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2 improvement of the ZOO AND PARK, over and above the revenues from
3 operation of the ZOO AND PARK; NOW, THEREFORE, THE PARTIES HERETO
4 AGREE AS FOLLOWS:

5 IN CONSIDERATION OF THE ABOVE RECITALS AND PERFORMANCE
6 OF THE RESPECTIVE COVENANTS HEREINAFTER CONTAINED, the City
7 hereby engages the Society, and the Society agrees to improve,
8 maintain and operate the ZOO AND PARK, upon the following terms
9 and conditions:

10 1. FEE INTEREST: The City shall retain the fee title
11 to the above referenced real property.

12 2. TERM: The term of this agreement shall be for ten
13 (10) years commencing upon execution hereof. The Society may
14 extend said agreement an additional five (5) years or more,
15 subject to any modifications to the terms agreed to between the
16 parties.

17 3. MANAGEMENT, IMPROVEMENTS AND MAINTENANCE: For
18 ~~purposes~~ of management, improvements and maintenance, Knowland
19 Park is hereby divided into three (3) areas as shown on the map
20 entitled "Knowland Park Management, Improvements and Maintenance
21 Plan" which plan is attached and made by reference a part of this
22 Agreement as Exhibit "B".

23 (a) Upper Area: This area contains approximately
24 65 acres and is that portion of the ZOO AND PARK which lies
25 between Golf Links Road and Skyline Boulevard. The Upper Area is
26 to be maintained in its present natural condition as undeveloped
27 land during the contract period.

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2 (b) Mesa Area: This area contains approximately
3 275 acres and is that portion of the ZOO AND PARK that lies
4 southerly of Golf Links Road and northerly of the private
5 property from Golf Links Road westerly to Maggiora. The Society
6 shall implement improvements to the Mesa Area pursuant to the
7 Master plan approved by the City Council in December 1990. Any
8 planning and development of this area shall be done with the
9 consultation of the Knowland Park Highland Association, with
10 consideration for the special relationship between this group and
11 the Society. Any such approved mesa development shall be subject
12 to environmental approval in accordance with the rules and
13 regulations of the City, the City Planning Commission and the
14 State of California. The Society shall, during the
15 implementation of the improvements, adhere to sound business and
16 legal practices concerning the following areas: design,
17 construction, financing, supervision, building codes,
18 regulations, maintenance and other applicable laws.

19 (c) Lower Area: This area contains approximately
20 150 acres and is that portion of the ZOO AND PARK that is
21 generally developed and contains, among other developments, the
22 zoological collection. The Society shall implement improvements
23 to the Lower Area pursuant to the Master Plan approved by the
24 City Council in December, 1990. Improvements to be paid for with
25 funds from the Measure K Bond Issue shall be performed in
26 compliance with the Master Agreement Between the City of Oakland
27 and the East Bay Zoological Society for the Oakland Zoo Projects
28 dated _____, 1992, and the Measure K Procedural Manual.

1 The Society agrees that it will not, except by
2 prior approval of the City Council, cause any development of the
3 meadow land area which is inconsistent with ZOO AND PARK uses.
4 The meadow land areas are the two (2) large cultivated turf areas
5 in the lower park. One lies north-easterly of the main entrance
6 to the park and the other southerly of the entrance and north of
7 the zoological collection. The Society shall be entitled to
8 close the picnic facilities if necessary for security and safety
9 reasons.

10 4. AGREEMENTS: The Society and City agree that this
11 agreement supersedes all previous agreements or contracts with
12 respect to Society's operations in Knowland Park and further
13 confirms the Society's right to continue the operation of
14 concessions including food, rides, the Snow Building and
15 programs, and further confirms the Society's responsibility for
16 all financial obligation in relation to such agreements and
17 contracts.

18 5. IMPROVEMENTS: The Society shall implement the
19 improvements in the Lower Area as set forth in the Master Plan or
20 any amendments thereto, as approved by the City Council. The
21 Society shall, during implementation of the improvements, adhere
22 to sound business and legal practices concerning the following
23 areas: design, construction, financing, supervision, building
24 codes, regulations, maintenance and other applicable laws. The
25 Society shall keep the premises free and clear from any and all
26 liens, claims, and demands for work performed, materials
27 furnished, or operations conducted on said premises.
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1 During the implementation of the improvements, the
2 Society shall submit all capital improvement items to the City
3 for environmental approval in accordance with the rules and
4 regulations of the City, the City Planning Commission, and the
5 State of California.

6 6. FINANCING: The Society currently raises in excess
7 of \$300,000 per year which it contributes to the maintenance,
8 operation and improvement of the ZOO AND PARK, over and above the
9 revenues from operation of the ZOO AND PARK. In order to
10 implement said improvements, the Society will necessarily be
11 required to raise funds through available methods of financing:
12 therefore, the Society shall have the right and authority to do
13 (a), (b), (c), (d) of the following during the term hereof, and,
14 with prior approval of the City Council, or its designate, (e):

15 (a) Collect and use in accordance with this
16 agreement all revenues collected at the ZOO AND PARK;

17 (b) Sub-license concession areas to responsible
18 parties for a period of time less than that remaining as the term
19 of the agreement;

20 (c) Charge admission and/or parking fees in
21 accordance with paragraph 8(b) and (c) appearing hereinafter;

22 (d) Raise funds in any other lawful manner;

23 (e) Make, execute or guarantee indebtedness
24 secured by Society's improvements; but under no circumstances
25 shall such indebtedness be construed as a debt of the City, nor
26 shall it constitute in any way a lien or encumbrance on the fee
27 of said leased premises or any interest of the City in said
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1 premises.

2 7. ACCOUNTING/FUND ACCUMULATION: The Society shall
3 furnish the City Manager with an audited financial statement
4 prepared in accordance with generally accepted accounting
5 principles (GAAP) which audit shall be conducted annually at the
6 Society's expense and delivered to the City Manager within one
7 hundred fifty (150) days after the end of the Society's fiscal
8 year.

9 During the term of the Agreement, the Society may
10 accumulate funds received from its operation of the ZOO AND PARK
11 to be used for the following purpose: (1) Regular operation and
12 maintenance as the Society expands, and (2) Improvements and
13 animal acquisitions.

14 The Society shall apply funds from the Measure AA and
15 Measure K Bond Issues to the implementation of the Master Plan
16 and the construction of such improvement projects, which funds
17 shall be administered by the Society in accordance with the
18 requirements of the East Bay Regional Parks District as to
19 Measure AA funds and in accordance with the Master Agreement
20 described above as to Measure K funds.

21 It is the intention of the City and the Society that
22 the improvements in Knowland Park be completed in a timely,
23 continuous and expeditious manner.

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

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

11 8. CHARGES AND FEES:

12 (a) Goods and Services: The Society and/or its
13 licensees may set and determine prices for the Snow Building,
14 children's rides, and services, goods and products sold to the
15 public; provided, however, that said prices shall not be more
16 than those charged for similar services, goods and products at
17 comparable facilities, such as San Diego Zoo, Sea World and
18 Marine World/Africa U.S.A.

19 (b) Parking Fees: The Society may collect and
20 receive parking fees charged to the public. Upon execution of
21 this lease, the City Council herein approves the initial parking
22 fee of Three Dollars (\$3.00) per car, and/or Eight Dollars
23 (\$8.00) per bus, to be charged by the Society. Said fees may be
24 increased by the Society in its reasonable discretion.

25 (c) Admission Fees: The Society may charge
26 admission to the ZOO AND PARK at rates to be determined by the
27 Society in its reasonable discretion.
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2 9. SOCIETY SERVICES:

3 (a) On-Going Services: A written schedule of
4 operational standards relating to the present concessions in the
5 ZOO AND PARK shall be maintained by the Society and shall be
6 subject to review and approval of the City Council upon its
7 request.

8 (b) Programs and Entertainment: The Society will
9 have the sole right to provide programs and entertainment at ZOO
10 AND PARK for the benefit of the public.

11 (c) Concessionaires: The Society shall have the
12 sole right to enter into agreements with concessionaires for the
13 sale of food, souvenirs, children's rides or animal exhibits.
14 The Society may enter into agreements with suppliers for goods,
15 food, souvenirs, materials, supplies and services related to the
16 operation of the park. Selection and award of contractors and
17 suppliers should follow the City's established policies regarding
18 awards of sub-contracts and/or selection of vendors. In the
19 event a concessionaire desires to retain ownership of
20 improvements placed or constructed on the real property, they may
21 be allowed to do so by the Society so long as the City's interest
22 in the land upon which improvements are located is not
23 subordinate thereto at any time; provided further, that, upon
24 termination of the concession, the premises shall be returned in
25 as good a condition as existed prior to commencement of
26 construction of the improvements.

27 10. CITY OWNED ANIMALS:

28 (a) All animals and their issue now owned by the

1 City and presently existing at the ZOO AND PARK shall be loaned
2 to the Society during the term hereof for its use in developing
3 and operating the premises; and the Society may, on the City's
4 account, buy, sell, trade and breed said animals during the term
5 hereof so long as the proceeds therefrom are restricted to the
6 acquisition, breeding and care of other animals. Further, all
7 animals and their issue acquired by the Society subsequent to the
8 execution of this contract shall become the property of the City.
9 The City shall retain legal ownership of all animals and their
10 issue at the ZOO AND PARK. The Society shall have exclusive
11 control over and be responsible for the care, maintenance and
12 feeding of such animals, or disposing of any deceased animals.
13 All animals at the ZOO AND PARK at the expiration or termination
14 of this Agreement shall be the sole property of the City.

15 (b) Should the Society, from time to time,
16 receive animals by way of donation from third persons, or should
17 the Society acquire animals with its own resources, the ownership
18 of said donated animals shall immediately vest in City upon
19 transfer of possession of the Society.
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21 (c) The Society shall submit an annual inventory
22 of all animals. Said annual inventory is due at the beginning of
23 the Society's fiscal year.

24 11. MANAGEMENT FEE: In consideration of the services
25 to be performed by the Society for managing, operating and
26 improving the ZOO AND PARK, and its efforts in raising and
27 administering moneys in excess of \$300,000.00 per year from
28 private donations by local businesses and individuals and

1 national and international funds, and governmental contributions
2 from the East Bay Regional Parks District to the Society, the
3 City agrees to pay to the Society as a Management Fee payable as
4 any of the following at City's election: either

5 (a) \$190,000.00 plus the services of City
6 employees Paul Siple and Erica Calcagno; or

7 (b) ~~\$220,000.00~~ plus the services of either one
8 of such City employees; or

9 (c) \$250,000.00 with neither of them.

10 Such fee shall be payable to the Society annually at the
11 commencement of each fiscal year. If either of the employees
12 ceases to be employed at the ZOO AND PARK, then City shall pay to
13 the Society the higher Management Fee prorated for the remainder
14 of the fiscal year. All costs and expenses of employing such
15 persons including all wages, withholding taxes, insurance and
16 benefits shall be paid by City directly.

17 The Management Fee shall be adjusted effective July 1,
18 1994 and annually thereafter by multiplying the Management Fee
19 for the immediately preceding fiscal year by a fraction the
20 numerator of which is the CPI, as hereinafter defined, most
21 recently published prior to such effective date and the
22 denominator of which is the CPI used as the numerator for the
23 last such adjustment, provided, however, that the denominator for
24 the first such adjustment shall be the CPI for June 1992 which is
25 141.9.

26 As used herein "CPI" shall mean the Consumer Price
27 Index-All Urban Consumers, All Items (1982-84=100), as published
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1 by the United States Department of Labor, Bureau of Statistics,
2 for the San Francisco-Oakland-San Jose Area. In the event the
3 CPI ceases to be published, the most similar like index publicly
4 available shall be substituted therefor, and if the parties
5 cannot agree on such a substitute index, the matter shall be
6 determined by binding arbitration by the American Arbitration
7 Association.

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9 Such Management Fee shall not be deducted from nor
10 reduced by county real property taxes allocated by law to the ZOO
11 AND PARK or the Society, Measure AA funds payable to the Society,
12 Measure K funds payable to the Society, or any other moneys paid
13 to the City for the maintenance, operation or improvement of the
14 ZOO AND PARK by any public or private person or entity. The City
15 agrees to pay all such funds to the Society promptly in
16 accordance with any terms or conditions required by the payor or
17 donor of any such funds.

18 12. EQUIPMENT: The City further agrees to allow the
19 Society to use, at no cost to the Society, all equipment,
20 supplies and tools used at the ZOO AND PARK for park and zoo
21 maintenance, excluding the equipment used by the City's roving
22 maintenance crews. The Society shall be responsible for the
23 maintenance and replacement of said equipment during the term
24 hereof. Upon the expiration or termination of this Agreement,
25 such property, if usable, or its equivalent value, shall revert
26 to the City, unless the City declines to accept it.

27 13. SOCIETY OBLIGATIONS: The parties agree that it is
28 the intent of this Paragraph 13, and the subparts thereof, that

1 the Society shall be solely responsible for all maintenance,
2 management and rehabilitation of ZOO AND PARK. Maintenance
3 includes, but is not limited to, animals, grounds, buildings,
4 equipment, security and administration and staffing thereof. The
5 Society further agrees that it will be responsible for proper
6 budget and financial reporting for those maintenance, management
7 and rehabilitation responsibilities stated hereinabove; for all
8 licenses, fees, possessory interest taxes, if applicable, and all
9 regulations relative to the care, feeding, importing and
10 exporting of animals. The Society shall pay and be responsible
11 for all charges for the furnishing of gas, water, electricity,
12 telephone service and other public utilities to the leased
13 premises during the term of this agreement and for the removal of
14 garbage and rubbish from said premises. The Society further
15 agrees that all animals at the ZOO AND PARK shall be maintained
16 in a manner consistent with comparable zoo standards and in
17 accordance with applicable Federal, State, County, or City rules
18 and regulations.

19 14. INSURANCE:

20 (1) Liability Insurance - The Society agrees
21 to procure, carry and maintain at all times during the term of
22 this agreement, Comprehensive General Liability Insurance with a
23 limit of not less than Two Million (\$2,000,000.00) Dollars to
24 protect and indemnify the City of Oakland, its Council members,
25 officers, agents and employees. Such coverage shall include
26 Bodily Injury, Property Damage, Product Liability, Completed
27 Operations, Auto Blanket Contractual, Personal Injury, Employees
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1 Added as Additional Insured, Liquor Law Liability, Owners and
2 Contractors Protective, Incidental Medical Malpractice, Broad
3 Form Property Damage, Cross Liability or Severability of Interest
4 Clause. The Society shall designate the City of Oakland, its
5 Council members, officers, agents and employees as an additional
6 insured on said policies.

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8 (2) Property Insurance - The Society agrees
9 to procure, carry and maintain at all times during the term of
10 this agreement, at Society's sole expense, fire insurance and
11 extended coverage on improvements at the ZOO AND PARK in an
12 amount equal to ninety percent (90%) of the replacement cost of
13 each improvement. In the event that the Society determines that
14 certain improvements constructed of non-flammable materials and
15 unlikely to burn are disproportionately expensive to insure, then
16 the Society may exclude such improvements from coverage subject
17 to prior review and approval by the City Manager. The City
18 Manager or his designee may require, whenever deemed necessary, a
19 review of the insured improvements as to insured values and items
20 covered. The deductible limit of this coverage is not to exceed
21 Five Thousand (\$5,000.00) Dollars per occurrence.

22 (3) Workers Compensation Insurance - The
23 Society shall provide Workers Compensation Insurance to insure
24 the Society's employees as required by the Labor Code of the
25 State of California and include employers liability with limit
26 not less than One Million (\$1,000,000.00) Dollars. The Society
27 shall specify that every volunteer is a volunteer for the East
28 Bay Zoological Society and not the City of Oakland.

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2 (4) A certificate or certificates evidencing
3 such insurance coverage required herein shall be filed with the
4 City, Office of the City Manager, and Office of Parks and
5 Recreation, prior to the commencement of the terms of this
6 agreement, and said certificate shall provide that such insurance
7 coverage will not be canceled or reduced without at least thirty
8 (30) days' prior written notice to the City. At least thirty
9 (30) days' prior to the expiration of any such policy, a
10 certificate showing such coverage has been renewed, is in the
11 process of being renewed, or extended, shall be filed with the
12 City. If such coverage is canceled or reduced, the Society shall
13 within fifteen (15) days after receipt of notice of such
14 cancellation or reduction in coverage file with the City a
15 certificate showing that the required insurance has been
16 reinstated, or is in the process of being reinstated, or provided
17 through another insurance company or companies.

18 15. NONDISCRIMINATION: In carrying out the
19 maintenance and improvements of the subject property, in
20 determining the appropriate fees to be charged pursuant to
21 Paragraph 8, subparagraphs (a) through (d), the Society shall
22 endeavor to establish programs and charges that will make the
23 subject property and facilities attractive and available to all
24 levels of economic, racial and academic interest in the
25 community, provided that the Society's goal of financial self-
26 sufficiency is not thereby endangered. The Society further
27 agrees that it shall not discriminate against any employee or
28 applicant for employment because of race, religion, sex, color,

1 national origin, age or handicap and that such provisions shall
2 include, but not be limited to, the following: employment,
3 upgrading, demotion, or transfer, recruitment or recruitment
4 advertising, lay-off or termination, rates of pay or other form
5 of compensation, and selection for training including
6 apprenticeship. The Society shall submit to the City for review
7 a workforce profile showing the race/ethnicity and sex of all
8 current employees. Should the City determine that women and
9 minorities are under-utilized in various job groupings, the City
10 shall require the Society to submit, prior to execution of the
11 contract, an Affirmative Action Plan which sets specific and
12 attainable goals with dates for hiring and promotion to correct
13 the identified under-utilization. The City may request the
14 submission of workforce data periodically during the life of the
15 contract.

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17 16. HOLD HARMLESS; Irrespective of any insurance
18 carried by the Society, the Society agrees to protect, indemnify
19 and hold the City and its officers, agents and employees harmless
20 from any and all damages and injuries arising in any manner out
21 of the performance of this agreement by the Society its
22 contractors and their respective employees, subcontractors,
23 vendors, guests and invitees, including those amounts not covered
24 by any insurance carried by the Society, and to defend the City
25 in any third party lawsuits resulting therefrom. The City agrees
26 to protect, indemnify and hold the Society and its officers,
27 agents and employees harmless from any and all damages and
28 injuries arising from the acts or omissions of the City, its

1 contractors (excepting the Society) and their respective
2 employees, subcontractors, vendors, guests and invitees
3 (excepting those of the Society), and to defend the Society in
4 any third party lawsuits resulting therefrom.
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6 17. DEFAULT BY THE SOCIETY: In the event the Society
7 defaults or fails to perform under any of the obligations
8 hereunder, the City Manager shall give written notice hereof to
9 the Society expressly stating the nature of said default or non-
10 performance. The Society shall have sixty (60) days from receipt
11 of said notice to correct said default or nonperformance, and in
12 the event of the Society's failure to do so, the City, in
13 addition to any other legal or equitable rights it may have, may
14 do any or all of the following:

15 (a) Terminate this agreement upon written notice
16 to the Society; or

17 (b) Direct the Society to assign its interest in
18 and to this agreement to a party designated by the City Council
19 without compensation to the Society, or

20 (c) Perform itself whatever corrective measures
21 are deemed necessary, which cost of such services plus
22 administrative overhead shall be charged to and paid by the
23 Society to the City upon demand.

24 18. MONITORING: OPR acting on behalf of the City
25 Council shall have an opportunity to continually review the
26 Society's performance to insure the success and quality thereof
27 under the terms and conditions of this agreement.
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2 19. ASSIGNMENT OF INTEREST: The Society shall not
3 assign this agreement, either in whole or in part, without the
4 prior written approval of the City Council. The City shall not
5 assign this agreement to a private corporation, firm or
6 individual without the prior written approval of the Society,
7 except as herein provided.

8 20. INUREMENT: This agreement shall be and is hereby
9 binding on the successors of the parties hereto.

10 21. PARKS AND RECREATION ADVISORY COMMISSION: Any and
11 all matters with respect to this agreement that require policy
12 approval by the City Council, not including administrative
13 decisions by the City Manager that need no such approval, shall
14 be first submitted to the PARKS AND RECREATION ADVISORY
15 COMMISSION which shall, in turn, submit same to the City Council
16 in conformance with procedures then in effect.

17 22. PERSONAL CONTRACT: The qualifications and
18 identity of East Bay Zoological Society, Inc. are of particular
19 concern to the City. Because of those qualifications and
20 identity, the City has entered into this agreement. No voluntary
21 or involuntary successor in interest of the Society shall acquire
22 any rights or powers under this agreement unless so approved by
23 the City Council, and until such successor is in compliance with
24 the applicable rules, procedures and regulations of the Federal
25 Government, the State of California, the County of Alameda and
26 the provisions of this agreement.

27 23. PERMANENT IMPROVEMENTS: At the conclusion or
28 termination of the agreement, or any renewals to the agreement,

1 all permanent fixtures shall become the property of the City,
2 except as set forth under Paragraph 9 (c), CONCESSIONAIRES.
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4 24. EASEMENT: The Society agrees the City shall
5 retain all rights and duties with respect to the granting and
6 issuance of any and all easements on the property known as
7 "Knowland Park" to third parties, provided such easements do not
8 interfere with the operation of the ZOO AND PARK. The City shall
9 retain all monies, profits, and fees collected pursuant to the
10 granting of such easement rights to any and all third parties.
11 As a courtesy to the Society, the City shall notify the Society
12 of the granting of any such easements prior to the effective date
13 of said easement.

14 25. ILLEGALITY OF CONTRACT: In the event that any of
15 the obligations under this agreement shall become null and void
16 by Federal, State or local law, or in the event the future
17 performance of the conditions or terms of this agreement becomes
18 a hardship for the parties to perform because of Federal, State
19 or local law which is enacted, or court decision rendered, the
20 parties may amend the agreement to conform with Federal, State or
21 local law, or the City may, at its option, terminate this
22 agreement. The City shall not be liable to the Society for any
23 loss or damage or any nature suffered or claim to be suffered by
24 the Society by reason of any modifications to the agreements or
25 its terminations.

26 26. WASTE OR NUISANCE: The Society shall not commit
27 or permit the commission by others of any waste on said premises;
28 the Society shall not maintain, commit, or permit the maintenance

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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.

27. WAIVER OF BREACH: The waiver by the City of any breach by the Society of any of the provisions of this 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.

28. 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:

<u>CITY</u>	<u>SOCIETY</u>
City of Oakland	East Bay Zoological Society
Office of the City Manager	P.O. Box 5238
Room 318	9777 Golf Links Road
1421 Washington Street	Oakland, CA 94605
Oakland, CA 94612	

IN WITNESS WHEREOF, the City Manager 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

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and seal to be hereunto affixed, all in quadruplicate, the day
and year first above written.

CITY OF OAKLAND EAST BAY ZOOLOGICAL SOCIETY, INC. a
municipal corporation nonprofit public interest corporation

By: _____

By: _____
Sheldon Ramsay, President

Title: _____

Approved as to Form and Legality

Assistant City Attorney

Accounting Office No. _____

Zoonew3