

CITY SECRETARY CONTRACT

No. 40564

THIS AGREEMENT is signed on this 14th day of July, 2010, to be effective as of October 1, 2010 (the "Effective Date"), by and between the City of Fort Worth (the "City"), a home rule municipal corporation of the State of Texas, and the Fort Worth Zoological Association, a Texas nonprofit corporation (the "Zoo Association"):

W I T N E S S E T H:

WHEREAS, the City is a municipal corporation existing under the Constitution and laws of the State of Texas and by home rule Charter; and

WHEREAS, the Charter of the City vests all powers of city government in its City Council; and

WHEREAS, the City owns a tract of land for the benefit of the public which is known as Forest Park ("Forest Park"); and

WHEREAS, the City has dedicated certain portions of Forest Park to be used for the development of the Fort Worth Zoo (the "Zoo"), the boundary of which has been approved by the City Council by adoption of City Ordinance 10261 and is specifically defined in Exhibit "A", a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, the boundary of the Zoo has been in existence since 1989 and this Agreement reaffirms such existing Zoo boundary; and

WHEREAS, the Zoo Association is a nonprofit corporation of the State of Texas which was organized in 1950 as a citizen support group whose mission has been to assist the Zoo in operational, educational and developmental growth for the benefit of all Fort Worth citizens; and

WHEREAS, the Zoo Association is governed by a Board of Directors made up of volunteer citizens who are elected by the Zoo Association and who are interested in the Zoo and its programs; and

WHEREAS, the City and the Zoo Association have been parties to a series of contracts pursuant to which the Zoo Association has provided financial and management services to the Zoo; and

WHEREAS, the City and the Zoo Association are currently parties to the certain City Secretary Contract No. 18454 dated as of May 14, 1991, as amended; and

WHEREAS, since 1991, the Zoo Association has demonstrated dedication and excellence in its stewardship of the Zoo, and the Zoo has thrived during this period; and

WHEREAS, under the management of the Zoo Association, the Zoo has been ranked as a “top zoo in the nation” by Family Life magazine, the Los Angeles Times and USA Today, and as “one of the top zoos in the south” by Southern Living Reader’s Choice Awards; and

WHEREAS, under the management of the Zoo Association, the Zoo has been named the “# 1 attraction in the Dallas/Fort Worth Metroplex” by the world-renowned Zagat’s Family Travel Guide; and

WHEREAS, since 1991, the Zoo Association has invested in excess of \$120 million to fund new exhibits, needed improvements and repairs throughout the Zoo; and

WHEREAS, the City desires for the greater Fort Worth area to continue to benefit economically from the Zoo Association’s management of the Zoo, through increased tourism, sales tax revenues and other advantages provided by a premier attraction and education venue; and

WHEREAS, the City seeks to ensure the continued safe operation of the Zoo for Zoo

patrons, animals and the Zoo's employees; and

WHEREAS, the City desires to provide for the continued proper health and care of the animals at the Zoo and maintain the Zoo's accreditation with a national zoological association; and

WHEREAS, the Zoo Association has a 60-year history of contributing significant financial and other benefits relating to the management and operation of the Zoo, including the acquisition of animals and specimens, the education of children and families, the construction of permanent exhibits and other public improvements, management of concession operations and employees, the collection of gate receipts and the management of gate employees, and the contribution of other significant services, benefits and support to the Zoo; and

WHEREAS, the Zoo Association is uniquely qualified to provide management services to the Zoo, given its 60-year history of involvement with and support of the Zoo; its demonstrated knowledge of Zoo operations; its acquisition and ownership of the animal collection and its current and past operation of the food and gift facilities; its demonstrated success at raising funds for the improvement, construction and maintenance of Zoo facilities; its development, management and promotion of the Zoo's educational programs (including sponsoring scholarships); and its demonstrated success in the funding, organization and execution of community outreach programs which serve all areas of Fort Worth; and

WHEREAS, the Zoo Association owns and/or manages a vast animal collection at the Zoo; and

WHEREAS, the Zoo Association is willing to continue to provide management services relating to the Zoo in exchange for the management fees provided for herein; and

WHEREAS, the City and the Zoo Association desire for the management fees and all

other revenue from the operation of the Zoo, including without limitation, admission and parking fees and proceeds of retail and educational operations, be used solely for the benefit of the Zoo and its programs; and

WHEREAS, the City desires, and the Zoo Association is committed, to expend funds to improve the Zoo pursuant to the previously adopted plan referred to herein and within the boundary defined in Exhibit "A" for the proper health and care of the Zoo's animal collection and for the education and enjoyment of all citizens of Fort Worth; and

WHEREAS, the City endorses the Zoo Association's past and future plans to fully develop, maintain and update the property and facilities located within the Zoo boundary, including the previously undeveloped area of the soccer fields within such boundary; and

WHEREAS, the City recognizes, reaffirms and approves the plan for Zoo development detailed in the Forest Park Master Plan as well as the Zoo Association's goals, and services to the citizens of Fort Worth; and

WHEREAS, the partnership between the City and the Zoo Association has become a model of public-private cooperative endeavors; and

WHEREAS, the City and the Zoo Association wish to continue in this highly successful relationship while refining and clarifying aspects of the arrangements between the parties; and

WHEREAS, effective as of the Effective Date, both parties desire to simultaneously terminate City Secretary Contract No. 18454 and all amendments thereto, and enter into this Agreement;

NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of the premises and the mutual covenants herein contained, the

City and the Zoo Association do hereby agree as follows:

ARTICLE I.

TERM

1.01 The Term. The term of this Agreement shall commence on the Effective Date and shall expire at midnight on September 30, 2030, subject to earlier termination as hereinafter provided (the “Term”).

ARTICLE II.

OWNERSHIP OF THE ZOO

2.01 Ownership. Title to all public lands, permanent improvements and property currently owned by the City at the Zoo, and any permanent Improvements (as hereinafter defined) constructed at the Zoo during the Term, shall remain vested or shall be vested in the City.

2.02 Equipment and Other Property. The City will permit the Zoo Association to use all City property currently used within the Zoo boundary or assigned to the Zoo to enable the Zoo Association to fulfill its commitments hereunder for the benefit of the Zoo and the visiting public.

ARTICLE III.

MANAGEMENT OBLIGATIONS AND RESPONSIBILITIES

OF THE ZOO ASSOCIATION

3.01 Service Operations. During the Term, the Zoo Association shall have the sole right and obligation to fund and manage all Service Operations at the Zoo. Service Operations to be funded and managed by the Zoo Association shall include, but are not necessarily limited to, the following: souvenirs, concessions, attractions, rides, restaurants, facilities, food, beverages,

gifts, promotions, marketing, leasing, catering, rentals, and strollers (collectively, the “Service Operations”).

The Zoo Association shall obtain, when necessary, and keep in effect, at its own cost and expense, all licenses and permits necessary for the Service Operations as well as state licenses and permits necessary for the sale of alcoholic beverages. However, the Zoo Association shall not apply for said permits necessary for the sale of alcoholic beverages without prior approval of the City Council, such approval not to be unreasonably withheld. All gross receipts the Zoo Association derives from the Service Operations at the Zoo shall be used solely for the benefit of the Zoo and its programs.

3.02 Education. During the Term, the Zoo Association shall have the obligation to fund and manage educational programs in the Zoo for the purpose of stimulating awareness and appreciation of conservation and wildlife issues, and shall provide educational services to schools, adult and senior citizen groups, and other interested parties visiting the Zoo. The Zoo Association will continue offering scholarships and special assistance to various disadvantaged children and families interested in the Zoo's educational programs. Revenue, if any, derived by the Zoo Association from the operation of the educational facilities and programs at the Zoo shall be used solely for the benefit of the Zoo and its programs.

3.03 Personnel and Benefits.

(a) Like the City, the Zoo Association is and shall continue to be dedicated to the hiring and promotion of the most qualified individuals without regard to their race, religion, color, sex, national origin, age, sexual orientation or disability. The Zoo Association will encourage applications from minority applicants. The Zoo Association's equal opportunity policy will apply to such areas as the recruitment and hiring of qualified applicants, job

assignments, pay levels, promotions/demotions, job transfers, job training, discipline, layoff and discharge.

(b) As part of its management responsibilities, and subject to the terms and conditions of this Agreement, the Zoo Association exclusively will have all the rights of a manager, including but not limited to the right to supervise, hire, promote, discharge, transfer, lay off, resolve disputes in accordance with appropriate procedures, to assign work, and to assess performance of all Zoo Association employees working at the Zoo.

(c) The City is not responsible for wages, insurance benefits, workers' compensation premiums (or qualified self-insurance alternative), vacation leave, sick leave, group insurance premiums, pension or retirement benefits, other benefits, or other obligations or liabilities owed to Zoo Association employees. The Zoo Association shall be responsible for all wages, insurance benefits, workers' compensation premiums (or qualified self-insurance alternative), vacation leave, sick leave, group insurance premiums, pension or retirement benefits and other benefits, or other obligations or liabilities owed to Zoo Association employees.

3.04 Insurance. The Zoo Association shall maintain statutory workers' compensation insurance (or qualified alternative self-insurance program) and employer's liability insurance with coverage of not less than \$500,000.00 per occurrence at its cost. The Workers' Compensation Policy insuring the Zoo Association employees shall be endorsed to waive all rights of subrogation in favor of the City. The Zoo Association will supply the City with a verification of this waiver annually at renewal or on the anniversary date of this Agreement.

In addition, the Zoo Association shall maintain a Commercial General Liability Policy with limits not less than \$500,000.00 per occurrence during the Term. Said policy shall include the City as an additional insured with respect to the acts of Zoo Association employees while in

the course and scope of their employment at the Zoo. The Zoo Association will also purchase a \$2,000,000.00 umbrella liability policy naming the City as an additional insured to provide excess coverage above the primary policies mentioned in this paragraph. The Zoo Association shall furnish the City a Certificate of Insurance verifying such coverage with a confirmation that such policy shall not be subject to cancellation except upon thirty (30) days' prior written notice to the City. The City may, at its option, also require the Zoo Association to submit a copy of the policy or policies of insurance in effect as well as proof of payment of premiums. All policies, where applicable, shall be on an occurrence basis rather than a claims made basis.

The Zoo Association shall further provide liquor liability insurance with coverage limits of not less than \$500,000.00 adding the City as an additional insured with respect to this exposure.

The Zoo Association and the City also will insure their respective real and personal property at the Zoo from physical damage or destruction on an all-risk basis through a traditional insurance format or through a self-insurance format. Each party is solely responsible for the insurance of its own property. Any policy of insurance covering the respective owner party (either the Zoo Association or the City) will be endorsed to waive all rights of subrogation that the owner-party or its insurance company possesses in favor of the other party. Should the owner party choose to self insure its property, or with respect to any deductible to the owner party's traditional insurance policy, any losses to the related personal property shall be at the sole risk of the owner party. To the extent covered by insurance, the Zoo Association and the City hereby mutually waive and release any claims for damages or losses that one may have against the other with respect to any of their real and personal property at the Zoo.

IN THE PERFORMANCE OF THIS AGREEMENT, THE ZOO ASSOCIATION

COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE PHYSICAL CONDITION OF THE ZOO PREMISES OR THE ACTS OR OMISSIONS OF THE ZOO ASSOCIATION, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS; provided, however, that the foregoing indemnity shall not relieve the City from any of its obligations, claims or liabilities arising from the acts or omissions of any City employees not under the supervision, management, direction or control of the Zoo Association or relieve the City from its obligations under this Section 3.04.

3.05 Zoo Plan. The City and the Zoo Association hereby reaffirm their commitment to and approval of the plan for Zoo development detailed in the Forest Park Master Plan (the “Master Plan”), approved by the City Council on November 10, 1987, and, subject to the terms and conditions found in Section 3.06 herein, the City approves the construction of any Improvements at the Zoo shown in such Master Plan. A conceptual map of the Master Plan with the Zoo boundary outlined thereon is attached hereto as Exhibit “B” and incorporated herein by reference. Reaffirmation of the Master Plan does not preclude other Improvements being constructed in the Zoo during the Term. Additional Improvements not reflected in the Master Plan may also be constructed by the Zoo Association in accordance with the provisions set forth in Section 3.06.

3.06 Construction. The Zoo Association has the right and obligation to manage the construction of all Improvements built after the Effective Date at the Zoo (the “Improvements”).

No such Improvements shall be constructed unless and until the plans and specifications for same have been reviewed and approved in writing by the City Engineer, when required by law, such approval not to be unreasonably withheld or delayed. All such plans and specifications, and the Improvements constructed in connection therewith, must conform to all local, state and federal codes, laws, and regulations now in force or hereinafter prescribed by authority of law. In addition, no major animal exhibits shall be constructed after the Effective Date unless and until the type and location of such exhibit is first approved by the City Manager, provided, however, that if the estimated cost of the proposed exhibit exceeds the contracting authority delegated to the City Manager under City Code, the Manager shall refer the proposed exhibit to the City Council for approval. City approval shall not be unreasonably withheld or delayed. The City shall cooperate with the Zoo Association in facilitating any Improvements at the Zoo. Without limiting the generality of the foregoing, the City Manager shall have authority to waive up to \$50,000.00 per-project in building permitting fees and any other City fees that would otherwise be required as a result of any construction at the Zoo during the Term. Any waiver of fees in excess of \$50,000.00 shall require the approval of the City Council. The parties recognize that the Zoo has not been platted, and the City agrees to make all reasonable efforts to ensure that the lack of a plat does not unduly delay the issuance of any permits associated with construction of Improvements at the Zoo. If the Zoo is required to be platted during the Term, the City shall bear all costs and expenses associated with the platting process.

The Zoo Association shall have the right and obligation to manage the modification and/or relocation of any facilities, walkways, passageways or other structures within the current boundary of the Zoo. All Improvements, modifications and/or relocations made at the Zoo shall be made solely for the enhancement and benefit of the Zoo.

Title to the Improvements shall be retained by the Zoo Association during construction, but such title shall vest in the City upon completion of each project. The Zoo Association shall take all steps necessary to vest title to the Improvements in the City, including but not limited to the delivery of an instrument of donation to the City.

The Zoo Association also agrees that it will take all steps necessary to prevent any lien being placed against the Improvements and **AGREES TO INDEMNIFY THE CITY AND HOLD THE CITY HARMLESS FROM ANY AND ALL SUCH LIENS AND FOR NON-PAYMENT OF CONTRACTORS, SUBCONTRACTORS, LABORERS OR MATERIALS FURNISHED IN CONNECTION WITH SUCH IMPROVEMENTS, INCLUDING COSTS AND EXPENSES INCURRED BY THE CITY IN ANY DISPUTE CONCERNING A LIEN AGAINST SAID IMPROVEMENTS OR THE NON-PAYMENT FOR SAME.** The Zoo Association agrees that at any time it undertakes to manage the construction of any Improvement that costs in excess of \$50,000.00 in the aggregate, the Zoo Association shall, at its own cost and expense, cause to be made and executed by the construction contractor either one or two separate bonds, in accordance with Section 2253.021 of the Texas Government Code, as follows:

- (1) If the amount of the construction contract awarded is in excess of \$50,000.00:
 - (a) prior to the date of commencement of construction, the contractor shall furnish a payment bond in a sum equal to the full amount of the construction contract awarded; and
 - (b) said bond shall be for the protection of and use by payment bond beneficiaries who have a direct contractual relationship with the construction contractor or any of its subcontractors who is actually supplying the public work labor or material.
- (2) If the amount of the construction contract awarded is in excess of \$100,000.00, in addition to any bond required under subsection (1) above:
 - (a) prior to the date of commencement of construction, the contractor shall

furnish a performance bond in a sum equal to the full amount of the construction contract awarded; and

- (b) said bond shall be conditioned on the faithful performance of necessary construction and completion of improvements in accordance with approved final plans, detailed specifications and contract documents.

The Zoo Association shall ensure that all required bonds list the City as dual obligee.

3.07 Maintenance of Zoo Structures. The Zoo Association covenants and agrees to provide maintenance against normal wear and tear occurring after the Effective Date for all exhibits and structures utilized at the Zoo. The Zoo Association also agrees to provide a maintenance endowment equal to five percent (5%) of the required construction costs for any major animal exhibit constructed at the Zoo after the Effective Date, to be held in escrow for the benefit of the particular exhibit so endowed for as long as the exhibit exists. All existing maintenance endowments heretofore established shall remain in effect for as long as the exhibit exists.

3.08 Animals. The Zoo Association agrees to exercise best efforts to meet and fulfill all of the standards, rules and regulations of the United States Fish and Wildlife Service ("USFWS") and the Department of Agriculture ("DOA") pertaining to animal health and safety and to maintain the Zoo's accreditation with a recognized zoological association. The Zoo Association also shall continue funding and managing the acquisitions and loans of animals at the Zoo. Title to all animals acquired by the Zoo Association shall be held by the Zoo Association in trust. Subject to the provisions of Section 7.02 of this Agreement, all animals will be fed, maintained, housed and exhibited at the expense and under the sole management of the Zoo Association.

3.09 Audit. The Zoo Association shall keep complete and accurate records, books and accounts of all receipts and disbursements from its operations at the Zoo. The City shall, have

the right to examine and audit said records, books and accounts. The City shall generally bear the cost and expense of conducting such examination and audit but shall not be obligated to reimburse the Zoo Association for personnel or overhead costs associated with Zoo Association employees cooperating with or participating in such examination and audit. Such examinations and audits shall be conducted during regular business hours on not less than three (3) days' written notice to the Zoo Association. The Zoo Association shall furnish to the City a yearly audit of its books, prepared by a certified public accountant, of gross receipts derived from the Zoo Association's operations at the Zoo and all expenditures made from such gross receipts, such report to be furnished within one hundred twenty (120) days after the end of the fiscal year of the Zoo Association.

3.10 Signage. The Zoo Association shall install signage in and around the Zoo. Any signs so installed must be constructed and installed in compliance with the ordinances, rules and regulations of the City of Fort Worth; provided, however, that the City acknowledges and agrees that during the Term the Zoo Association shall have a continued right to place the sign located at the intersection of Colonial Parkway and University Drive in Fort Worth for advertising and marketing purposes in a manner consistent with the Zoo Association's past usage of such sign. In the event this sign is damaged or destroyed, the Zoo Association shall be allowed to rebuild a sign of the same type and character, provided, however, that any rebuilt sign may not exceed the dimensions of the sign that exists at this location as of the Effective Date.

3.11 Marketing and Advertising. As set forth in Section 3.01, the Zoo Association shall have the sole responsibility for management of and the expenses incurred in the advertising, marketing, merchandising and promotion of the Zoo. The City agrees that it will not enter into any other advertising contracts affecting the Zoo; however, the City shall continue to use its best

efforts to promote the Zoo.

3.12 Janitorial and Groundskeeping Services. The Zoo Association shall manage all janitorial and groundskeeping services at the Zoo. The Zoo Association shall be obligated to maintain the Zoo in a clean, neat and attractive condition in a manner consistent with the requirements or standards of the recognized zoological association with which the Zoo is accredited and for the use and enjoyment of the public.

3.13 Security. The Zoo Association shall manage security operations at the Zoo and shall be obligated to provide reasonable security for the animals, employees, visitors, equipment and structures within the Zoo boundary. Such obligations include the construction and erection of all fences located on the Zoo boundary, including the construction and erection of a fence around the previously undeveloped area of the soccer field within the Zoo boundary.

3.14 Performance as an Independent Contractor. It is expressly understood and agreed that the Zoo Association shall perform its obligations and responsibilities hereunder as an independent contractor and not as an officer, agent, representative or employee of the City; that the Zoo Association shall have exclusive control of and the exclusive right to control the details of its obligations and responsibilities and all persons performing same; that the Zoo Association shall be solely responsible for the acts or omissions of its officers, agents, employees or other persons under its supervision, management and control; that the doctrine of respondeat superior shall not apply as between the City and the Zoo Association; and that nothing herein shall be construed as creating a partnership or joint enterprise between the City and the Zoo Association.

3.15 Performance. Subject to the faithful performance of the provisions of this Agreement, the Zoo Association shall have the sole discretion to determine the method in which it performs its obligations and responsibilities herein.

3.16 Public Zoo. The Zoo Association agrees that at all times during the Term, it will operate the Zoo as a public zoo for the use, benefit and enjoyment of the citizens of Fort Worth. No major portion of the Zoo may be closed to or discontinued from public view for more than sixty (60) days without prior City Council approval, such approval not to be unreasonably withheld. The Zoo Association agrees that with respect to admission of the public and the charges therefor, it will not discriminate as to race, religion, color, sex, national origin, age, sexual orientation, transgender, gender identity, gender expression, or disability.

3.17 Minority and Women Business Enterprise Commitment. It is the policy of the City to involve disadvantaged business enterprises in all phases of its procurement practices and to provide them an equal opportunity to compete for contracts for construction, provision of professional services, purchase of equipment and supplies and provision of other services required by the City. In keeping with this policy, the Zoo Association agrees to incorporate the ordinances establishing the City's Minority and Women Business Enterprises Policies and Disadvantaged Business Enterprise Policies, as they may from time to time be amended, into all contracts of the Zoo Association that call for expenditure of City funds and that would include a goal if entered into by the City and will further require all persons or entities with whom it contracts to comply with said ordinances. In all other instances, the Zoo Association will make a good faith effort to include minority, women, and disadvantaged business enterprises among its contractors and subcontractors.

3.18 Outdoor Events. It is expressly understood and agreed that the Zoo Association conducts and/or permits numerous outdoor events at the Zoo on an annual basis. Many of these outdoor events are conducted in connection with the Zoo Association's performance of its marketing and promotion obligations in accordance with Section 3.11. The Zoo Association

shall have the sole responsibility for management of all outdoor events conducted at the Zoo during the Term of this Agreement. The parties acknowledge and agree that the requirements of this Agreement shall govern the conduct of outdoor events held at the Zoo during the Term of this Agreement, and such events shall be exempt from those regulations contained in that certain draft City Ordinance dated June 30, 2010 relating to the amendment of Chapter 20, "Licenses and Miscellaneous Business Regulations" of the Code of the City of Fort Worth should such draft ordinance or a similar ordinance become enacted or adopted by the City after the execution of this Agreement.

ARTICLE IV.

ADMISSION CHARGES

4.01 Management. The Zoo Association shall be responsible for managing the collection of admission and parking fees at the Zoo and its associated parking. The Zoo Association will keep accurate records of the monies received from these charges and will provide such records, upon reasonable request, to the City. All admission and parking fees shall be managed and administered by the Zoo Association and used solely for the benefit of the Zoo and its programs.

4.02 Price of Admission Tickets for Fort Worth Residents. The Zoo Association hereby agrees that any increase in the prices of admission tickets over those prices charged (as of the Effective Date) to Fort Worth residents shall not exceed the sum of an annual C.P.I. adjustment and the following:

- (a) \$4.00 over the first five (5) years of the Term;
- (b) A total of \$8.00 over the first ten (10) years of the Term;
- (c) A total of \$16.00 over the entire twenty (20) years of the Term.

4.03 Price of Admission Tickets for Non-Fort Worth Residents. The price for

admission tickets for non-Fort Worth residents shall be set by the Zoo Association but shall never be lower than the amount charged to Fort Worth residents.

ARTICLE V.

MANAGEMENT FEES

5.01 As compensation for management services rendered under this Agreement during the Term, the City shall pay the Zoo Association annual fees as hereinafter described (the "Management Fees"). The annual Management Fees applicable to each fiscal year of the City during the Term are shown on Exhibit "C" hereto.

5.02 Each annual Management Fee shall be paid to the Zoo Association by the City in equal monthly installments to be paid by the 5th of each month.

5.03 For each fiscal year during the Term, the amount of the Management Fee shall be the amount determined by adding a C.P.I. adjustment (as compounded) to the amount reflected on Exhibit "C" for such fiscal year. For example, with respect to the 2015 fiscal year (which covers the Management Fee payable during the period of October 1, 2014 through September 30, 2015), the \$9,350,000.00 Management Fee amount reflected on Exhibit "C" shall be subject to a C.P.I. adjustment that reflects the cumulative and compounded adjustments for all of the contract years that have occurred prior to such year; provided, however, a negative C.P.I. for any year shall not be utilized in calculating any adjustments. The term "C.P.I." shall mean the annual average Consumer Price Index issued by the Bureau of Labor Statistics covering All Urban Consumers for the Dallas/Fort Worth, Texas Region (or if this index ceases to be published, then a comparable index).

ARTICLE VI.

PARKING

6.01 Designation of Parking Areas.

(a) The City and the Zoo Association agree that the main parking lot at the Zoo, a diagram of which is attached to this Agreement as Exhibit “D”, will continue to be designated as a parking lot for the use and enjoyment of Zoo patrons and Forest Park visitors.

(b) The City and the Zoo Association further agree that the property known as the “Archery Range”, a diagram of which is attached to this Agreement as Exhibit “E”, will continue to be designated as a parking lot for the use of Zoo patrons and enjoyment of Forest Park visitors.

(c) The City and the Zoo Association further agree that the property known as the “Colonial North” area, a diagram of which is attached to this Agreement as Exhibit “F”, will continue to be designated a parking lot for the use of Zoo patrons and enjoyment of Forest Park visitors.

(d) “Designated”, as used in this Agreement, shall mean devoted to the specified use during the Term.

6.02 Management, Operation and Maintenance of Parking Areas.

(a) The Zoo Association shall be responsible for managing, operating and maintaining the parking areas designated in Section 6.01, above.

(b) The Zoo Association shall bear all costs of management, operation and routine maintenance of the designated parking areas. All costs associated with short-term planning and development shall be borne by the Zoo Association. As used in this Section 6.02, “short-term development” shall mean improvements such as post and cable, tree protection, grading, drainage, signage, gravel and other like improvements constructed and maintained at any time

during the Term. “Short-term development” shall not include paving or permanent surface changes.

(c) The Zoo Association’s management responsibilities for personnel working in the designated parking areas shall be consistent with, but no greater than, its management responsibilities for other personnel working at the Zoo.

(d) Because the areas designated in Section 6.01(b) and (c), above, are unique natural open spaces, any development or improvements shall be subject to the following standards:

- (1) A buffer area, utilizing the existing shrubs, trees, and foliage along the edge of the designated area which abuts the residential property, shall be maintained to minimize the impact on the neighborhood.
- (2) A barrier system will be created to preserve and protect the existing trees and natural resources.
- (3) Topographical elevations will be improved when necessary to facilitate drainage.

(e) The parties acknowledge and agree that neither party contemplates paving the areas designated in Section 6.01(b) or (c) above. Any paving or other permanent surface change of these areas will require the approval of City Council.

6.03 Parking Fees.

The City grants the Zoo Association the right to charge parking fees for the use of the designated parking areas. The Zoo Association agrees that the level and frequency of any parking fees charged will be reasonable and fair and based upon comparable parking fees that are charged by other entertainment attractions of similar quality.

6.04 Other Parking Areas.

(a) With the exception of the areas designated in Section 6.01, this Agreement does not authorize or contemplate the use of any greenspace that is within the boundaries of Forest Park and that is outside the Zoo boundaries, as defined by Exhibit “A”, for regular Zoo parking.

(b) The City shall assist the Zoo Association from time to time in making other areas of City property available for off-site or overflow parking for Zoo patrons and Forest Park visitors. Unless otherwise agreed to by the parties, the Zoo Association shall have no responsibility for managing the other areas used for parking by Zoo patrons or Forest Park visitors. The Zoo Association shall provide signage as may be reasonably requested by the Director of the City's Parks and Community Services Department ("Director") to indicate the availability and location of such other parking areas.

6.05 Traffic Plan.

If requested by the City, the Zoo Association agrees to work with the City Manager (acting, as appropriate, through the Director and the Director of Transportation and Public Works) to develop a traffic plan of Forest Park that is designed to (1) improve traffic flow through Forest Park, (2) reduce the impact of heavy traffic on surrounding neighborhoods, and (3) minimize congestion at points where traffic enters Forest Park.

ARTICLE VII

TERMINATION RIGHTS

7.01 Termination.

(a) Either the City or the Zoo Association shall have the right to terminate this Agreement at any time upon delivery of twelve (12) months' prior written notice to the other party.

(b) Upon the occurrence of any Event of Default (as hereinafter defined) by one party, the nondefaulting party may terminate this Agreement upon sixty (60) days' prior written notice, unless the defaulting party cures the Event of Default (including making the nondefaulting party whole for any damage caused by such Event of Default) during such sixty

(60) day period. For purposes of this Agreement, an "Event of Default" shall occur in the event either party is in substantial or material breach of any of its duties or obligations under this Agreement. Failure of the City to appropriate funds to pay Management Fees shall constitute an Event of Default with respect to the City.

(c) In the event of a notice of termination of this Agreement by the Zoo Association pursuant to Section 7.01(a) or by the City pursuant to Section 7.01(b), the Zoo Association shall ensure the completion, at its cost, of any Improvements then under construction, such completion to be within the time prescribed in the contract for construction, together with such additional reasonable time as provided to the contractor by written change order. In the event of a notice of termination of this Agreement by the City pursuant to Section 7.01(a) or by the Zoo Association pursuant to Section 7.01(b), the Zoo Association shall be under no obligation to complete any Improvements then under construction.

(d) In the event of (i) a termination of this Agreement by the City pursuant to Section 7.01(a), (ii) a termination of this Agreement by the Zoo Association pursuant to Section 7.01(b), or (iii) an expiration of the Term of this Agreement, the City agrees to assume, upon the effective date of such termination or expiration, to the extent permitted by law, any obligations, indebtedness, contracts or commitments incurred or entered into by the Zoo Association during the Term related to operation and management of the Zoo, including the costs of constructing Zoo Improvements initiated or contracted by the Zoo Association.

7.02 Effect of Termination. The Zoo Association shall be entitled to receive payment of Management Fees for services provided up to the effective date of termination. Upon the effective date of any termination of this Agreement, all cash on hand being managed by the Zoo Association, derived either from Service Operations at the Zoo or from the collecting of

admissions and parking fees at the Zoo, save and except those required to pay existing obligations, shall be transferred to the City to be used for the benefit of the Zoo only. All other cash on hand, including all donations and contributions from Zoo donors, shall remain with the Zoo Association.

Insofar as permitted by law, contract, or other third party agreements, and subject to the Zoo Association's various trustee duties and obligations, upon the effective date of any termination or expiration of this Agreement, title to all animals and specimens owned by the City shall remain vested in the City and title to all animals and specimens owned, managed or held in trust by the Zoo Association shall remain vested in the Zoo Association. The Zoo Association agrees to care for the animals and to fulfill all of the rules and regulations of the USFWS and DOA and other attendant rules, regulations or standards pertaining to animal health and safety for the animals and specimens. In such event, the Zoo Association shall continue to be permitted to acquire, sell and transfer animals to satisfy obligations and commitments and to further the Zoo Association's conservation goals.

7.03 Remedies Cumulative. The termination of this Agreement under the provisions of this Article VII shall not affect the rights of the terminating party with respect to any breach of this Agreement, nor shall it affect the rights of either party with respect to liability or claims accrued, or arising out of events occurring, prior to the date of termination.

Neither the right of termination nor the right to sue for damages nor any other right or remedy available to either party hereunder shall be exclusive of any other right or remedy given hereunder or now or hereafter existing at law or in equity.

ARTICLE VIII.

GENERAL PROVISIONS

8.01 Notice. Any notice or communication required or permitted hereunder shall be by first class mail, postage prepaid, or hand delivered, as follows:

If to the City	City of Fort Worth c/o City Manager 1000 Throckmorton Street Fort Worth, Texas 76102
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If to the Zoo Association:	The Fort Worth Zoological Association c/o Zoo Director 1989 Colonial Parkway Fort Worth, Texas 76110
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(or at such other address or in care of such other persons as hereafter shall be designated in writing by either party to the other) and shall be deemed to have been given as of the date of receipt.

8.02 Consent to Assign. Neither party may assign all or any portion of this Agreement without the prior written consent of the other party, and any attempted assignment of same without such prior written consent shall be void.

8.03 Successors and Assigns. All covenants, conditions and agreements made by or on behalf of either of the parties to this Agreement shall bind and inure to the benefit of the respective successors, representatives and assigns of each party.

8.04 Utilities and Infrastructure. Except as otherwise indicated below, the City covenants and agrees to provide, at its cost, normal and routine maintenance and repair to all Basic Utilities affecting the Zoo; provided, however that the City's duty shall not operate to alleviate any utility company or service provider of its obligation to conduct normal and routine maintenance and repair for which the utility company or service provider is ordinarily responsible. "Basic Utilities" at the Zoo shall include, but are not necessarily limited to, sewage, water, fiber optic and other communication, gas and electricity. Normal and routine maintenance

and repair shall be performed no less frequently than performed by the City for other City facilities.

The City shall promptly repair, at its cost, all Basic Utilities affecting the Zoo in the event of any disruption, malfunction or interruption in service not caused by the Zoo Association. The City acknowledges the importance of Basic Utilities to the operation of the Zoo and shall exercise its best efforts to repair such Basic Utilities as soon as reasonably possible after becoming aware of such disruption. In this regard, the City shall provide the Zoo Association with the name and contact information of a City employee who shall be designated by the City with the authority to manage and supervise the repair of all Basic Utilities. In the event that the City is not able to repair disrupted or malfunctioning Basic Utilities in a timely manner, the Zoo Association may elect to contract with a third party for the repair of such Basic Utilities and the City agrees to reimburse the Zoo Association for the costs of such repairs. Notwithstanding anything to the contrary contained in this Section, the parties acknowledge and agree that the Zoo Association shall be responsible for the repair and maintenance of water pipes and sanitary sewer pipes that are located within the Zoo boundary and that are less than four inches in diameter, while the City shall be responsible for the repair and maintenance of water pipes and sanitary sewer pipes that are located within the Zoo boundary and that are four inches or greater in diameter.

The City further agrees to relocate or alter the Basic Utilities to accommodate any construction or modifications at the Zoo. In this regard, the City shall exercise commercially reasonable efforts to relocate or alter the Basic Utilities in a timely manner, consistent with the construction and modification schedules planned by the Zoo Association. With respect to all Improvements, the City agrees to provide all lines, pipes and other connections to within five

feet of the location of such Improvement on the Zoo premises.

8.05 Flood Mitigation. The City understands that portions of the Zoo property are in a FEMA Special Flood Hazard Area and therefore subject to periodic flooding that has occurred historically along Zoo Creek, some of which has resulted in damages to Zoo facilities constructed nearby. As of the Effective Date, the City is in the process of studying stormwater runoff and flooding issues in the Forest Park-Berry storm drain watershed, which contributes to Zoo Creek from the south. The City has also included in the scope of this study an evaluation of flooding, erosion, and siltation in Zoo Creek. The City shall exercise best efforts to complete the Forest Park-Berry watershed portion of the study within one year of the Effective Date and the Zoo Creek portion of the study as soon as possible thereafter, but not later than two years from the Effective Date. During the course of the study, the City shall update the Zoo Association on at least a quarterly basis regarding the status of the study, estimated completion date, preliminary findings, and any other material items. Upon the completion of the study, the City shall promptly provide the Zoo Association with copies of all reports, findings, and conclusions resulting from the study.

In addition, throughout the Term, the City agrees to maintain the public portions of the storm drain infrastructure that impact drainage within the Zoo in good, unobstructed condition to the maximum extent practicable. Also, within 180 days of the Effective Date, the City, following consultation with designated Zoo staff, will develop and complete an initial maintenance and repair project in and along Zoo Creek to improve water flow and reduce the risk of flooding. The parameters of the cleaning and clearing activities will be mutually determined by the Zoo Director and the Transportation and Public Works Department Assistant Director for the Stormwater Division, acting in good faith, based on an on-site assessment of

conditions and memorialized and incorporated into this Agreement by execution of an addendum to this Agreement outlining the activities to be performed. Following this initial cleaning and clearing, the City shall perform maintenance along Zoo Creek as needed, but not more often than once every year, to maintain conditions at the level agreed upon by the Zoo Director and Stormwater Assistant Director. In the event that the City fails to meet its obligations with respect to maintenance of the storm drain infrastructure or Zoo Creek in a timely manner, the Zoo Association shall have the right, following reasonable notice to the City, to contract with a third party for the performance of City's obligations, and the City agrees to reimburse the Zoo Association for the costs of such activities.

8.06 Entire Agreement. With respect to the subject matter hereof, this writing, including the Exhibits hereto, embodies the entire agreement and understanding between the City and the Zoo Association and supersedes all prior agreements and understandings relating to such subject matter, including but not limited to, City Secretary Contract No. 18454, and all amendments thereto. All other previous agreements, contracts and amendments, whether oral or in writing, between said parties pertaining to this subject matter are hereby terminated and cancelled and declared to be of no further force and effect. No prior or contemporaneous written or oral agreements of any nature exist to alter or modify the terms of this Agreement.

8.07 Bond Elections. Except as otherwise prohibited by applicable federal, state and local laws, nothing in this Agreement shall prohibit the City or the Zoo Association from seeking financing for the construction of Improvements at the Zoo through City bond financing. No provision in this Agreement shall render the Zoo Association's right to seek such financing invalid or unenforceable.

8.08 Contracting. The Zoo Association, at its sole discretion, shall manage the hiring,

letting, contracting or franchising of any of the work necessary to fulfill any of its obligations or responsibilities under this Agreement. All such contracts paid for with revenues from operations at the Zoo must be in conformity with the terms and conditions of this Agreement and all other laws, rules, regulations and policies of the City.

8.09 Severability. Any Article, section, part of a section or provision of any section of this Agreement held to be void, invalid, unenforceable, or illegal in any jurisdiction shall be ineffective to the extent that such invalidity or unenforceability invalidates or renders unenforceable the remaining Articles, sections and provisions of the Agreement, which shall remain in full force and effect. To the extent permitted by law, any determination of invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.10 Amendments. Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may not be modified or amended except upon the written consent of both the City and the Zoo Association.

8.11 Headings. The headings of the Articles, sections, and provisions of this Agreement have been added for convenience only and shall not be deemed to be a part of this Agreement.

8.12 Fiscal Funding. As to the City's performance of the obligations in this Agreement, the Zoo Association acknowledges and agrees that the City is a governmental entity, and because of statutory, constitutional and City Charter provisions, it cannot commit to the funding of the City's obligations described herein beyond each fiscal year. Therefore, the funding obligations of the City described herein are subject to and conditioned upon the City Council of the City appropriating for each fiscal year sufficient funds to satisfy such obligations.

8.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

By: 
President

Exhibit A

Zoo Boundary

Attached hereto and incorporated herein.

Exhibit A

A parcel of land out of the S. A. and M. G. Railroad Survey, Abstract No. 1481, and the E. S. Harris Survey, Abstract No. 688, and also being portions of tracts of land conveyed to the City of Fort Worth, Texas, by deeds recorded in Volume 891, Page 365, Volume 332, Page 548, and Volume 931, Page 186, Deed Records, Tarrant County, Texas, and being more particularly described as follows:

BEGINNING at a point in the north line of a 38.8 foot "Reserved" strip on the north side of Block 2, Park Hill Addition, an addition to the City of Fort Worth, as recorded in Volume 388, Page 58, Plat Records, Tarrant County, Texas, said BEGINNING POINT being at the intersection of a projection of the west line of Lot 3, Block 2, said addition, with said north line;

THENCE: North 84 degrees 07 minutes 34 seconds East, a distance of 186.14 feet, to a point on the south side of the east parking lot for said zoo;

THENCE: Across said parking lot, North 10 degrees 01 minutes 28 seconds East, a distance of 542.71 feet, to a point on the east curb line of Colonial Parkway, said point being approximately 490.8 feet northeasterly along said curb, of the intersection of University Drive and Colonial Parkway;

THENCE: The following courses and distances, generally behind said curb;

North 31 degrees 38 minutes 28 seconds East, a distance of 145.57 feet;

North 24 degrees 29 minutes 16 seconds East, a distance of 66.93 feet;

North 88 degrees 12 minutes 53 seconds West, a distance of 81.83 feet;

North 27 degrees 23 minutes 58 seconds West, a distance of 91.68 feet;

North 88 degrees 42 minutes 11 seconds West, a distance of 69.85 feet;

North 11 degrees 38 minutes 07 seconds East, a distance of 238.55 feet;

North 22 degrees 51 minutes 06 seconds East, a distance of 58.79 feet to a point;

THENCE: South 81 degrees 33 minutes 00 seconds East, a distance of 893.18 feet, to a point;

THENCE: South 89 degrees 03 minutes 28 seconds East, a distance of 218.8 feet, to a point in the west curb line of the existing parking lot access drive;

THENCE: The following courses and distances, with said west curb line, and the south curb line of said parking lot;

South 13 degrees 21 minutes 03 seconds East, a distance of 327.00 feet;

South 41 degrees 44 minutes 45 seconds East, a distance of 98.54 feet;

South 65 degrees 27 minutes 27 seconds East, a distance of 35.03 feet;

North 86 degrees 11 minutes 34 seconds East, a distance of 32.62 feet;

South 48 degrees 40 minutes 51 seconds East, a distance of 64.85 feet;

and North 47 degrees 29 minutes 59 seconds East, a distance of 40.75 feet, to a point;

THENCE: South 62 degrees 04 minutes 38 seconds East, a distance of 148.40 feet, to a point behind the west curb line of Park Place Drive;

THENCE: The following courses and distances, generally behind said curb;

South 26 degrees 40 minutes 40 seconds West, a distance of 34.48 feet;

South 10 degrees 41 minutes 09 seconds West, a distance of 34.54 feet;

South 05 degrees 29 minutes 26 seconds East, a distance of 34.50 feet;

South 12 degrees 08 minutes 34 seconds East, a distance of 57.71 feet;

South 28 degrees 15 minutes 36 seconds East, a distance of 67.25 feet;

South 30 degrees 30 minutes 24 seconds East, a distance of 57.11 feet;

South 28 degrees 04 minutes 44 seconds East, a distance of 113.41 feet;

South 26 degrees 08 minutes 54 seconds East, a distance of 80.91 feet;

South 24 degrees 01 minute 30 seconds East, a distance of 84.07 feet;

South 30 degrees 23 minutes 12 seconds East, a distance of 58.27 feet;

South 32 degrees 19 minutes 37 seconds East, a distance of 106.07 feet;

South 22 degrees 24 minutes 14 seconds East, a distance of 53.67 feet;

South 03 degrees 50 minutes 13 seconds East, a distance of 65.29 feet;

South 19 degrees 06 minutes 10 seconds East, a distance of 78.82 feet;

South 26 degrees 11 minutes 08 seconds East, a distance of 64.51 feet;

South 85 degrees 41 minutes 31 seconds East, a distance of 48.92 feet;

South 13 degrees 01 minute 37 seconds West, a distance of 177.72 feet;

South 12 degrees 24 minutes 57 seconds East, a distance of 78.72 feet;

South 30 degrees 04 minutes 45 seconds East, a distance of 114.65 feet;

South 43 degrees 19 minutes 51 seconds East, a distance of 88.86 feet;

South 58 degrees 47 minutes 51 seconds East, a distance of 318.12 feet;

and South 89 degrees 16 minutes 41 seconds East, a distance of 67.27 feet to a point;

THENCE: The following courses and distances, with the existing or purposed security fence;

South 85 degrees 22 minutes 41 seconds West, a distance of 58.82 feet;

South 21 degrees 03 minutes 19 seconds East, a distance of 18.48 feet;

South 52 degrees 58 minutes 20 seconds East, a distance of 29.86 feet;

South 51 degrees 09 minutes 20 seconds East, a distance of 128.18 feet;

South 76 degrees 49 minutes 48 seconds East, a distance of 88.95 feet;

South 66 degrees 01 minutes 12 seconds East, a distance of 99.28 feet;

South 02 degrees 18 minutes 28 seconds East, a distance of 188.21 feet;

South 11 degrees 14 minutes 58 seconds West, a distance of 48.57 feet;

South 02 degrees 56 minutes 57 seconds West, a distance of 28.58 feet;

South 37 degrees 46 minutes 58 seconds West, a distance of 118.89 feet;

South 26 degrees 31 minutes 57 seconds West, a distance of 48.31 feet;

South 32 degrees 14 minutes 27 seconds West, a distance of 81.25 feet;

South 38 degrees 33 minutes 55 seconds West, a distance of 84.33 feet;

South 47 degrees 18 minutes 56 seconds West, a distance of 293.58 feet;

South 89 degrees 28 minutes 04 seconds West, a distance of 354.61 feet;

North 86 degrees 27 minutes 47 seconds West, a distance of 187.26 feet;

North 73 degrees 47 minutes 43 seconds West, a distance of 29.78 feet;

North 42 degrees 39 minutes 08 seconds East, a distance of
 16.57 feet;
 North 42 degrees 01 minutes 52 seconds East, a distance of
 137.27 feet;
 North 35 degrees 33 minutes 17 seconds East, a distance of
 131.82 feet;
 North 68 degrees 38 minutes 42 seconds East, a distance of
 38.51 feet;
 North 50 degrees 16 minutes 13 seconds East, a distance of
 98.56 feet;
 North 67 degrees 02 minutes 39 seconds East, a distance of
 29.80 feet;
 North 01 degrees 22 minutes 39 seconds East, a distance of
 151.51 feet;
 North 03 degrees 01 minutes 56 seconds East, a distance of
 51.27 feet;
 North 25 degrees 25 minutes 50 seconds East, a distance of
 115.53 feet;
 North 45 degrees 46 minutes 33 seconds East, a distance of
 118.74 feet;
 North 15 degrees 48 minutes 20 seconds East, a distance of
 51.26 feet;
 North 37 degrees 50 minutes 21 seconds East, a distance of
 58.54 feet;
 North 28 degrees 15 minutes 13 seconds East, a distance of
 210.07 feet;
 North 15 degrees 05 minutes 01 seconds East, a distance of
 59.44 feet;
 North 42 degrees 31 minutes 22 seconds East, a distance of
 289.29 feet;
 North 34 degrees 11 minutes 41 seconds East, a distance of
 302.91 feet;
 South 58 degrees 59 minutes 13 seconds East, a distance of
 67.77 feet;
 North 66 degrees 56 minutes 35 seconds East, a distance of
 44.95 feet;
 North 38 degrees 43 minutes 15 seconds East, a distance of
 18.78 feet;
 North 19 degrees 47 minutes 30 seconds East, a distance of
 28.67 feet;
 North 04 degrees 05 minutes 53 seconds East, a distance of
 69.67 feet;
 North 40 degrees 21 minutes 58 seconds East, a distance of
 198.54 feet;
 North 45 degrees 11 minutes 50 seconds East, a distance of
 77.81 feet;
 North 36 degrees 05 minutes 25 seconds East, a distance of
 89.24 feet;
 North 58 degrees 27 minutes 35 seconds East, a distance of
 42.45 feet;
 North 68 degrees 23 minutes 56 seconds East, a distance of
 88.23 feet;

South 78 degrees 23 minutes 48 seconds West, a distance of 146.28 feet;

and South 71 degrees 06 minutes 12 seconds West, a distance of 197.58 feet, to a point in the east line of a tract of land as described in Volume 3385, Page 295, Deed Records, Tarrant County, Texas;

THENCE: With the east line of said tract, North 27 degrees 51 minutes 38 seconds West, a distance of 23.55 feet, to its northeast corner;

THENCE: With the north line of said tract, South 52 degrees 09 minutes 38 seconds West, a distance of 5.88 feet, to the southeast corner of Lot 2-R, Block 2, Park Hill Addition, as recorded in Volume 388-15, Page 5, Plat Records, Tarrant County, Texas;

THENCE: With the east line of said Lot 2-R, North 00 degrees 09 minutes 38 seconds East, at a distance of 72.58 feet, passing the northeast corner of said Lot 2-R, in all a distance of 81.78 feet, to the northeast corner of the aforesaid "Reserved" strip;

THENCE: With the north line of said strip, South 74 degrees 08 minutes 38 seconds West, a distance of 288.00 feet, to an angle point;

THENCE: Continuing with said north line, South 48 degrees 05 minutes 38 seconds West, a distance of 283.43 feet, to the POINT OF BEGINNING, and containing 58.53127 acres, or 2,548,648 square feet of land, more or less.

URN:JBN:fdg497

12/18/88

Exhibit B

Forest Park Master Plan

Attached hereto and incorporated herein.

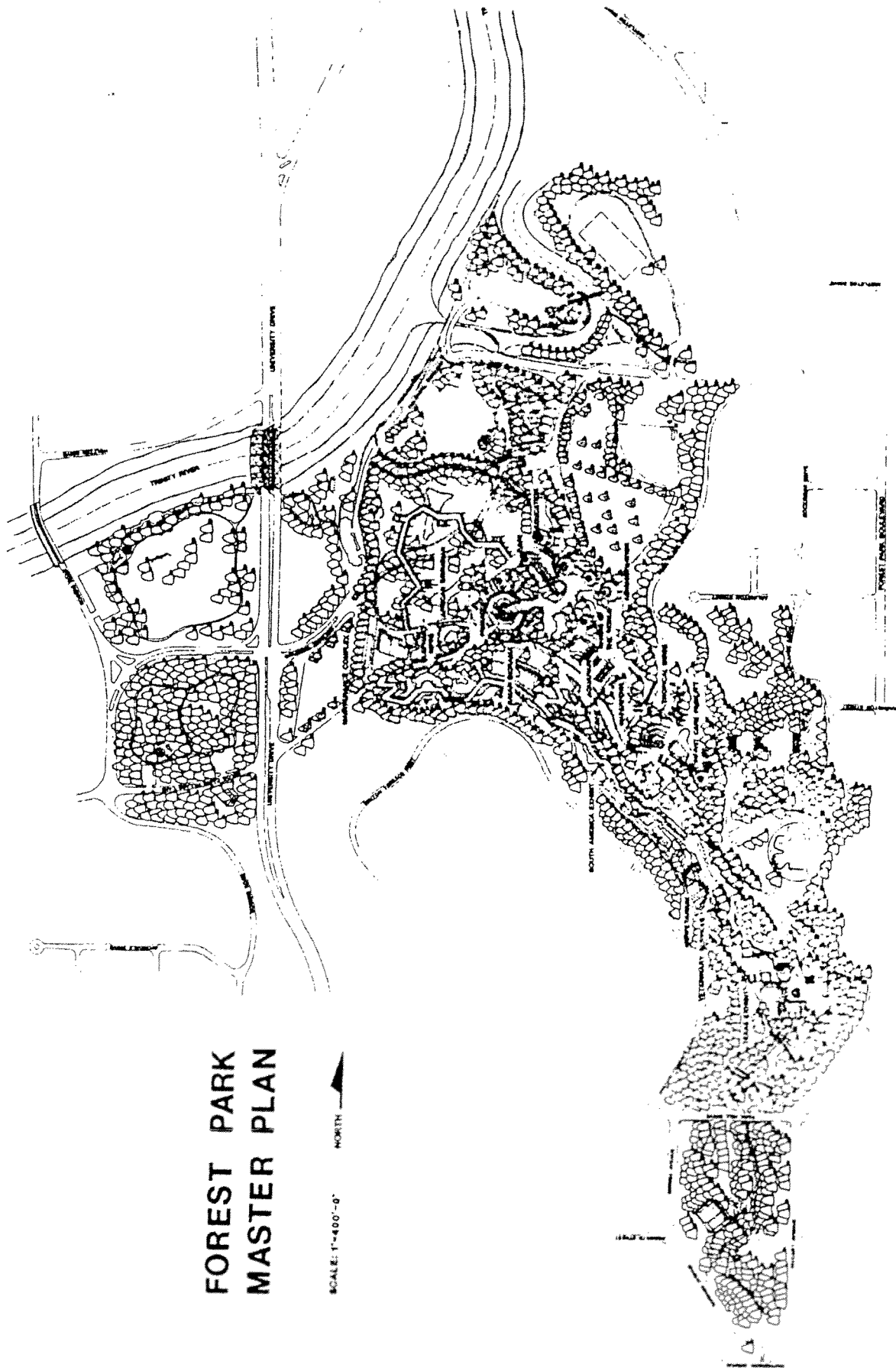


Exhibit C

Management Fees

Attached hereto and incorporated herein.

Exhibit C - Management Fees

Fiscal Year	Management Fee
2011	\$5,850,000.00
2012	\$6,350,000.00
2013	\$7,350,000.00
2014	\$8,350,000.00
2015	\$9,350,000.00
2016	\$9,350,000.00
2017	\$9,350,000.00
2018	\$9,350,000.00
2019	\$9,350,000.00
2020	\$9,350,000.00
2021	\$9,350,000.00
2022	\$9,350,000.00
2023	\$9,350,000.00
2024	\$9,350,000.00
2025	\$9,350,000.00
2026	\$9,350,000.00
2027	\$9,350,000.00
2028	\$9,350,000.00
2029	\$9,350,000.00
2030	\$9,350,000.00

Exhibit D

Main Zoo Parking Lot

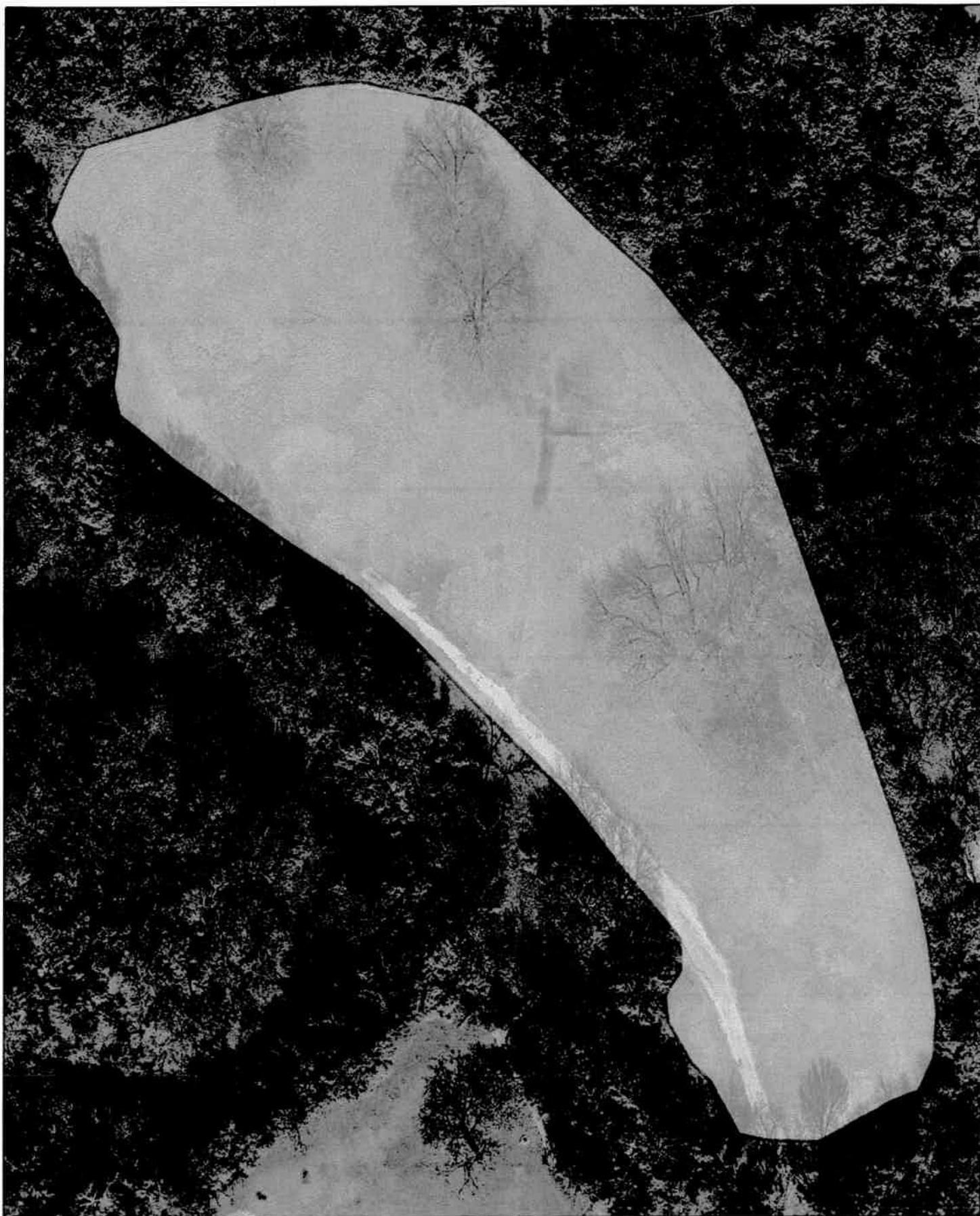
Attached hereto and incorporated herein.



Exhibit E

Archery Range Parking Lot

Attached hereto and incorporated herein.



Feet
0 25 50 100


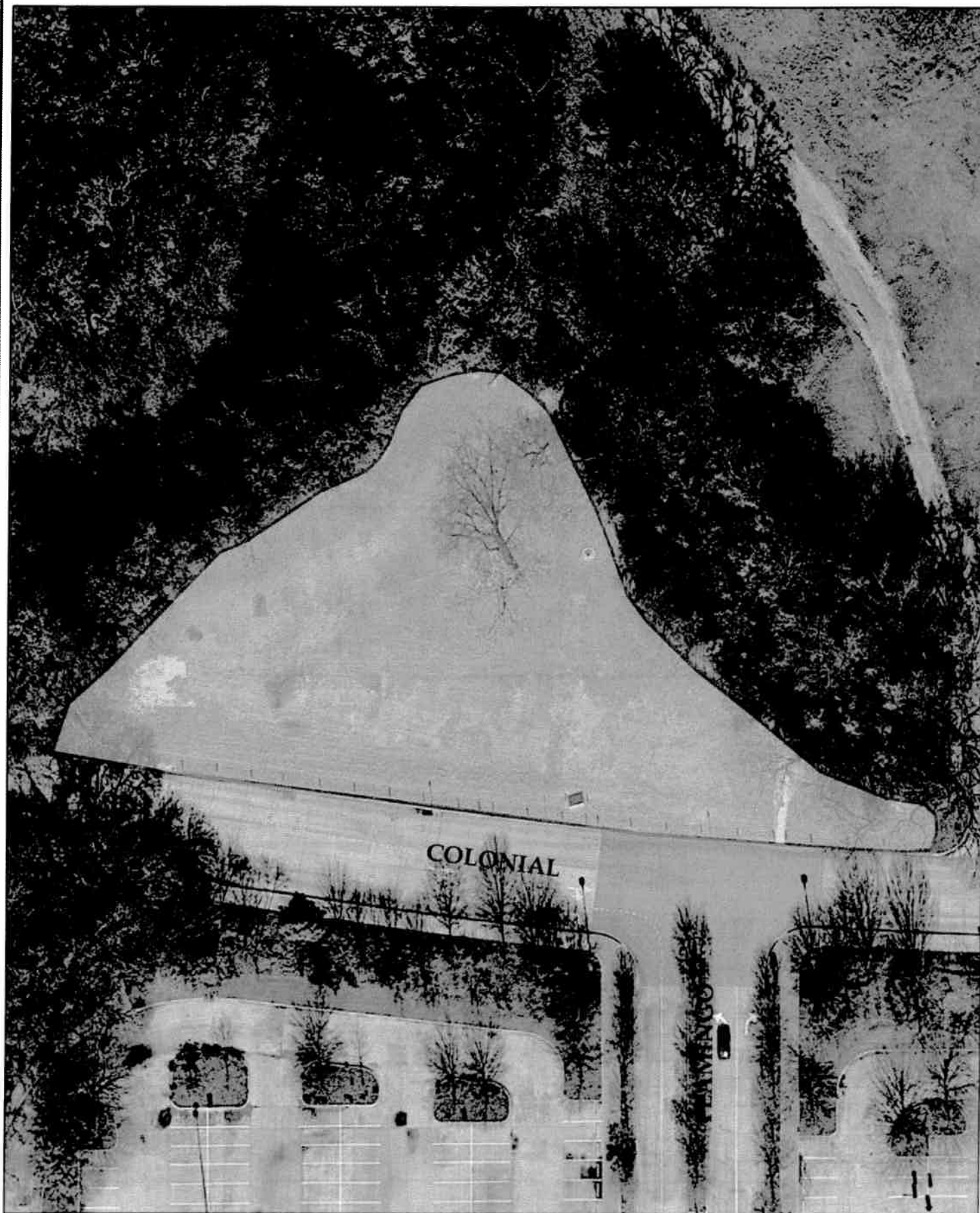
 Archery Range Parking Lot



Exhibit F

Colonial North Parking Lot

Attached hereto and incorporated herein.



Feet
0 25 50 100

Colonial North Parking Lot



City of Fort Worth, Texas

Mayor and Council Communication

COUNCIL ACTION: Approved on 5/4/2010

CONTINUED FROM A PREVIOUS WEEK

DATE: Tuesday, April 27, 2010

REFERENCE NO.: C-24194

LOG NAME: 80ZOO MANAGEMENT CONTRACT RENEWAL

SUBJECT:

Authorize the Renewal Agreement with the Fort Worth Zoological Association for the Management, Operation and Development of the Fort Worth Zoo

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a renewal agreement with the Fort Worth Zoological Association for the provision of management services and oversight of operations for the Fort Worth Zoo.

DISCUSSION:

The purpose of this M&C is to seek authority from the City Council to execute a renewal agreement with the Fort Worth Zoological Association (FWZA) for the provision of management services to the Fort Worth Zoo. On May 14, 1991, (M&C C-12867) the City Council authorized a 20 year agreement with the FWZA to manage the operations and development of the Zoo (City Secretary Contract No. 18454, as amended).

Although the initial term of the contract does not expire until May 2011, renewal discussions were initiated in advance because the brief time remaining under the term of the original agreement posed challenges to the Zoological Association's ability to obtain favorable rates and terms on financing for construction and other projects. Staff members from the City and FWZA began meeting regularly in May 2008.

History and Performance

Over the past 19 years the FWZA has managed, subsidized and underwritten capital improvements at the Zoo (of which titles for certified capital improvements vest to the City of Fort Worth) totaling \$120 million. This includes the recently opened Museum of Living Art which replaced the Herpetarium as authorized in the Fourth Amendment to the contract (M&C C-19035 Revised). The Zoo is also ranked by the Zagat Survey U.S. Family Travel Guide as the top attraction in the D/FW area. Annually, it attracts approximately 800,000 visitors from outside of Fort Worth and a total of one million visitors overall. A recent economic impact study commissioned by the FWZA indicates that the Zoo's annual economic impact to the City is \$124 million. The Zoo has also provided free admission annually for more than 5,000 children in Fort Worth and continues operating well-regarded educational programs that include outreach to area schools.

Terms of Proposed Renewal Agreement

In the nearly two decades since the original agreement was signed, four amendments have been executed. These amendments address a variety of issues ranging from designation of additional parking areas to transitioning to a staff of all FWZA employees. Because the current contract has undergone so many amendments and modifications, staff recommends that it be replaced with a new agreement that

incorporates the previous amendments and eliminates the necessity of referring to multiple documents in order to ascertain the responsibilities of the parties.

- 20 year term beginning October 1, 2010, and expiring September 30, 2030;
- Annual management fee with incremental increases (see attachment) - adjusted to reflect cumulative, compounded increases in the Consumer Price Index (CPI); and
- Caps on admission fee increases that are not to exceed an annual adjustment and a set dollar amount (see attachment).

As indicated on the attached schedule, in addition to compounded CPI adjustments, the unadjusted or "base" management fee would undergo a series of incremental increases over the first five years of the contract. The intent is to bring the FWZA's compensation to a level that is comparable to similar public-private partnerships between zoos and municipalities, while also phasing the increase in over time to address current economic challenges facing the City. Beginning with the sixth year, increases in the management fee will be limited to the compounded CPI adjustment.

Other substantive changes from the current contract, as amended, consist of: 1) acknowledgment that there is no plan to pave the Archery Range or Colonial North properties, which are assigned to the FWZA for use as additional parking areas; 2) consolidating financial matters related to repayment of the costs associated with paving of the main parking lot; 3) authority for the City Manager to administratively approve projects of which the estimated cost does not exceed the City Manager's delegated contracting authority and to waive up to \$50,000.00 in permit and other fees per project; and 4) commitment to work together on flood mitigation efforts. The other elements of the current agreement, as amended, remain in place, including the Zoo boundary, which was established by City Ordinance No. 10261, which was adopted on February 28, 1989 (M&C G-7944).

The major terms of the proposed contract include the following:

FISCAL INFORMATION / CERTIFICATION:

The Financial Management Services Director certifies that funds will be included in the Fiscal Year 2011 Operating Budget, as presented in the City Manager's Proposed Budget, of the General Fund.

FUND CENTERS:

TO Fund/Account/Centers

FROM Fund/Account/Centers

CERTIFICATIONS:

Submitted for City Manager's Office by:

Charles Daniels (6183)

Originating Department Head:

Richard Zavala (5704)

Additional Information Contact:

Shirley Little (6110)

ADDENDUM TO CITY SECRETARY CONTRACT No. 40564

THIS ADDENDUM TO CITY SECRETARY CONTRACT NO. 40564 ("Addendum") is made and entered into by and between **THE CITY OF FORT WORTH**, a home-rule municipal corporation of the State of Texas ("City"), acting by and through the Transportation and Public Works Department Assistant Director for the Stormwater Management Division ("SWM"), and **THE FORT WORTH ZOOLOGICAL ASSOCIATION**, a Texas nonprofit corporation (the "Zoo Association"), acting by and through its duly authorized Executive Director.

By execution of this Addendum, the City and Zoo Association agree that the following measures will be taken within fifteen (15) months of the Effective Date to clean and clear along Zoo Creek to improve water flow and reduce the risk of flooding.

Phase I – Isolated and Specific Vegetation Removal

Vegetation removal, as agreed upon by Zoo Association staff and SWM staff, will be performed along Zoo Creek to increase the flow of water within the creek's banks and reduce the height of the water during high water occurrences. The City shall thin out and clear vegetation in identified locations, which will reduce the frictional roughness along the creek's banks and allow the water in the creek to flow at a lower elevation.

Phase II- Flood Protection Wall

In addition to the vegetation removal, the City, through its Stormwater Management Division, will construct a flood protection wall along Zoo Creek in two specific locations as agreed upon by Zoo Association staff and SWM staff. The proposed wall will be erected on the existing bank and be approximately 500 feet in length and 12 to 18 inches high at each of the two locations. The wall will be constructed to act as a diversion wall and protection device from high water occurrences. The wall will be constructed out of a rigid material (e.g. concrete, gunite, or shotcrete) that will be agreed upon by Zoo Association staff and SWM staff.

Following execution of this Addendum, SWM will schedule a field visit with Zoo Association staff to (i) determine access and staging areas to be utilized by SWM; (ii) identify the necessary areas for vegetation removal; and, (iii) determine the specific locations for the flood protection wall.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum in Fort Worth, Texas, as of the day and year indicated below.

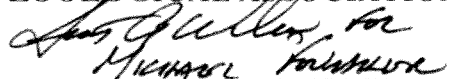
CITY OF FORT WORTH, TEXAS


Greg Simmons

Asst. Director – Stormwater Division

Date Signed: 30 Mar 11

**FORT WORTH
ZOOLOGICAL ASSOCIATION**

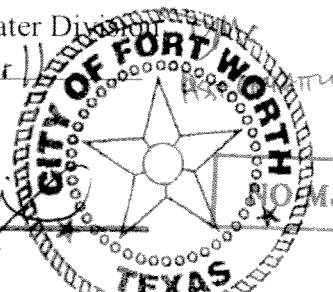

Michael Fouraker

Executive Director

Date Signed: 3/30/11

Attested by:


Marty Hendrix, City Secretary



FORM & C REQUIRED