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CITY OF SAN ANTONIO

P.O. BOX 839966

SAN ANTONIO, TEXAS 78283-3966

October 2, 2007

Mr. J. Stephen McCusker
Executive Director
San Antonio Zoo
3903 N. St. Mary's Street
San Antonio, Texas 78212

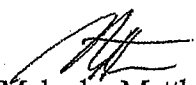
Re: Zoo Funding Agreement

Dear Mr. McCusker,

Enclosed for your files is an executed original of a Funding Agreement in the amount of \$629,553 between the City of San Antonio and the San Antonio Zoological Society. This agreement was approved by the San Antonio City Council through Ordinance 2007-09-13-0969 on September 13, 2007 and became effective October 1, 2007.

Please contact Linda Beal at (210) 207-6128 if you have any questions. Thank you.

Sincerely,


Malcolm Matthews
Director of Parks and Recreation

Enclosure

AN ORDINANCE 2007-09-13-0969

AN ORDINANCE ADOPTING THE ANNUAL CONSOLIDATED OPERATING AND CAPITAL BUDGETS FOR THE CITY OF SAN ANTONIO FOR THE FISCAL YEAR 2007-2008; APPROVING THE PROJECTS INCLUDED IN THE FY 2008-FY 2012 5-YEAR INFRASTRUCTURE MANAGEMENT PLAN; APPROVING THE FY 2008-FY 2013 6-YEAR CAPITAL IMPROVEMENTS PROGRAM FOR THE CITY OF SAN ANTONIO; APPROPRIATING FUNDS AND AMENDING RELATED ORDINANCES.

* * * * *

WHEREAS, in accordance with the City Charter, it is necessary to adopt a budget for the Fiscal Year 2007-2008; and

WHEREAS, a Proposed Annual Budget for the period commencing October 1, 2007, and ending September 30, 2008, has been prepared by the City Manager in accordance with Article VII of the City Charter, and the City Council has considered the City Manager's proposals; and

WHEREAS, after public notice, worksessions and hearings were held on the Proposed Budget and the City Council has considered the issue for several weeks; and

WHEREAS, on September 13, 2007, City Council considered the Proposed Budget and approved several amendments to the Proposed Budget and issued a statement clearly identifying the amendments as required under Article VII, Section 82 of the City Charter; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Annual Budget. The Proposed Annual Budget, as set out in Attachment I, and as amended by Attachments II through Attachment IV and Attachment IX, all of which are attached hereto and incorporated herein for all purposes, and the following sections of this Ordinance, is hereby approved and adopted for the fiscal year commencing October 1, 2007 and ending September 30, 2008. The expenditure of 2007/2008 through 2012/2013 Capital Improvements Program Funds, as set forth in Attachment I as amended by Attachment II and Attachment III, is subject to appropriation by separate ordinance(s).

SECTION 2. Appropriations. The sums set forth in Attachment III are hereby appropriated for the ensuing Fiscal Year 2007-2008 for the different City Departments and purposes of the City.

SECTION 3. Five-Year Infrastructure Management Plan. The Five-Year Infrastructure Management Plan for FY 2008-FY 2012, to include the Five-Year Alley Maintenance Program, its base funding level, and its associated policies, is hereby approved as part of the FY 2008 Budget.

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

FUNDING AGREEMENT

This Agreement (the "Agreement") is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 2007-09-13-0969 dated September 13, 2007, and the San Antonio Zoological Society, (hereinafter referred to as "Zoo").

WITNESSETH:

WHEREAS, the Department of Parks and Recreation is designated as the managing City Department for the City; and

WHEREAS, the City has been provided certain funds from the City of San Antonio General Fund or Grant Fund Operating Budget (hereinafter referred to as General Fund and Grant Fund respectively) for the Zoo to operate the zoological facilities in accordance with the terms and conditions of the existing Lease between the City and the Zoological Society dated May 5, 1998; and

WHEREAS, the City has adopted a budget for expenditure of such funds, and included therein is an allocation of \$ 629,553 funds for a project entitled San Antonio Zoo (hereinafter referred to as "Project" or "Program");

NOW THEREFORE:

The parties hereto agree as follows:

1. The Zoo will operate and open to the public a zoo of a like quality and similar operating hours as it has historically done, and carry out all activities and services in a manner satisfactory to the AZA and in compliance with the budget submitted and attached as Exhibit A.
2. In consideration, the City will pay Zoo, as requested by the from time to time for those certain expenditures set out in Exhibit A attached hereto an amount, which, in aggregate will not exceed the amount of \$629,553 (the "Funds").
3. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2007 and shall terminate on September 30, 2008.

(a) The funding of this Contract is based on an allocation from the following funding sources:

\$ 38,288	General Fund
\$ 591,265	Hotel/Motel Tax Fund
\$ _____	Federal Funds

(b) The Zoo understands that this Agreement will terminate as provided in this Section, and that there is no guarantee of renewal for the following fiscal year.

4. All Funds and accounts into which the Zoo may deposit the Funds will be subject to audit and review according to the City Operational Guidelines and City of San Antonio General Provisions. The City's Department of Parks and Recreation will have the authority to perform all such accounting functions or delegate all or part of the responsibility to the Zoo.
5. The Zoo shall be required to furnish the Parks and Recreation Department an audited financial statement for the budget line items funded by or through the City as set out in Exhibit A, prepared by an independent auditor (CPA) within one-hundred and twenty (120) days of the close of the Zoo's fiscal year or termination of this Agreement. In addition to the audited financial statements or program-specific audit(s), a copy of the management letter (Report on the Conduct of Audit) should be submitted.

The financial disclosure to be provided by the Zoo to the City under the terms of the Lease shall be deemed sufficient to meet this requirement, however, the Financial Statements must be accompanied by a schedule of receipts and disbursements by budgeted cost category for each of the line items to be funded by or through the City as listed in Exhibit A.

Zoo shall also ensure that a copy of the audited financial statements and any management letter be sent from the office of the independent auditor directly to the City of San Antonio, Office of the City Auditor with a copy to the Department of Parks and Recreation.

6. Payment and financial transactions shall be as follows:
 - (a) payments shall be made upon receipt of billing from the Zoo;
 - (b) Zoo agrees that all request for reimbursement shall be accompanied with documentation stating where requested funds are allocated in Exhibit A, in a manner as may be reasonably required by the Department of Parks and Recreation;
 - (c) the final request for payment to the City must be submitted not later than sixty (60) days after the contract end date;
 - (d) an accounting system which accurately reflects all costs chargeable (paid and unpaid) with the Funds is mandatory. A Receipts and Disbursements Ledger of paid invoices relating to the matters set out in Exhibit A must be maintained which will reflect paid invoices revealing check number, date paid and evidence of goods or services received;
 - (e) all records and files on matters funded by this Agreement will be open for inspection and audit at any reasonable time during the term hereof by representatives of the City or the State or Federal Government, and shall continue to be so available for a period of three (3) years after the termination date hereof. If at the end of three (3) years, there is litigation or if the audit report covering such Agreement has not been accepted, the Zoo shall retain the records until the resolution of such litigation or audit.
 - (f) the City shall not be obligated to any third parties (including any subcontractors of the Zoo);
 - (g) Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel rights or privileges herein given the Zoo for failure to comply with this Agreement. Specifically, the City may withhold reimbursements in cases where it determines that the Zoo is not in compliance with this Agreement.
7. The City's Department of Parks and Recreation is assigned monitoring, fiscal control, and evaluation of the Zoo's use of Funds as set out in Exhibit A. Therefore, at such times and in such form as may be required, the Zoo shall furnish such statements, records, data, and information and permit such interviews with personnel and board members pertaining to the matters covered by this Agreement.
8. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any audit, the Zoo will refund such amount to the City. The Zoo further authorizes the City to deduct such amount or charge as a claim against future payments.
9. The Zoo warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the sums to be paid under the terms of this Agreement or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
10. The Zoo agrees that neither the program nor the funds provided therefore, nor the personnel employed in the administration of the program, shall be in any way or in any extent engaged in the

conduct of political activities in violation of its tax-exempt status. Prohibited activities include, but are not necessarily limited to, the assignment by the Zoo of any employee in the agency to work for or on behalf of a political activity, to take part in voter registration activities, to provide voters and prospective voters with transportation to the polls, or to participate in partisan political activities, such as lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.

11. The Zoo agrees that under no circumstances will the Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
12. Zoo agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.
13. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Zoo and evidenced by passage of a subsequent City ordinance, as to City's approval.
14. The Zoo shall not assign or transfer the Zoo's interest in this Agreement without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person or party.
15. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Director
Department of Parks and Recreation
114 West Commerce Street, 11th Floor
San Antonio, Texas 78205

ZOO

San Antonio Zoological Society
3903 N. St. Mary's Street
San Antonio, Texas 78212-3199

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

16. No elected official, director, officer, agent or employee of City or Zoo shall be charged personally or held contractually liable by or to City or Zoo under any term or provision of this Agreement, or because of any breach thereof, or because of its or this execution, approval, or attempted execution of this Agreement.
17. The Zoo will adhere to City of San Antonio policies and procedures, as they now exist or as they may subsequently be adopted, in all respects, so that Zoo's policies will be no more liberal than the City of San Antonio's policy and procedures. These are highlighted in Operational Guidelines and General Provisions for the City of San Antonio Funded Projects, and may be amended from time to time to reflect any subsequent Operational Guidelines and General Provisions incorporating City policies and procedures.
18. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable

EXHIBIT "A"

USE OF GRANT PROCEEDS

**SAN ANTONIO ZOO
CITY OF SAN ANTONIO GRANT
PROPOSED USES FISCAL YEAR 2008**

<u>DESCRIPTION</u>	<u>AMOUNT</u>
Finance	
Insurance	150,000
Marketing & Development	
Salaries	185,000
Development & Public Affairs	
Media Outlets	125,000
Production Costs	20,000
Brochures/Handouts	20,000
Guest Relations	9,553
Membership Development	
Direct Mail	50,000
Magazine Expense	30,000
Newletter Expense	30,000
Operations	
Training	10,000
	<u>629,553</u>

AN ORDINANCE

AUTHORIZING THE EXECUTION OF A TWENTY-FIVE (25) YEAR LEASE AGREEMENT WITH THE SAN ANTONIO ZOOLOGICAL SOCIETY FOR THEIR CONTINUED USE OF THE SAN ANTONIO ZOO AND AQUARIUM.

* * * * *

WHEREAS, the San Antonio Zoological Society has leased the San Antonio Zoo and Aquarium in Brackenridge from the City of San Antonio since 1959 and has operated this major tourist attraction for the benefit of the entire community; and

WHEREAS, most recently, Ordinance No. 35370, passed and approved on April 27, 1967, authorized a twenty-five (25) year agreement with the Society for their continued operation of the San Antonio Zoo and Aquarium; and

WHEREAS, the Society has requested another long term lease agreement for this public property, and it is in the best interest of the City of San Antonio to allow the continued lease of this public property by the Society for the operation of the San Antonio Zoo and Aquarium;
NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

Section 1. The City Manager or his designee is hereby authorized to execute the Lease Agreement Between the City of San Antonio and the San Antonio Zoological Society for the San Antonio Zoo and Aquarium for a twenty-five (25) year period to begin with the effective date of this ordinance. A copy of said lease agreement, in substantially correct form, is affixed hereto and incorporated herein for all purposes as Attachment I.

Section 2. This ordinance shall be effective on the tenth (10th) day after passage hereof.

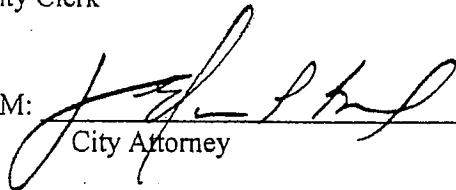
PASSED AND APPROVED this _____ day of April, 1998.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney

ORD. NO. 87751

APR 30 1998


CITY CLERK

LEASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE SAN ANTONIO ZOOLOGICAL SOCIETY FOR THE SAN ANTONIO ZOO AND AQUARIUM

This Lease Agreement (hereinafter called ("LEASE" or "agreement") is made and entered into by the CITY OF SAN ANTONIO, a Texas Municipal Corporation, hereinafter referred to as CITY, acting by and through its City Manager pursuant to Ordinance No. 87751, passed and approved on APRIL 20, 1998 and the SAN ANTONIO ZOOLOGICAL SOCIETY, INC., hereinafter referred to as SOCIETY, a Texas non-profit corporation.

RECITALS

WHEREAS, SOCIETY has, for more than 65 years, managed, operated and maintained the San Antonio Zoological Gardens and Aquarium, most recently pursuant to that certain Contract with the CITY manifested by Ordinance No. 35370, dated August 27, 1967; and

WHEREAS, SOCIETY has, during the course of aforesaid history, created one of the top-ranked zoos in the United States; and

WHEREAS, the San Antonio Zoo is a vital center for education and recreation in the City of San Antonio and is a valuable asset to the collaborative conservation and education effort of professionally run zoos and aquariums in North America; and

WHEREAS, the San Antonio Zoo is one of the major visitor and tourist attractions in the CITY, thereby significantly contributing to the CITY's economic base; and

WHEREAS, CITY and SOCIETY desire to continue their long-standing relationship for the benefit of the citizens of San Antonio, NOW THEREFORE, the parties agree as follows:

ARTICLE I.
TERM

1.1 The term of this Lease Agreement shall be for twenty-five (25) years effective ten (10) days following passage of the authorizing ordinance first cited above, unless sooner terminated as hereinafter provided. The term Lease year shall refer to each consecutive twelve (12) month period beginning with the effective date this Lease is effective.

1.2 Renewal of this agreement for an additional twenty-five (25) year term shall require the approval of the City Council of the CITY as evidenced by the passage of an appropriate ordinance. In the event that CITY does not wish to renew said agreement, this LEASE shall terminate on the original termination date hereof. Provided however, to provide SOCIETY time to remove its living collection, in no event shall SOCIETY be required to vacate the PREMISES sooner than twenty-four (24) months after written

notice from CITY. In the event that SOCIETY continues to occupy the PREMISES (as that term is defined hereinafter in Article II) after the termination date hereof, such occupancy shall be considered to be on a month to month basis under the same terms and conditions as this agreement. In such event, SOCIETY shall vacate the PREMISES upon twenty-four (24) months written notice from CITY of said termination.

1.3 The above notwithstanding, it is the intention of the parties hereto to encourage the SOCIETY to continue to make capital improvements to the PREMISES with a level of assurance that, as those improvements are made they will have a term sufficient to enjoy the full use of those improvements. Accordingly, for each \$5,000,000.00 dollars of capital improvements SOCIETY plans to make to the PREMISES from and after the date hereof, SOCIETY may request that, in connection with such improvements to the PREMISES, the term of the LEASE will be extended for an additional five (5) year period of time with no other change made to the terms and conditions of this LEASE, and upon approval of the CITY, evidenced by the passage of an appropriate City Ordinance, such approval being at the sole discretion of the City Council, the term of this LEASE shall be extended for an additional period of five (5) years; provided however in no event shall the then current term of the LEASE (as extended) exceed twenty-five (25) years in length.

ARTICLE II. DEMISE OF PREMISES AND RENT

2.1 City, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by SOCIETY, does hereby lease and demise to SOCIETY, and SOCIETY does hereby rent and accept from CITY for the term hereinafter set out, the real property owned by the CITY and identified as the San Antonio Zoological Gardens and Aquarium (hereinafter referred to as "ZOO" or "PREMISES") and as described in EXHIBIT "A" attached hereto. SOCIETY'S rights, privileges, duties and responsibilities hereunder are limited to those PREMISES until such time as they may be expanded or changed pursuant to paragraph 2.2. Notwithstanding anything contained in the LEASE to the contrary, the terms of this LEASE shall in no way limit SOCIETY'S ability to own and/or operate other operations on facilities which are not included in the list attached hereto and incorporated herein as Exhibit A.

2.2 CITY and SOCIETY acknowledge that continued viability of the ZOO depends to a degree on expansion capability. To that end, CITY and SOCIETY agree to continuous liaison related to possible PREMISES expansions during the term of this LEASE, or any extension thereof.

2.3 SOCIETY has had full opportunity to examine the PREMISES and agrees that no representations respecting the conditions of the PREMISES and no promises to alter, repair or improve the PREMISES, either before or after the execution hereof, have been made by CITY or its agents to SOCIETY unless the same are contained herein or made a part hereof by reference herein. SOCIETY'S management and operation of the PREMISES shall be conclusive evidence of SOCIETY'S acceptance thereof in good order and satisfactory condition, and SOCIETY hereby accepts the PREMISES in its present condition, AS IS, WHERE IS, WITH ALL FAULTS, as suitable for the purpose of conducting ZOO operations and with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for SOCIETY'S use and possession of the premises as a ZOO or for any other purpose.

2.4 SOCIETY and its patrons shall have the non-exclusive right to use the parking facilities within the surrounding park areas for so long as the CITY continues to operate such parking facilities. Should City permanently, or over an extended period of time, close a significant portion of such parking facilities without providing suitable alternate parking for use by SOCIETY, SOCIETY shall have the right to terminate this agreement by providing written notice two years prior to such termination. SOCIETY shall have no other remedy for such closings.

2.5 SOCIETY shall pay to city the sum of \$1.00 per year as rental during the term of this Lease. The CITY does hereby confirm that contemporaneously with the execution of this Lease by SOCIETY, it has paid and the CITY has received the sum of \$25.00 as a pre-payment of this rental.

ARTICLE III.

ACCREDITATION WITH THE AMERICAN ZOO AND AQUARIUM ASSOCIATION

3.1 Throughout the term of this LEASE and any extensions thereof, SOCIETY shall maintain membership in the American Zoo and Aquarium Association (AZA) and shall maintain accreditation with said Association or with such other similar organization which has been approved in writing by both SOCIETY and CITY (the "Alternate Organization").

ARTICLE IV.

OWNERSHIP, CARE, PROTECTION AND DISPOSITION OF LIVING COLLECTION

4.1 SOCIETY shall continue to own all plants acquired and fostered since January 1983, all mammals, birds, reptiles, amphibians, fishes and invertebrates (hereinafter collectively referred to as "the living collection"). Subject to all applicable laws, SOCIETY may buy, sell, trade, loan, borrow, donate, receive as donations, and breed specimens within the moral and ethical guidelines of the AZA, or the Alternate Organization (as applicable).

4.2 SOCIETY shall strictly comply with the AZA Code of Professional Ethics and Animal Disposition Guidelines (or those of the Alternate Organization, as applicable) in matters related to animal transactions. A copy of the current AZA Guidelines is attached hereto as EXHIBIT "B" and incorporated herein for all purposes.

ARTICLE V.

MANAGEMENT, OPERATIONS, CAPITAL AND MAINTENANCE COSTS BORNE BY SOCIETY

5.1 SOCIETY shall bear, at its sole cost and expense all costs related to the operation of the ZOO. These shall include, but not be limited to, costs of managing, operating, maintaining, developing, equipment, supplies, utilities (excluding water provided in Section 8.1 below), and all capital improvements which the SOCIETY elects to carry out, or are required to carry out under Section 6.3 of this LEASE.

ARTICLE VI.

RELATIONSHIP AND ADDITIONAL RIGHTS AND RESPONSIBILITIES

6.1 CITY and SOCIETY mutually agree that SOCIETY acts in the capacity of a tenant of lease space and that nothing contained herein shall be construed by either party hereto or by any third party as creating the relationship of principal and agent, partners, joint venture or any other similar such relationship between the parties hereto, and confirm that all of the services to the public provided by the SOCIETY are provided on behalf of the SOCIETY and not for or on the part of the CITY. Neither party to this LEASE has the authority to bind the other party or to hold out to third parties that it has the authority to bind the other.

6.2 SOCIETY shall collect and retain all revenues from all aspects of its operations, including but not limited to gate admissions and from concessions, including but not limited to food and beverages, rides, performances and exhibits, sightseeing vehicles, souvenirs, gifts, novelties, membership fees, donations, bequests, special benefit events, fund raisers, promotions, public and private grants, and contributions for management, operations, maintenance and development of the ZOO, the living collections (as herein defined) and other SOCIETY mission based programs. In addition, the SOCIETY may apply to the CITY for any applicable financial support each year through the City's normal annual budget development process.

6.3 SOCIETY shall comply with all Federal, State and local laws pertaining to its activities under this LEASE. In the event that following the date of this LEASE the CITY should modify its laws and/or ordinances, and (i) the operations of the SOCIETY otherwise carried out in conformance with the terms of this LEASE are found to be in violation of the terms of this LEASE due to the change in the CITY laws and/or ordinances, (ii) the CITY elects to enforce the terms of this LEASE to remedy such default, and (iii) the remedy exercised by CITY will impair the ability of the SOCIETY to continue to operate in the manner it has in the past under this LEASE, the SOCIETY may elect to terminate this LEASE by providing written notice to CITY of the time (not to exceed twenty-four (24) months) it will take to vacate the Premises.

ARTICLE VII. ADMISSION FEES

7.1 As of the effective date of this LEASE, admission fees to the ZOO are as listed on EXHIBIT "C" attached hereto.

7.2 Not sooner than twelve (12) months following the effective date of this LEASE, admission fees to the ZOO may be adjusted from time to time, subject to the following stipulations:

A. SOCIETY may, by written notification to the Director of Parks and Recreation, hereinafter called the "DIRECTOR," at least thirty (30) days prior to proposed increase, raise admission fees above the rate indicated in 7.1 above. In no instance shall admission fees be raised by more than a cumulative twenty percent (20%) during any three (3) year period during the term of this agreement.

B. Should economic or financial circumstances require admission fee increases in excess of those authorized in paragraph 7.2 A., such increases must be approved by the CITY by ordinance passed and approved by the City Council of the City of San Antonio.

C. SOCIETY may, at its discretion, charge a lesser than currently established admission fee for special promotions, membership benefits, or other activities designed to increase ZOO attendance.

7.3 SOCIETY may establish special admission fees for special exhibits and events above and beyond those normally available at the ZOO. Provided, however, any special admission fees which are to be in effect longer than 90 days must be approved by the DIRECTOR in writing prior to its implementation.

ARTICLE V
CITY PROVISION OF WATER

water

8.1 The CITY shall pay for, or provide, or purchase water to the SOCIETY, as required by SOCIETY'S "Water Allocation"), or any extension thereof for the supply of water or provide the water. The CITY shall pay for the water in any one LEASE year SOCIETY'S water.

8.2 Upon the mutual agreement of CITY and SOCIETY, water meters on the PREMISES shall be placed in the SOCIETY'S name, and the accounts shall be switched to SOCIETY'S name the CITY will reimburse the SOCIETY for water utilized on the PREMISES, up to the limit in Section 8.1 above. SOCIETY shall provide monthly invoices to the CITY within thirty (30) days of the end of the billing period. CITY will reimburse the SOCIETY for water billings within thirty (30) days of receipt by the DIRECTOR.

8.3 When available, the SOCIETY will convert as many applications in the PREMISES to reuse water as feasible (as determined by SOCIETY). As an incentive for water conservation the CITY shall pay the SOCIETY, as additional compensation each LEASE year, one-half (1/2) of the applicable water rate for every acre foot of potable water SOCIETY does not use below the maximum total allocation of 375 acre feet each LEASE year. As an incentive to SOCIETY to convert as many applications in the PREMISES to reuse water, whenever SOCIETY makes use of reuse water, such additional compensation for water conservation shall be calculated according to the following two formulas: (1) the total amount of reuse water used by SOCIETY shall be divided by the total amount of all CITY provided water (potable and non-potable); the resulting fraction shall be multiplied by the total acre feet of water below the allocated amount which was not used by SOCIETY, the result shall then be multiplied by three fourths (3/4) of the applicable water rate established by the San Antonio Water System or its successor for this user (the "applicable water rate"), and that result shall be paid to SOCIETY in dollars. (2) the total amount of potable water used by SOCIETY shall be divided by the total amount of all CITY provided water (potable and non-potable); the resulting fraction shall be multiplied by the total acre feet

of water below the allocated amount which was not used by SOCIETY, the result shall then be multiplied by one-half (1/2) of the applicable water rate, and that result shall also be paid to SOCIETY in dollars.

By way of illustration, given below is sample calculation:

LEASE Year 5 Water Usage	=	350 acre feet
LEASE Year 5 Water Rate per Acre Foot	=	\$700.00
Percentage Potable Water Used by Zoo	=	80%
Percentage Re-Use Water Used by Zoo	=	20%
Additional Compensation to the Zoo = 25 acre feet x 80% x \$350.00 per acre foot = \$7,000.00;		
25 acre feet x 20% x \$525.00 per acre foot = \$2,625.00; Total Additional Compensation =		
\$9,625.00.		

Said payment will be determined within sixty (60) days of the end of the LEASE year and paid as a lump sum to the SOCIETY as additional compensation. Said payments shall be used by the SOCIETY for the maintenance, upkeep and operation of the ZOO. In the event the CITY shall fail to pay for such additional compensation for water conservation for any year, such compensation shall continue to be due and owing and shall be paid by the CITY with any future payments, if any, due the SOCIETY, or at the SOCIETY'S direction, by added Water Allocation computed based upon the applicable water rate for the Lease year to which the payment relates.

8.4 For so long as and upon the condition that the City retains the right to withdraw the ground water which relates to the real property described on Exhibit "A" attached hereto, including the right to withdraw and/or beneficially use the Edward's Aquifer water permitted or for which a permit has been applied for relating to such property and the well situated thereon (the "water rights"), CITY promises and agrees to allow SOCIETY to make use of such water as may be legally withdrawn from the "Hippo Well" (herein after referred to as "well"), but solely for its purposes in operating the San Antonio Zoological Gardens and Aquarium and for no other purpose. SOCIETY understands and agrees that it shall be liable for (1) the maintenance and upkeep of said well; (2) any utility costs associated with operating said well; (3) the payment of any fees associated with said well, whether based on the withdrawal of water or merely for the establishment or maintenance of a water rights permit. CITY and SOCIETY shall use their best efforts to protect the CITY'S right to withdraw the ground water which relates to the real property described on Exhibit "A" attached hereto, including the right to withdraw and/or beneficially use the Edward's Aquifer water permitted or for which a permit has been applied for relating to such property and the well situated thereon. CITY shall not take any action or omit to take any actions which will adversely affect the CITY'S water rights and SOCIETY'S right to withdraw and/or beneficially use Edward's Aquifer water from the well. SOCIETY acknowledges and agrees that these water rights are the property of the CITY and SOCIETY'S right to use these water rights under this lease agreement is in no way a transferable right. SOCIETY further agrees that to the extent that SOCIETY does not make full use of the pumping rights established under the permit, that the CITY shall have the right to make use of these pumping rights either by extra pumping from other CITY wells, or by transferring said rights to other water users, but not by using the well, for such period of time as SOCIETY is not making full use of the CITY'S pumping rights. In the event that CITY does make use of such excess pumping rights, CITY agrees that it shall be liable for a pro rata share of the permit fee for the years pumping based on the actual amount of water right used by CITY. CITY and SOCIETY mutually agree to work together in securing alternate sources of water, especially reuse water, and to

substitute such water for water pumped from the Edward's Aquifer to the extent that it is mutually beneficial.

8.5 Both CITY and SOCIETY understand and agree that the maintenance of the water rights referenced in section 8.4 will require the best efforts and cooperation of CITY and SOCIETY. SOCIETY agrees that it will comply with all applicable rules and regulations of the State of Texas and the Edwards Underground Aquifer Authority in its maintenance and operation of the well and will take no actions which will jeopardize the CITY'S Water Rights. CITY agrees that it will use its best efforts in any circumstances requiring action by the CITY to protect and maintain any water rights, including permit rights, related to the water rights, that it will comply with all applicable rules and regulations of the State of Texas and the Edwards Underground Aquifer Authority, and further agrees to consult with SOCIETY in the taking of any such actions. Both parties agree that under certain circumstances CITY may, in its sole discretion, authorize SOCIETY to act on its behalf in taking any such actions.

ARTICLE IX. ZOO CAPITAL IMPROVEMENTS

9.1 SOCIETY shall coordinate all capital improvements over \$500,000.00 on the PREMISES with the CITY to assure compatibility with the 1979 Brackenridge Park Master Plan, or the most current plan as approved by the City Council. Said improvements must be approved in writing by the DIRECTOR prior to implementation. Capital improvements shall be deemed to be approved if the SOCIETY has not received official notification from the DIRECTOR of their approval, disapproval or a request for additional time for consideration of the capital improvement request by the CITY within ninety (90) working days of the request for approval from the SOCIETY.

9.2 SOCIETY shall comply with all applicable federal, state and local laws and shall obtain all applicable permits and approvals required by applicable CITY agencies, boards, commissions and committees for all capital improvements to the PREMISES made by the SOCIETY.

9.3 Unless otherwise agreed by the parties, all costs of new capital development improvements and/or alterations to existing facilities which SOCIETY elects to carry out or is required to carry out under Section 6.3 above, shall be borne by SOCIETY.

ARTICLE X. LIENS PROHIBITED

10.1 Except as set out below, SOCIETY shall not suffer or permit any mechanics' liens or other liens to be filed against the fee title of the PREMISES nor against SOCIETY interest in the land nor any buildings or improvements on the PREMISES by reason of any work, labor, services or materials supplied or claimed to have been supplied to SOCIETY.

10.2 If any such mechanics' liens or materialmen's liens or orders for payment shall be filed against the PREMISES, or any improvements thereof, or CITY-owned property located thereon, SOCIETY shall cause the same to be removed or, in the alternative, if SOCIETY in good faith desires to contest the same, SOCIETY shall be privileged to do so, but, in such case, SOCIETY shall be liable to CITY for any

and all damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment.

10.3 Under no circumstances will CITY impart a lien on SOCIETY'S property including the living collection.

ARTICLE XI.
ACCESS

11.1 SOCIETY shall permit CITY's authorized agents, representatives or employees to enter on the PREMISES while in the performance of their official duties at any reasonable and necessary times for the purpose of inspection to determine whether SOCIETY is in compliance with the terms of this LEASE.

ARTICLE XII.
HOURS OF OPERATION

12.1 SOCIETY shall be responsible for establishing dates and hours of operation for public admissions to the ZOO.

12.2 SOCIETY, through its designated representative, shall have the authority to close the ZOO during inclement weather or other circumstances which may pose potential hazard to the health or safety of ZOO visitors, SOCIETY staff, or living collection.

ARTICLE XIII.
FINANCIAL RECORDS AND FINANCIAL REPORT

13.1 Throughout the term of this LEASE and any extensions hereof, SOCIETY shall maintain complete and accurate permanent financial records of all income and expenditures. Such records shall be maintained on a comprehensive basis, in accordance with generally accepted auditing standards.. Such financial records and supporting documentation shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to CITY inspection following reasonable notification of intent to inspect by CITY's Director of Finance or other appropriate CITY official(s).

13.2 SOCIETY shall file with the DIRECTOR, on or before January 30 of each year of this LEASE and any extended term(s) hereof, an annual report of SOCIETY'S receipts and expenditures, prepared and certified by a Certified Public Accountant and in such detail as may be reasonably prescribed by CITY's Director of Finance.

ARTICLE XIV.
OTHER RECORDS AND REPORTS

14.1 In addition to aforesated annual financial report, SOCIETY shall maintain the following records and shall make such records available for inspection and copying by authorized CITY representatives at any reasonable time(s) during the term of this LEASE:

- A. All reports issued in connection with inspections related to the federal Animal Welfare Act and, if applicable, SOCIETY'S reply to all findings cited in said Animal Welfare Act inspection report(s);
- B. The most current AZA or Alternate Organization (as applicable) accreditation report;
- C. All changes and amendments to the AZA or Alternate Organization (as applicable) by-laws, rules and regulations; and

14.2 CITY shall provide SOCIETY a written report of every inspection conducted by CITY pursuant to paragraph 11.1. Such report shall be provided to SOCIETY no later than thirty (30) business days following such inspection.

ARTICLE XV.
MEETINGS AND MEETINGS MINUTES

15.1 SOCIETY shall make available to the DIRECTOR upon request the scheduled date of SOCIETY Board of Directors meeting(s) and/or a copy of the minutes of the most recent Board of Directors meeting(s). The DIRECTOR or his designee(s) may attend all such meetings as non-voting observer(s).

ARTICLE XVI.
CITY INSURANCE

16.1 SOCIETY shall provide fire and extended coverage insurance on CITY-owned improvements and permanent structures on the PREMISES in types and amounts as directed by the CITY's Risk Manager. Provided, however, in no event shall such coverage required by CITY be more than that which reasonably reflects the replacement cost for the structures insured.

ARTICLE XVII.
FIRE OR OTHER CASUALTY

17.1 Partial Destruction: In the event that any part of the improvements on the PREMISES should be damaged by fire or other casualty and such casualty does not render the PREMISES inoperable or reconstruction and/or repair of the damaged improvements is economically practical, as determined by SOCIETY in its reasonable judgment, then, in such event or events, the damaged or destroyed improvements shall be rebuilt and/or repaired, provided that insurance proceeds shall have been received by SOCIETY and/or CITY and provided further that such proceeds shall be made available to SOCIETY to pay for at least one hundred percent (100%) of the costs of rebuilding or repairing, as the case may be. Any rebuilding or reconstruction work shall be performed in a good and workmanlike manner by SOCIETY personnel or by one or more independent contractors selected by SOCIETY; provided, however, that the extent of such reconstruction or repair shall be limited to restoring the damaged improvements to substantially their condition immediately prior to the casualty unless approval for a design difference from the original design has been obtained from the CITY. The approvals otherwise required pursuant to Section 9.1 above shall not be required for these renovations.

17.2 Total Destruction: In the event that all or substantially all of the animal collections and/or all of the improvements on the PREMISES are destroyed by fire or other casualty, then, in such event, SOCIETY shall take immediate steps which, in its judgment, are in the interests of protecting the health and well-being of the surviving living collections. SOCIETY'S decisions in this regard shall be final. Within six (6) months following such catastrophic event, CITY and SOCIETY shall jointly determine the feasibility of rebuilding or re-establishing the ZOO and the extent of such rebuilding or re-establishment if that is the mutual decision of SOCIETY and CITY. If SOCIETY and CITY determine that whole or partial rebuilding or relocation is not feasible, then this LEASE shall be terminated without liability on the part of either party. Such termination shall be effected by ordinance passed and approved by the City Council of the City of San Antonio.

17.3 Should LEASE termination result under the aforestated circumstances, SOCIETY and CITY shall each retain the insurance proceeds derived from their respective insurance carriers.

XVIII. INDEMNITY

18.1 SOCIETY covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to SOCIETY'S activities under this LEASE, including any acts or omissions of SOCIETY, any agent, officer, director, representative, employee, consultant or sublessor of SOCIETY, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this LEASE, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SOCIETY shall promptly advise the CITY in writing of any claim or demand against the CITY, or any claim or demand against the SOCIETY that SOCIETY reasonably anticipates may adversely impact the CITY, known to SOCIETY related to or arising out of SOCIETY'S activities under this LEASE and shall see to the investigation and defense of such claim or demand at SOCIETY'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving SOCIETY of any of its obligations under this paragraph.

18.2 It is the EXPRESS INTENT of the parties to this LEASE, that the INDEMNITY provided for in this section (Section 18), is an INDEMNITY extended by SOCIETY to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for

in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. SOCIETY further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

XIX. INSURANCE REQUIREMENTS

19.1. Prior to the commencement of any activities under this LEASE, by the City Council, SOCIETY shall furnish a completed Certificate of Insurance to the CITY's Director, Parks and Recreation Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The CITY shall have no duty to pay or perform under this LEASE until such certificate shall have been delivered to the CITY's Director, Parks and Recreation Department and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.

19.2 The CITY reserves the right to review the insurance requirements of this section during the effective period of this LEASE and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this LEASE, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk. In no event shall the coverage required by the CITY increase the coverage to a level which is not reasonably economically feasible for SOCIETY to obtain.

19.3 As SOCIETY'S financial integrity is of interest to the CITY, therefore, subject to SOCIETY'S right to maintain reasonable deductibles in such amounts as are approved by the CITY, SOCIETY shall obtain and maintain in full force and effect for the duration of this LEASE, and any extension hereof, at SOCIETY'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas or a non-admitted but approved Excess/Surplus lines carrier, rated A- or better by A.M. Best Company and/or otherwise acceptable to the CITY's Risk Manager, in the following types and at least the following amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation	Statutory
Employers' Liability	\$500,000/\$500,000/\$500,000
(or an Alternative Plan approved by the CITY's Risk Manager)	

2. **Commercial General (public) Liability Insurance to include coverage for the following:**

a. General Aggregate	\$2,000,000
b. Products/Completed Operations	\$1,000,000
c. Per Occurrence Limit	\$1,000,000
d. Personal/Advertising Injury	\$1,000,000
e. Fire Legal Liability	\$ 50,000
f. Medical Expense	\$ 5,000
g. Independent Contractors	Included
h. Broad Form Property Damage	Included
i. Liquor Liability (if alcohol is served)	\$1,000,000

3. **Business Comprehensive Automobile Liability (Owned/Leased Vehicles)**

a. Combined Single Limit for Bodily Injury and Property Damage	\$1,000,000
b. Hired and Non-Owned Liability	\$1,000,000

4. **Commercial Crime**

a. Employee Dishonesty	\$ 100,000
b. Forgery or Alteration	\$ 100,000
c. Theft, Disappearance & Destruction	\$ 100,000

5. **Commercial Excess/Umbrella Liability**

a. General Aggregate	\$5,000,000
b. Each Occurrence	\$5,000,000
(No limits less than \$5,000,000)	

19.4. The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the CITY, the SOCIETY shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof, provided, however, in no event shall the CITY request a change in policy coverage or rider or modification to a policy which is not reasonably economically feasible for SOCIETY to obtain.

19.5 SOCIETY agrees that with respect to the above required insurance, all insurance Agreements and Certificate(s) of Insurance will contain the following required provisions:

- Name the CITY and its officers, employees, agents and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this LEASE with the CITY, with the exception of the property, workers' compensation and commercial crime policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy; this provision may be waived only with the approval of the Risk Manager and the City Attorney.
- Workers' compensation and employer's' liability policy will provide a waiver of subrogation in favor of the CITY.

19.6 SOCIETY shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following address:

City of San Antonio
Director,
Parks and Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

19.7 If SOCIETY fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of SOCIETY to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon SOCIETY'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order SOCIETY to stop work hereunder, and/or withhold any payment(s) which become due, to SOCIETY hereunder until SOCIETY demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which SOCIETY may be held responsible for payments of damages to persons or property resulting from SOCIETY'S or its subcontractors' performance of the work covered under this agreement.

ARTICLE XX.

DEFAULT AND REMEDIES

20.1 The following events shall be deemed to be events of default by SOCIETY under this LEASE:

- A. SOCIETY shall fail to comply with any term, provision or covenant of this LEASE and shall not cure such failure within sixty (60) days after receipt of written notice thereof to SOCIETY, or, if such default cannot be cured within such sixty (60) day period SOCIETY shall have a reasonable time period to complete such cure if SOCIETY promptly undertakes action to cure such default within sixty (60) days of original written notice and thereafter diligently pursues the same to completion.
- B. The taking by a court of competent jurisdiction of SOCIETY or its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as remedies for default are provided for or permitted in such code or act.

20.2 Upon the occurrence of an event of default as heretofore provided in Section 20.1 above, CITY may, at its option, declare this LEASE, and all rights and interest created by it, terminated. Upon CITY electing to terminate, this LEASE shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or CITY, its agents or attorney may, at its option, resume possession of the PREMISES, except, however, for possession of the SOCIETY'S living collections and any personal property owned by SOCIETY, subject to an orderly procedure for protection and relocation of the living collection and SOCIETY'S personal property.

20.3 The following event shall be deemed to be events of default by CITY under this LEASE:

CITY shall fail to comply with any term, provision or covenant of this LEASE, provided CITY shall have a period of sixty (60) days from the date of written notice from the SOCIETY within which to cure such default, or, if such default can not be cured within such sixty (60) day period, CITY shall have a reasonable time period to complete such cure if CITY promptly undertakes action to cure such default within such sixty (60) day period and thereafter diligently pursues the same to completion.

20.4 Upon the occurrence of an event of default as heretofore provided in Section 20.3 above, SOCIETY may, at its option, declare this LEASE, and all rights and interest created by it, terminated. Upon SOCIETY electing to terminate, this LEASE shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof and SOCIETY shall peaceably quit and surrender to CITY the PREMISES, in good order and condition, normal wear and tear and damage caused by casualty or condemnation excepted; provided, however, SOCIETY shall retain possession of the SOCIETY'S living collection and any personal property owned by SOCIETY and shall have a reasonable period of time, not to exceed twenty-four (24) months, in which to remain on the PREMISES in order to provide for the protection and relocation of the living collection and SOCIETY'S personal property.

20.5 Unless otherwise provided for herein, in the event that this LEASE is terminated for any reason, SOCIETY may continue in possession of the PREMISES for the purpose of operating and maintaining the living collection for a period not to exceed twenty-four (24) months.

ARTICLE XXI.
ASSIGNMENT AND SUBLETTING

21.1 Except for concession operations and short-term special events, SOCIETY shall not assign this LEASE, or allow same to be assigned by operation of law or otherwise, or sublet the PREMISES or any part thereof without the prior written consent of CITY which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. Any assignment or subletting by SOCIETY without such permission shall constitute grounds for termination of this LEASE by the CITY. SOCIETY shall continue to be liable under this LEASE after such assignment, with or without CITY's consent.

21.2 Section 21.1 notwithstanding, SOCIETY shall be entitled to sub-lease or license the use of up to 33% of the PREMISES for up to eighteen (18) months per event and/or exhibit to accommodate special traveling exhibits.

ARTICLE XXII.
TAXES AND LICENSES

22.1 SOCIETY shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees, which are now or may hereafter be levied upon SOCIETY, or upon the business conducted on the PREMISES, or upon any of SOCIETY'S property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operations and activities conducted by SOCIETY. Failure to comply with the foregoing provisions shall constitute grounds for termination of this LEASE by the CITY.

ARTICLE XXIII.
NON-DISCRIMINATION

23.1 SOCIETY covenants that neither it, nor its agents, employees or anyone under its control, will discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability, in employment practices or in the use of or admission to the PREMISES.

ARTICLE XXIV.
CONDEMNATION

24.1 It is agreed and understood that in the event the PREMISES are taken, in whole or in part, by any governmental authority other than CITY, this LEASE and all rights or permission- to use hereunder shall, at the option of the CITY, cease on the date that title to such land so taken or transferred vests in the condemning authority. SOCIETY hereby waives all rights to any proceeds of such condemnation of the real property owned by the CITY, but specifically reserves its rights with respects to loss of business and personal property and the living collection to seek proceeds from condemnation proceedings of the property and any other proceeds that may become available to the SOCIETY under such proceedings.

ARTICLE XXV.

NO SUBSTANTIAL INTEREST

25.1 SOCIETY acknowledges that it is informed that local law prohibits leases between the CITY and any local public official, such as a CITY officer or employee, and that the prohibition extends to an officer and employee of CITY agencies, such as CITY-owned utilities and certain CITY boards and commissions, and to leases involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. SOCIETY certifies (and this LEASE is made in reliance thereon) that neither it, its individual officers, employees, or agents, nor any person has a substantial interest in this LEASE, while occupying a position as officer or employee of the CITY or any of its agencies.

ARTICLE XXVI. ENTIRE AGREEMENT

26.1 It is understood and agreed that this LEASE, together with the authorizing ordinance and any attached exhibits, constitute the entire LEASE between the parties hereto and shall not be modified or amended in any manner except by instrument in writing executed by the parties hereto. It is further understood and agreed by SOCIETY that CITY and CITY's agents have made no representations or promises with respect to the PREMISES or the making or entry into this LEASE, except as in this LEASE expressly set forth, and that no claim or liability or cause for termination shall be asserted by SOCIETY against CITY for, and CITY shall not be liable by reason of, the breach of any representations or promises not expressly stated in this LEASE, any other written or oral agreement with CITY being expressly waived by SOCIETY, it being understood that the Charter of the CITY requires all agreements with the CITY, including any subsequent amendments or other modifications hereto, to be in writing and adopted by ordinance.

26.2 The parties hereto acknowledge that they have thoroughly read this LEASE, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and counsel as was necessary for them to form a full and complete understanding of their rights and obligations herein.

ARTICLE XXVII. SEPARABILITY

27.1 If any clause or provision of this LEASE is illegal, invalid or unenforceable under present or future laws effective during the term of this LEASE, then and in that event, it is the intention of the parties hereto that the remainder of this LEASE shall not be affected thereby, and it is also the intention of the parties to this LEASE that in lieu of each clause or provision of this LEASE that is illegal, invalid or unenforceable, there be added as a part of this LEASE a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

27.2 All other provision of this lease agreement notwithstanding, in the event any obligation of CITY set out in this Agreement would cause this Agreement to be void by law or otherwise, the obligation shall be deemed to not be a part of this Agreement and shall be deemed severed from this Lease ab initio.

Upon CITY notifying SOCIETY that any such provision has been eliminated from the Agreement for the reasons stated above, SOCIETY shall thereafter have the right to elect to terminate this agreement.

ARTICLE XXVIII.
NOTICES

28.1 Notices to the CITY required or appropriate under this LEASE shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to City Clerk, P.O. Box 839966, San Antonio, Texas 78283-3966, and to the Director, Department of Parks and Recreation, P.O. Box 839966, San Antonio, Texas 78283-3966, or to such other address as may have been designated in writing by the City Manager of the City of San Antonio, from time to time. Notices to SOCIETY shall be deemed sufficient if in writing and mailed, registered or certified- mail, postage prepaid, addressed to SOCIETY at:

Zoo Director
San Antonio Zoological Gardens and Aquarium
3903 North St. Mary's Street
San Antonio, Texas 78212;

and;

Wells Pinckney & McHugh
Attorneys At Law
Mr. Frank Z. Ruttenberg
800 One Alamo Center
106 South St. Mary's Street
San Antonio, Texas 78205-3603

OR at such other address on file with the City Clerk as SOCIETY may provide from time to time in writing to the CITY.

ARTICLE XXIX.
PARTIES BOUND

29.1 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns, and if there shall be more than one party designated as SOCIETY in this LEASE, they shall each be bound jointly and severally hereunder.

ARTICLE XXX.
TEXAS LAW TO APPLY

30.1 THIS LEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

ARTICLE XXXI.
GENDER

31.1 Words of any gender used in this LEASE shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE XXXII.
CAPTIONS

32.1 The captions contained in this LEASE are for convenience of reference only and in no way limit or enlarge the terms and conditions of this LEASE.

ARTICLE XXXIII.
AUTHORITY

33.1 The signer of this LEASE for SOCIETY hereby represents and warrants that he or she has full authority to execute this LEASE on behalf of SOCIETY.

IN WITNESS WHEREOF, we have affirmed our signatures this 5TH day of MAY, 1998.

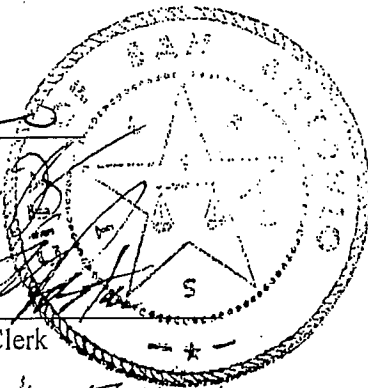
CITY OF SAN ANTONIO

SAN ANTONIO ZOOLOGICAL
SOCIETY, INC.

By: [Signature]
Assistant City Manager

By: [Signature]
Title: President

ATTEST: [Signature]
City Clerk



Approved as to Form: [Signature]
City Attorney