the operational costs to be covered, explain the need relative to operating costs and projected revenues, and specify the impact if the request is not granted. The CITY agrees to assist the SOCIETY in its efforts to meet the ZOO AND PARK's annual operating and maintenance needs and retain its accreditation with the AZA.

15. REPORT OF EXPENDITURES: SOCIETY shall provide, during the course of the Agreement, reports of expenditures from the proceeds of City funds, loan funds from City administered programs and grants from programs administered by the City. The reports shall be at such frequency and of such content as specified by the City Administrator or

her designee (OPR) and/or the City Auditor. Supporting documents may be required to be attached.

16. PROPERTY ACCOUNTING: SOCIETY has a responsibility for the protection, maintenance and preservation of all property held as a custodian for the City. At the inception of this Agreement, the parties shall inventory all tangible property of the City transferred to the custody of SOCIETY. All tangible property acquired during the course of this Agreement shall be the property of the City when acquired by City grant, operating revenues, refunds, fund raising revenues, governmental grants and other grants. Annually, SOCIETY shall provide an acquisition and disposal report for tangible property. Property dispositions shall be approved by the City Administrator or her designee (OPR) prior to such disposition. At the conclusion of this Agreement, all City tangible property shall be returned to the City with shipping and delivery expenses to be at SOCIETY'S sole expense.
17. RETURN OF FUNDS AT END OF TERM: Upon termination of this Agreement, SOCIETY shall close all accounts; all account balances shall be determined and certified by an independent Certified Public Accountant; and such balances shall be forwarded to the CITY within one-hundred-twenty (120) days after such termination.
18. SOCIETY OBLIGATIONS: The parties agree that it is the intent of this Paragraph 18, and the subparts thereof, that the SOCIETY shall be solely responsible for all maintenance, management and rehabilitation of ZOO AND PARK, and shall comply with all applicable Federal (including ADA), State, County, and City rules and regulations. CITY shall not have any responsibility for maintenance, management, and rehabilitation of ZOO AND PARK.
 - a. Maintenance and Utilities
Maintenance includes, but is not limited to, animals, grounds, buildings, rides, elevators, equipment, and security, administration and staffing therefore. The SOCIETY further agrees that it will be responsible for proper budget and financial reporting for those maintenance, management and rehabilitation responsibilities stated hereinabove; for all licenses, fees, possessory interest taxes, if applicable, and all regulations relative to the care, feeding, importing and exporting of animals. The SOCIETY shall pay and be responsible for all charges for the furnishing of gas, water, electricity, telephone service and other public utilities to the premises during the term of this Agreement and for the removal of garbage and rubbish from said premises. The SOCIETY further agrees that all animals at the ZOO AND PARK shall be maintained

in a manner consistent with accreditation standards of the American Zoo and Aquarium Association (AZA) and in accordance with applicable Federal, State, County, or City rules and regulations.

b. Amusement Ride Inspection and Certification

The SOCIETY shall be solely responsible for conducting annual amusement ride inspections and obtaining certification from the State of California as required pursuant to Title 8 CCR 344.5 through 344.18. The SOCIETY shall also be solely responsible for inspection and certification of the Tram pursuant to Title 8 CCR 343.

19. BOARD OF TRUSTEES: The Board shall consist of up to twenty-seven (27) members, one of whom shall be a representative of the Docent Council and the remaining Board members shall be selected from a broad cross section of the people of the Bay Area that reflects the cultural diversity within the Oakland Community/East Bay area. An Executive Director for the SOCIETY shall be employed by the Board. The Executive Director shall be responsible for the efficient operation of the business of the SOCIETY, and shall exercise supervision of all employees, purchasing and actions of the SOCIETY, subject to the direction of the Board, and shall perform such other duties as may be prescribed by the Board from time to time. A copy of the Nonprofit Corporation's Articles of Incorporation and all currently approved Bylaws, and any Constitution and Amendments shall be submitted to OPR within thirty (30) days of the date of execution of this Agreement. Any amendments to these documents shall be submitted to OPR within thirty (30) days after the Board of Trustees' approval.

20. INSURANCE:

Unless a written waiver is obtained from the City's Risk Manager, SOCIETY shall provide the insurance listed in Schedule Q attached hereto and incorporated herein by reference.

21. NON-DISCRIMINATION/EQUAL EMPLOYMENT PRACTICES/EQUAL BENEFITS: In carrying out the maintenance and improvements of the subject property, in determining the appropriate fees to be charged, the SOCIETY shall endeavor to establish programs and charges that will make the subject property and facilities attractive and available to all levels of economic, racial and academic interest in the community, provided that the SOCIETY'S goal of financial self-sufficiency is not thereby endangered.

SOCIETY and SOCIETY'S Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of SOCIETY that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

SOCIETY shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1 "Declaration of Compliance with the Americans with Disabilities Act" attached hereto and incorporated herein.

This Agreement is subject to the Equal Benefits Ordinance, Municipal Code, Chapter 2.32 requiring contractors on City contracts of \$25,000.00 or more to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses. The ordinance covers all benefits that an employer offers its employees and their spouses, which include but are not limited to, health benefits, bereavement leave, family leave, retirement benefits, travel and other benefits. Contractor and vendors that do not have employees or do not provide employees with spousal benefits are not required to change their benefits policies. All Contractors shall execute an "Equal Benefits Declaration of Non-Discrimination" which shall be incorporated herein and attached as Schedule C-2 to this Agreement.

If applicable, SOCIETY will send to each labor union or representative of workers with whom SOCIETY has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of SOCIETY'S commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The SOCIETY further agrees that it shall not discriminate against any employee or applicant for employment because of race, creed, religion, sex, sexual preference, color, national origin, age, marital status, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or disability, handicap and that such provisions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other

form of compensation, and selection for training, including apprenticeship.

22. TWENTY PERCENT (20%) LOCAL, SMALL BUSINESS ENTERPRISE PROGRAM (LSBE); LOCAL EMPLOYMENT PROGRAM; FIFTEEN PERCENT (15%) APPRENTICESHIP PROGRAM

For contracts \$15,000.00 or higher, contractors utilizing subcontractors shall comply with the 20% LBE/SLBE participation requirement for the City's Professional Services Contract Program. Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant (s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent requirement. Additionally, opportunities for training and employment shall be given to residents of the City of Oakland.

This agreement is subject to the (a) City's Local Employment Program and (b) the 15% Apprenticeship Program.

(a) The objective of the Local Employment Program for public works and subsidized construction projects is to cause the hiring of Oakland residents on as many Prevailing Wage jobs as possible, and to encourage businesses to hire local residents for non-City-funded work. For any construction contract, subsidy, or development agreement with the City this policy establishes a goal for Oakland-resident employment on public works projects (as such projects are defined in this policy). Specifically, for work performed at the construction site, this policy establishes a goal of 50% of the work hours, which must be performed by Oakland residents on a craft-by-craft basis. In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents, and the first new hire must be an Oakland resident. A contractor or developer must achieve the goals or secure an exemption from the City.

(b) The 15% Apprenticeship Program (Oakland Apprenticeship Workforce Development Partnership System – OAWDPS) requires contractors meet a 15% Oakland resident apprenticeship hire goal that is based on total hours worked and on a craft-by-craft basis. The hours worked may be performed on City of Oakland projects, or 7.5% of the hours worked may be performed by resident apprentices on non-City of Oakland or Oakland Redevelopment Agency projects.

A copy of the (1) Local Small Local Business Enterprise Program (2) Local Employment Program and (3) 15% Apprenticeship Program is attached and shall be incorporated herein as Exhibit "E 1-2"

All affirmative action efforts of SOCIETY are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by SOCIETY to hire and/or contract with the individual or entity in question.

In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community

23. LIVING WAGE REQUIREMENTS

This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations if it is for an amount of \$25,000.00 or more, or if it is amended to increase the contract amount by \$25,000.00 in any twelve-month period thereafter. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that SOCIETY provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$9.66 with health benefits or \$11.11 without health benefits. These initial rates shall be upwardly

adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. SOCIETY shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – SOCIETY shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- e. SOCIETY shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. SOCIETY shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.

- g. Reporting – SOCIETY shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. SOCIETY shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. SOCIETY shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. SOCIETY shall require contractors and subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

24. CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, SOCIETY must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O

- 25. NUCLEAR FREE ZONE DISCLOSURE: SOCIETY represents pursuant to Schedule P ("Nuclear Free Zone Disclosure Form"); that it is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, SOCIETY shall complete Schedule P, attached hereto.
- 26. HOLD HARMLESS/INDEMNIFICATION: The SOCIETY agrees to protect, defend (including any third party lawsuits), indemnify, and hold

harmless CITY, its Council Members, officers, agents, and employees from any and all claims, demands, actions or damages arising out of the performance of this Agreement by SOCIETY, its contractors, and their respective subcontractors, vendors, guests, and invitees to which CITY may be subjected, except for those claims, demands, actions or damages resulting from the sole negligence or willful misconduct of CITY, its Council Members, officers, agents, and employees. The CITY agrees to protect, defend (including any third party lawsuits), indemnify, and hold harmless Society, its Board of Trustees, Advisory Council members, officers, directors, legal counsel, employees and agents from any and all claims, demands, actions, or damages, arising out of the active negligence or willful misconduct of the City, its contractors (excepting Society) and their respective subcontractors, vendors, guests, and invitees to which Society may be subjected, except for those claims, demands, actions or damages resulting from the negligence or willful misconduct of Society, its Board of Trustees, Advisory Council members, officers, directors, legal counsel, employees and agents. As used in herein, "active negligence" shall exclude all conditions that the City may be aware but which falls under the obligations of Society to manage under the terms of the Agreement.

27. SUNSHINE ORDINANCE: All meetings of the SOCIETY Board of Directors shall be conducted pursuant to the provisions of Oakland Municipal Code Section 2.20.040B (City of Oakland Sunshine Ordinance.)
28. POLITICAL PROHIBITION: Subject to applicable law, funds received pursuant to this agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, or for publicity or propaganda designed to support or defeat legislation and ballot measures pending before federal, state, or local government. The SOCIETY shall not use the property for political purposes, including, but not limited to, political fundraising and campaigning.
29. CONFLICT OF INTEREST: The following protections against conflict of interest will be upheld:
 - a. SOCIETY certifies that no member of or delegate of the Congress of the United States shall be permitted to share or take part in this agreement or in any benefit arising herefrom.
 - b. SOCIETY certifies that no member, officer, or employee of City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to

the programs or projects covered by this agreement, shall have any interest, indirect or direct in this agreement or in its proceeds during his/her tenure or for one year thereafter;

- c. SOCIETY certifies that no one who has any financial interest in this agreement or receives compensation for the services from SOCIETY is related by blood or marriage within the third degree to the Mayor or any one or more of the members of the City Council, City Administrator, or the head of the department to which these services are to be provided pursuant to this agreement.

30. BONDS AND CONTRACTOR'S INSURANCE: SOCIETY shall require any contractor who performs work on the premises to maintain in force such insurance as may be necessary to assure that the City is indemnified and held harmless. In addition, the City and the SOCIETY shall require as a condition of any contracts for the construction, performance bonds and payment bonds in the amounts equal to one hundred percent (100%) of the amount of each contract over \$25,000.00. This amount shall be subject to review at five (5) year intervals by the City and SOCIETY. The SOCIETY shall be responsible for the labor utilized or materials furnished in the future repair or replacement of facilities at the premises and keep the ZOO and City's possessory interest therein free and clear of any liens or encumbrances of any kind whatsoever created by the SOCIETY'S act or omission.

31. DEFAULT BY THE SOCIETY: In the event the SOCIETY defaults or fails to perform under any of the obligations hereunder, the City Administrator shall give written notice hereof to the SOCIETY expressly stating the nature of said default or nonperformance. The SOCIETY shall have sixty (60) days from receipt of said notice to correct said default or nonperformance, and in the event of the SOCIETY'S failure to do so, the CITY, in addition to any other legal or equitable rights it may have, may do any or all of the following:

- a. Terminate this Agreement upon written notice to the SOCIETY or
- b. Direct the SOCIETY to assign its interest in and to this Agreement to a party designated by the City Council without compensation to the SOCIETY, or
- c. Perform itself whatever corrective measures are deemed necessary, which costs of such services plus administrative

overhead shall be charged to and paid by the SOCIETY to the CITY upon demand.

31. RIGHT TO INSPECT: The City shall have the right to inspect the premises and operations of the SOCIETY from time to time, in a reasonable manner.
32. MONITORING: The City Council shall continually review the SOCIETY'S performance to insure the success and quality thereof under the terms and conditions of this Agreement.
33. NON-ASSIGNMENT OF INTEREST: The SOCIETY shall not assign or otherwise transfer any rights, duties, or obligations or interest in this Agreement, either in whole or in part, without the prior written approval of the City Council. The CITY shall not assign this Agreement to a private corporation, firm or individual without the prior written approval of the SOCIETY, except as herein provided.
34. INUREMENT: This Agreement shall be and is hereby binding on the successors of the parties hereto.
35. PARKS AND RECREATION ADVISORY COMMISSION: Any and all matters with respect to this Agreement that require policy approval by the City Council, not including administrative decisions by the City Administrator that need no such approval, shall be first submitted to the PARKS AND RECREATION ADVISORY COMMISSION which shall, in turn, submit same to the City Council in conformance with applicable procedures.
36. PERSONAL CONTRACT: The qualifications and identity of EAST BAY ZOOLOGICAL SOCIETY, INC., are of particular interest to the CITY. Because of those qualifications and identity, the CITY has entered into this Agreement. No voluntary or involuntary successor in interest of the SOCIETY shall acquire any rights or powers under this Agreement unless so approved by the City Council, and until such successor is in compliance with the applicable rules, procedures and regulations of the Federal Government, the State of California, the County of Alameda and the provisions of this Agreement.
37. PERMANENT IMPROVEMENTS: At the conclusion or termination of the Agreement, or any renewals to the Agreement, all permanent fixtures shall become the property of the CITY, except as set forth under Paragraph 12(c), CONCESSIONAIRES.

38. EASEMENT: The SOCIETY agrees the CITY shall retain all rights and duties with respect to the granting and issuance of any and all easements on the property known as "Knowland Park" to third parties provided such easements do not interfere with the operation of the ZOO AND PARK. The CITY shall retain all monies, profits, and fees collected pursuant to the granting of such easement rights to any and all third parties. As a courtesy to the SOCIETY, the CITY shall notify the SOCIETY of the granting of any such easements prior to the effective date of said easement.
39. ILLEGALITY OF CONTRACT: This Agreement is intended to satisfy the conditions of Internal Revenue Service Procedure 93-17. In the event that any of the obligations under this Agreement shall become null and void by Federal, State or local law, or in the event the future performance of the conditions or terms of this Agreement becomes a hardship for the parties to perform because of Federal, State or local law which is enacted, or court decision rendered, the parties may amend the Agreement to conform with Federal, State or local law, or the CITY may, at its option, terminate this Agreement. The CITY shall not be liable to the SOCIETY for any loss or damage of any nature suffered or claim to be suffered by the SOCIETY by reason of any modifications to the Agreement or its termination.
40. WASTE OR NUISANCE: The SOCIETY shall not commit or permit the commission by others of any waste on said premises; the SOCIETY shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code on said premises; and the SOCIETY shall not use or permit the use of said premises for any unlawful purpose.
41. WAIVER OF BREACH: The waiver by the CITY of any breach by the SOCIETY of any of the provisions of the Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by the SOCIETY either of the same or a different provision of this Agreement.
42. HOLDOVER: Should the SOCIETY hold over and continue maintaining and operating the ZOO AND PARK after the end of the term of this Agreement, with the expressed or implied consent of the CITY, such holding over shall be construed as a continuation of the Agreement from month-to-month and upon the same terms and conditions as herein provided for the previous Agreement. Any holdover shall terminate upon the execution of a new Agreement.
43. CITY'S REPRESENTATIVE: The SOCIETY shall be considered the CITY'S representative for the sole purpose of improvements.

maintenance, and/or construction undertaken at the ZOO AND PARK, including, but not limited to, construction, alteration, repair, demolition or excavation of existing structures, buildings, roadways, paths, parking lots and other facilities and landscaping for which a California contractor's license, general or special, is required.

44. ACCESS TO PUBLIC RECORDS: The SOCIETY shall cooperate with CITY to provide public access for the purposes of public inspection of information, documents, correspondence, inspection records, logs, minutes, photographs, contracts and other documents in any way related to the expenditure of funds granted or otherwise provided to the ZOO AND PARK by CITY.

45. TERMINATION: This Agreement may be terminated by SOCIETY or the CITY at any time without cause and without penalty upon 180 days prior written notice. Upon termination of this agreement, all assets and operations will be turned over to the CITY or its designated representative, and the CITY will assume all financial and operational responsibilities for the ZOO AND PARK, except SOCIETY's debts and liabilities which SOCIETY shall be solely responsible.

46. NOTICES: Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to the CITY by the SOCIETY or the SOCIETY by the CITY shall be in writing and shall be deemed duly served and given when deposited in the United States mail, first-class postage prepaid, addressed as follows:

CITY

City of Oakland
Office of the City Administrator
One Frank Ogawa Plaza
Oakland, CA 94612
Attn: Deborah Edgerly

SOCIETY

East Bay Zoological Society
P.O. Box 5238
9777 Golf Links Road
Oakland, CA 94605
Attn: Dr. Joel Parrott

47. SEVERABILITY: In the event that any covenant, term or condition herein contained is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other valid covenant, term or condition herein contained.

48. GOVERNING LAW: This agreement shall be deemed to be made and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the City Administrator of the CITY OF OAKLAND has caused the name of the City of Oakland to be affixed hereto and the EAST BAY ZOOLOGICAL SOCIETY, INC., has caused its name to be affixed, all in quadruplicate, the day and year first above written. The City Administrator is duly authorized by Resolution No. 78872 C.M.S. passed by the City Council on October 19, 2004, to execute this agreement.

CITY OF OAKLAND,
a municipal corporation

EAST BAY ZOOLOGICAL
SOCIETY, INC.,
a nonprofit public
interest corporation

By *Melanie A. Lyons* 8/2/05
Date

By *Robert H. ...* 8/2/05
Date

Title: City Administrator

Title: President

Approved:

Melanie A. Lyons 8/2/05
Office of the City Attorney Date

OAKLAND CITY COUNCIL

SEP 16 2018 City Attorney

RESOLUTION NO. 78872

C.M.S.

RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE EAST BAY ZOOLOGICAL SOCIETY, INC., FOR THE MANAGEMENT OF THE KNOWLAND PARK AND ZOO, FOR A FIFTEEN-YEAR PERIOD EXPIRING ON OCTOBER 31, 2019, IN AN ANNUAL AMOUNT NOT TO EXCEED \$172,414 AND THE COST OF A ZOOKEEPER

WHEREAS, the City of Oakland ("City"), and the East Bay Zoological Society, Inc., a nonprofit corporation ("Society"), seek to enter into an Agreement for the purpose of operating, maintaining and improving Knowland Park and Zoo for the use and benefit of the public; and

WHEREAS, Knowland Park and Zoo, which real property and improvements are owned by the City of Oakland, is located at 9777 Golf Links Road, Oakland, California, hereinafter referred to as "Zoo and Park"; and

WHEREAS, the Zoo and Park is a unique and important asset for the education, recreation and enjoyment of Oakland's children, students, residents and visitors; and

WHEREAS, the City wishes to promote and assist in improving the Zoo and Park as an educational and recreational area and the Society agrees to be solely responsible for the maintenance, operation and improvement of said property; and

WHEREAS, the Society needs City Council approval for the right and authority to collect and use revenues collected at the Zoo and Park, including sub-licensed concession charges, admission charges, rental fees, parking fees, and raising of funds in any other lawful manner for the maintenance, operation and improvement of the Zoo and Park; and

WHEREAS, the Society will submit proposed changes to Zoo and Park fees and charges to the City Council for approval in the Master Fee Schedule, now therefore be it

RESOLVED: That the City Administrator of the City of Oakland is hereby authorized and directed to negotiate and execute an Agreement with the Society for a fifteen-year period expiring on October 31, 2019; and be it

FURTHER RESOLVED: That the City will pay the Society an annual subsidy in an amount not to exceed one hundred seventy two thousand four hundred fourteen dollars (\$172,414) and cover the cost of a zookeeper from the General Purpose Fund (1010), Zoo Organization (501260), and the Society will fund the balance of all costs of Zoo and Park maintenance, operations and improvements; and be it

78872

FURTHER RESOLVED: That the Office of the City Attorney shall review and approve the Agreement authorized by this Resolution prior to the City Administrator's execution of same; and a copy of the Agreement will be on file at the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to take whatever action is necessary with respect to the East Bay Zoological Society, Inc., Agreement for Zoo and Park operations in accordance with the basic purpose of this Resolution.

OCT 19 2004

COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN and PRESIDENT DE LA FUENTE — 8

NOES- 0

ABSENT- 0

ABSTENTION- 0
ABSTENTION- 0

ATTEST: *CEDA FLOYD*
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California