

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

IN 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

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

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Manager  
Deborah A. Edgerly  
City Manager

(510) 238-3301  
FAX: (510) 238-2223  
TDD: (510) 238-2007

March 9, 2004

Dr. Joel Parrott  
Oakland Zoo  
P.O. Box 5238  
Oakland CA 94605

Dear Dr. Parrott,

This letter is written to advise you that the 10-year agreement between the City and East Bay Zoological Society, Inc. for management of Knowland Park and Zoo, executed on March 10, 1994, is about to expire. Given that both parties have shown interest in fashioning a new operating agreement, the holdover clause shall be in effect so the agreement can continue on a month-to-month basis until a new agreement can be approved by the City Council.

Thank you for your consideration.

Sincerely,

*Deborah A. Edgerly*  
DEBORAH A. EDGERLY  
City Manager

CITY OF OAKLAND  
LIFE ENRICHMENT AGENCY

Facilities, Planning and Development  
150 Frank H. Ogawa Plaza ♦ 4th Floor ♦ Oakland, Ca 94612  
Phone (510) 238-2036 ♦ Fax (510) 986-2859 ♦ TDD (510) 839-6451



February 2, 2001

Dr. Joel Parrott  
The Oakland Zoo  
P.O. Box 5238  
Oakland, CA 94605

Dear Dr. Parrott:

Enclosed please find five (5) copies of the Master Agreement between the City and the East Bay Zoological Society for improvements related to construction of the Oakland Zoo using Measure K, Series D bond funds. Please have each of the five (5) agreements signed and return to me with required attachments. For your information and assistance please find below a summary of the attachments/affidavits as required by the City into order to enter into a Master Agreement. Upon receipt of a completed set of agreements, I will obtain the necessary signatures and return a final executed copy to you within 14 days.

1. Exhibit A: 8 ½" x 11" size conceptual plan of architectural rendering of the proposed project.
2. Exhibit B: Proposed Project Budget for the project
3. Business Tax Certificate
4. Certificates of Insurance verifying compliance with the City's insurance requirements stated in the master agreement.
  - a. **Fidelity Bond** indicating coverage in an amount equal to 20 percent of the amount of the Measure K Series D funds to be received. The bond shall include the following endorsement:

"It is hereby understood and agreed that this policy may not be cancelled nor the amount of the coverage thereof be reduced until thirty (30) days after the receipt by the City Manager of the City of Oakland of the written notice of such cancellation or reduction of coverage, as evidenced by receipt of the registered letter."
  - b. The premiums shall not be paid by the CITY.
  - b. **Worker's Compensation** insurance is required by the laws of the State of California.
  - c. **Commercial General Liability** insurance, including ut not limited to, Personal Injury, Broad from, Property Damage, Contractual (as Needed), Products and Completed Operations or Owners and subcontractor Protective Liability.
  - d. **Automobile Liability** insurance
  - e. **Errors and Omissions/Professional Services Liability** insurance
5. Affidavit of Non-Discrimination

**CITY OF OAKLAND  
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Should you have any questions regarding any of the requirements of the Master agreement, please call me at 238-2036.

Sincerely,



Kerry Jo Ricketts-Ferris  
Project Manager, Facilities, Planning and Development

Cc: Terry Brown, CAO  
Julie Odofin, Library  
✓ Sandra Taylor, OPR

BYLAWS  
OF  
EAST BAY ZOOLOGICAL SOCIETY

1. NAME

The name of this corporation shall be East Bay Zoological Society, hereinafter referred to as the "Society."

2. POWERS

2.1 To acquire, establish, maintain, operate and control zoological gardens, botanical gardens and parks for the education, recreation and pleasure of the public.

2.2 To purchase, own, hold, lease, hire, mortgage, hypothecate, exchange and receive donations and bequests of real and personal property, and otherwise acquire and deal in all kinds of real and personal property for the accomplishment of the objectives of this corporation.

2.3 To have and exercise all of the powers conferred upon nonprofit corporations by the laws of the State of California now in effect or hereafter amended.

3. PLACE OF BUSINESS

The principal place of business shall be at the offices of The Oakland Zoo at Knowland Park, 9777 Golf Links Road, Oakland, California.

4. FISCAL YEAR

The fiscal year of the Society shall be July 1 through June 30.

5. MEMBERSHIP IN THE SOCIETY

5.1 Membership in the Society shall be open to all persons desiring to promote and preserve a zoo in Knowland Park for the education, recreation and pleasure of the citizens of the greater East Bay.

5.2 The Society shall have three (3) classes of members (as defined by Section 5056 of the California Nonprofit Corporation Law), as follows: Personal, Business and Meritorious. From time to time, the Board by resolution may establish categories of membership within each class. The rights, preferences and privileges of each class and category of members, and the dues payable by each, shall be established by resolution of the Board of Trustees from time to time; provided, however, that each membership shall be entitled to one (1) vote on matters submitted to a vote of members (regardless of the number of persons who may enjoy other rights or privileges inherent in such membership). Memberships held of record by more than one person shall be voted in the manner specified in Section 5612 of the California Nonprofit Public Benefit Law.

5.3 Voting members shall be 15 years or older. Members under 15 years of age shall be eligible for "Junior Membership"

with all privileges of Society members except the right to vote at regular or special meetings of the membership.

5.4 Annual dues shall become due and payable each year on the first day of the month following the anniversary date of each member's date of enrollment. Only those members who have paid the annual dues set by the Board for their class or category of membership shall be members in good standing and thus entitled to exercise the rights, preferences and privileges of a member.

5.5 Memberships are not transferable, whether by bequest, gift, operation of law or otherwise.

## 6. MEETINGS OF MEMBERS

6.1 The annual meeting of members of the Society shall be held on the second Wednesday of January of each year. The President may change the date of the membership meeting, using the same notice procedures provided for special meetings of members. At the annual meeting, the members present (if a quorum exists) may fill any vacancies on the Board of Trustees, and may transact such other business as may be brought before the meeting.

6.2 Special meetings of members may be called by the Board or the President. In addition, special meetings of members for the purpose of removal of Trustees and election of their replacements may be called by fifty (50) or more of the members of record. No business may be transacted at a special meeting unless the general nature of such business is stated in the

notice of the special meeting. Voting members shall receive at least seven (7) days notice of special meetings. Two-thirds (2/3) of the voting members present at a special meeting shall be required to remove a Trustee.

6.3 Meetings of the members shall be held at any place designated by the Board of Trustees or by written consent of all persons entitled to vote at the meeting, given before or after the meeting. In the absence of any such designation, members' meetings shall be held at the Snow Building located on the grounds of The Oakland Zoo at Knowland Park, 9777 Golf Links Road, Oakland, California.

6.4 The Board may fix, in advance, a date as the record date for the purpose of determining the members entitled to notice of any meeting of members. Such record date shall not be more than sixty (60) nor less than ten (10) days before the date of the meeting. Only members in good standing on the record date shall be entitled to vote.

6.5 A minimum of thirty (30) of the voting members, in person, shall constitute a quorum at a meeting of members. In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the votes represented in person, but no other business may be transacted, except as provided by law.

6.6 If a quorum is present, the affirmative vote on any matter of the majority of the voting power represented at the meeting shall be the act of the members. The members present at



a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

6.7 Any member in good standing may nominate himself or any other member in good standing for election to the Board at the next annual meeting of members by making such nomination, in writing, to the Nominating Committee not less than sixty (60) days prior to the date of the annual meeting, and the Nominating Committee shall present all such nominations to the members at the annual meeting. Nominations to fill vacancies on the board at any special meeting of members called for such purpose may be made in writing to the Nominating Committee at least five (5) days prior to the date of such meeting.

## 7. BOARD OF TRUSTEES

7.1 Powers. Subject to the provisions of the Nonprofit Public Benefit Corporation Law and any limitation in the Articles of Incorporation and Bylaws of the Society, the activities and affairs of the Society shall be conducted and all corporate powers shall be exercised by or under the direction of a board of directors which shall be denominated the "Board of Trustees" (hereafter, the "Board"). The Board may delegate the management of the activities of this corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of this corporation shall be managed

and all corporate powers shall be exercised under the ultimate direction of the Board.

7.2 Composition of Board; Responsibilities. The Board shall consist of twenty-five (25) members, one of whom shall be the Executive Director of The Oakland Zoo and one of whom shall be a representative of the Docent Council. The remaining members shall be selected from a board cross section of the people of the Bay Area. Except for the Executive Director, all Board members shall serve on at least one (1) of the Standing Committees of the Board; the Executive Director may, but shall not be required to, serve on one or more committees of the Board. No member of the Board (other than the Executive Director) may be an employee of the Society and no Board member shall receive remuneration from it for service in fulfilling his or her duties as a Board member.

7.3 Term of Office. Except for the President of the Docent Council, who shall remain as a Board member for so long as he or she is President of the Docent Council, the Trustees shall serve a three (3) year term, with no fewer than eight (8) Trustee positions expiring at the annual meeting of members following the end of each calendar year. A Trustee shall be limited to two (2) full, consecutive terms of office, after which the Trustee will not be eligible for reelection to the Board until he or she has been off the Board for at least one (1) year.

7.4 Vacancies. Subject to the provisions of Section 5226 of the California Nonprofit Public Benefit Corporation Law, any Board member may resign effective upon giving written notice to

the Chairman of the Board, the President, the Secretary, or the Board, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be selected before such time, to take office when the resignation becomes effective.

Vacancies in the Board may be filled by majority vote of the members or by a majority vote of the remaining Trustees, although less than a quorum, or by a sole remaining Trustee. Each Trustee so selected shall hold office until the expiration of the term of the replaced Trustee and until a successor has been selected and qualified.

A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation, or removal of any director, or if the authorized number of Trustees is increased.

The Board may declare vacant the office of a Trustee who has been declared of unsound mind by a final order of court, or convicted of a felony, or found by a final order of judgment of any court to have breached any duty arising under Article 3 of Chapter 2 of the California Nonprofit Public Benefit Corporation Law.

No reduction of the authorized number of Board members shall have the effect of removing any Trustee prior to the expiration of the Trustee's term of office.

7.5 Place of Meeting. Meetings of the Board shall be held at the Snow Building on the grounds of The Oakland Zoo at

Knowland Park or at such other place which may be designated from time to time by the Board.

7.6 Annual Meetings. The Board shall hold an annual meeting for the purpose of organization, selection of officers, and the transaction of other business. The first regularly scheduled Board meeting following the annual meeting of members shall be the annual meeting of the Board.

7.7 Regular Meetings. Regular meetings of the Board shall be held in January, March, May, July, September and November of each year, on such dates, and at such time and place, as the Board may determine from time to time.

7.8 Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the President or any five Trustees.

Special meetings of the Board shall be held upon not less than five (5) days' notice by first-class mail or seventy-two (72) hours' notice given personally or by telephone, telegraph, telex, or other similar means of communication. Any such notice shall be addressed or delivered to each Trustee at such Trustee's address as it is shown upon the records of the corporation or as may have been given to the corporation by the Trustee for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the Trustees are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails,

postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

7.9 Quorum. A majority of the authorized number of Trustees then in office constitutes a quorum of the Board for the transaction of business, except to adjourn as provided in Paragraph 7.11 of this Section 7. Every act or decision done or made by a majority of the Trustees present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law or by the Articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Trustees, if any action taken is approved by at least a majority of the required quorum for such meeting.

7.10 Participation in Meetings by Conference Telephone. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another.

7.11 Waiver of Notice. Notice of a meeting need not be given to any Trustee who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Trustee. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

7.12 Adjournment. A majority of the Trustees present, whether or not a quorum is present, may adjourn any Trustee's meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent Trustees if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than seventy-two (72) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Trustees who were not present at the time of adjournment.

7.13 Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. Such consent or consents shall have the same effect as a unanimous vote of the Board and shall be filed with the minutes of the proceedings of the Board.

7.14 Rights of Inspection. Every Trustee shall have the absolute right at any reasonable time to inspect and copy all

books, records, and documents of every kind and to inspect the physical properties of the corporation.

8. OFFICERS AND DIRECTOR

8.1 The officers of the Board shall be a President, Vice President, Secretary and Treasurer. They shall likewise be the officers of the Society.

8.2 The officers shall be elected for the term of one (1) year by the Board at the Annual Meeting of the Board, and the newly elected officers shall assume office at that time. In the event that a vacancy among the officers occurs during the year, the Board may fill the vacancy by a majority vote at any regular or special meeting of the Board at which a quorum is present.

8.3 Any officer selected by the Board of Trustees may be removed by a two-thirds (2/3) vote of the Board of Trustees whenever in its judgment the best interests of the Society would be served thereby.

8.4 Any officer may resign at any time upon written notice to this corporation without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

8.5 The President, subject to the control of the Board of Trustees, shall have general supervision, direction and control of the business and officers of the Society. He shall preside at all meetings of the members and at all meetings of the Board. He

shall have all of the powers and shall perform all of the duties which are ordinarily inherent in the office of the President.

8.6 In the absence or disability or refusal to act of the President, the Vice President shall perform all of the duties of the President. The Vice President also shall serve as Chair or Co-Chair of one of the Standing Committees.

8.7 The Treasurer shall be the Chief Financial Officer of the Society and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account of this corporation. The Treasurer shall have all of the powers of and shall perform all of the duties incident to the office of Treasurer, and shall have such further powers and shall perform such further duties as may be prescribed by the Board of Trustees. The Treasurer shall serve as Chair of the Budget and Finance Committee of the Board.

8.8 The Secretary shall keep or cause to be kept at the principal executive office of this corporation or such other place as the Board of Trustees may order, a book of minutes of all proceedings of the members of the Board of Trustees, with the time and place of holding, whether regular or special, and if special how authorized, the notice thereof given, the names of those present at the Trustees' meetings, and the number of members present or represented at meetings of members. The Secretary shall keep or cause to be kept at the principal executive office or at such other place as the Board of Trustees may order a record of members. He shall have all of the powers



and perform all of the duties incident to the office of Secretary.

8.9 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.

8.10 Except as otherwise designated by the Board, all checks of the Society in amounts of over \$1,500 shall require two signatures, one of which shall be the signature of a Board member. The Board shall designate, from time to time, those persons who are authorized to sign checks.

## 9. COMMITTEES

There shall be two (2) categories of committees, Standing Committees and Special Committees, as set forth below.

### 9.1 Standing Committees

(a) Executive Committee. The Executive Committee shall consist of the President, the Vice President, the Secretary, the Treasurer, the immediate past President (if still a member of the Board), the Executive Director, the Chairs of each of the Standing Committees, plus, if the Executive Committee as so comprised would consist of an even number of members, then one (1) member of the Board at large, nominated by the Nominating

Committee, with the advice and consent of the Executive Committee, and approved by the Board. Vacancies on the Executive Committee, on nomination by the nominating Committee, shall be filled by the vote of a majority of the remaining members of the Executive Committee, subject to ratification by the full Board at its next meeting.

The President shall serve as Chairperson of the Executive Committee. Meetings of the Executive Committee shall be held from time to time, as called by the President or any two Committee members. Notices of specially called meetings shall be posted in the Society's office at least twenty-four (24) hours prior to the meeting date.

The Executive Committee shall be responsible for the regular and routine business of the Society and shall supervise the Director in accordance with the policies and directions developed by the Board of Trustees.

The Executive Committee shall have all the authority and powers of the Board except:

- (i) The approval of any action for which the Nonprofit Public Benefit Corporation Law also requires approval of the members or approval of a majority of all voting members;
- (ii) The filling of vacancies on the Board or on any committee which has the authority of the Board;
- (iii) The amendment or repeal of bylaws or the adoption of new bylaws;

(iv) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

(v) The expenditure of corporate funds to support a nominee for Trustee after there are more people nominated for Trustee than can be elected; or

(vi) The expenditure of Society funds for nonbudgeted items in excess of \$10,000.

(b) Development Committee. The Development Committee shall consist of three (3) or more members, as determined by the Board from time to time. Committee members will be appointed by the President, with the advice and consent of the Chairman of the Committee, subject to ratification by the Board. The Committee may establish such subcommittees (members of which need not be members of the Society) as it deems necessary to actively raise funds for Zoo operations and capital improvements. Committee members will be appointed by the President, with advice and consultation from the Chairman of the Committee.

(c) Planning Committee. The Planning Committee shall consist of three (3) or more members, as determined by the Board from time to time. Committee members will be appointed by the President, with the advice and consent of the Chairman of the Committee, subject to ratification by the Board. The committee shall review periodically the long-range Master Plan for The Oakland Zoo and Knowland Park, and shall review plans prepared by

Zoo staff and professional consultants and make recommendations to the Board concerning such plans. Committee members will be appointed by the President, with advice and consultation from the Chairman of the Committee.

(d) Nominating Committee. The Nominating Committee shall consist of three (3) or more members of the Board, as determined by the Board from time to time. Committee members will be nominated by the Nomination Committee each year, approved by the Executive Committee and ratified by the Board. When a vacancy exists on the Board, the Committee shall interview, gather information about and recommend to the Executive Committee a person to fill the vacancy in accordance with Paragraphs 7.4 of these Bylaws. During the course of each year, the Committee also shall solicit applications from, interview and gather information about candidates interested in serving on the Board for nomination at the Annual Meeting of Members. Following approval of such nomination by the Executive Committee and the Board, the Secretary shall, prior to the Annual Meeting of Members, cause to be sent to all members a list of persons who have been nominated to the Board, including both those nominations which resulted from the Nominating Committee, with the advice and consent of the Executive Committee, also shall recommend to the Board at the Board's Annual Meeting those persons who the Nominating Committee believes are best suited to serve as officers of the Society, members of the Executive and Nominating Committees and Chairs of the Development, Planning and

Budget and Finance Committee during the succeeding year. The Secretary of the Society shall cause these recommendations to be disseminated to all members (for informational purposes only) when the notice of the Annual Meeting of Members is given. In addition to the foregoing duties, the Nominating Committee shall be responsible for the orientation of new Board Members, the evaluation of the performance of sitting Board members and such other duties as may be delegated by the Board from time to time.

(e) Budget and Finance Committee. The Budget and Finance Committee shall consist of three (3) or more members, as determined by the Board from time to time, one of whom shall be the Treasurer and who shall serve as Chairperson of the committee. Committee members will be appointed by the President, with the advice and consent of the Chairman of the Committee, subject to ratification by the Board. The duties of the committee shall be:

(i) To monitor policies, practices and procedures to assure the fiscal integrity of the Society and to present comments on financial matters to the Executive Committee; and

(ii) To review the annual budget, to conduct audits, as necessary, and to present its findings and recommendations to the Board.

9.2 Special Committees. Special advisory committees to the Board may be appointed by the President without the approval of the Board.

9.3 Honorary Trustees. In order to take advantage of the knowledge and experience of outstanding persons who may be unable to serve on the Board, the Board may establish, from time to time, an Honorary Trusteeship, to serve at the direction of the Board of Trustees.

Honorary Trustees may be invited to attend Board meetings, but shall not be entitled to vote at such meetings. Honorary Trustees shall have the privilege of the floor.

9.4 Docent Council. The Docent Council shall consist of such persons (who need not be Board members) who have complied with the requirements for membership as set forth in the Bylaws of the Docent Council. The Chairperson shall be elected by the members of the Docent Council and shall be a member of the Board.

#### 10. SELF-DEALING TRANSACTIONS

10.1 Trustees are encouraged to volunteer their goods and services for the benefit of the Society.

10.2 Trustees may be paid by the Society for their out-of-pocket expenses incurred in connection with providing the Society goods and services.

10.3 No Trustee or business of which a Trustee is a principal may provide goods or services to the Society at a profit.

11. INDEMNIFICATION

11.1 Definitions. For the purposes of this Section 11, "agent" means any person who is or was a Board member, officer, employee or other agent of the Society, or is or was serving at the request of the Society as a Trustee, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the Society or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under Paragraphs 11.4 or 11.5(b) of this Section 11.

11.2 Indemnification in Actions by Third Parties. The Society shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust), by reason of the fact that such person is or was an agent of the

Society, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Society and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Society or that the person had reasonable cause to believe that the person's conduct was unlawful.

11.3 Indemnification in Actions by or in the Right of the Society. The Society shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Society, or brought under Section 5233 of the California Nonprofit Public Benefit Corporation law, or brought by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the Society, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interest of the Society, and



with such care, including reasonable injury, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Paragraph 11.3:

(a) In respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Society in the performance of such person's duty to the Society, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;

(b) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(c) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

11.4 Indemnification Against Expenses. To the extent that an agent of the Society has been successful on the merits in defense of any proceeding referred to in Paragraph 11.2 or 11.3 of this Section 11 or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

11.5 Required Determinations. Except as provided in Paragraph 11.4 of this Section 11 any indemnification under this Section 11 shall be made by the Society only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Paragraphs 11.2 or 11.3 of this Section 11, by:

(a) A majority vote of a quorum consisting of Trustees who are not parties to such proceeding; or

(b) The court in which such proceeding is or was pending upon application made by the Society or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the corporation.

11.6 Advance of Expenses. Expenses incurred in defending any proceeding may be advanced by the Society prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Section 11.

11.7 Other Indemnification. No provision made by the corporation to indemnify Board members or officers for the defense or any proceeding, whether contained in the Articles, Bylaws, a resolution of members or the Board, an agreement, or otherwise, shall be valid unless consistent with this Section 11. Nothing contained in this Section 11 shall affect any right to

indemnification to which persons other than such Trustees and officers may be entitled by contract or otherwise.

11.8 Forms of Indemnification Not Permitted. No indemnification or advance shall be made under this Section 11, except as provided in Paragraphs 11.4 or 11.5(b), in any circumstances where it appears:

(a) That it would be inconsistent with a provision of the Articles, these Bylaws, or an agreement in effect at the time of the accrual of this alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

11.9 Insurance. The Society shall have power to purchase and maintain insurance on behalf of any agent of the Society against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to purchase and maintain such insurance to indemnify any agent of the corporation for a violation of Section 5233 of the California Nonprofit Public Benefit Corporation Law.

## 12. AMENDMENTS TO BYLAWS

New bylaws may be adopted, or these bylaws may be amended or repealed, by the Board of Trustees or by the members as provided

by these bylaws at the properly called regular or special meeting.

No amendment on the following matters may be adopted except by the affirmative vote of a majority of the members of the Society:

(a) An amendment changing the authorized number of Trustees of the Society, or fixing a single, authorized number of Trustees.

(b) An amendment increasing the term of any Trustee.

(c) An amendment increasing the quorum of a meeting of members.

13. RULES OF ORDER

Robert's Rules of Order, Revised shall govern this society in all cases in which they are applicable and not inconsistent with these bylaws.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am the duly elected and presently serving Secretary of the East Bay Zoological Society, a California nonprofit public benefit corporation, and that these bylaws, consisting of twenty-five (25) pages including this page, are the bylaws of this corporation as amended and adopted at a meeting of the Board of Trustees on February 10, 1993 and by the members of such corporation on March 3, 1993.

DATED: June 29, 1994, 1994



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Dana Sack, Secretary