

**March 1, 2006**

**MEMORANDUM OF AGREEMENT**

**CITY OF DETROIT – DETROIT ZOOLOGICAL SOCIETY**

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This **MEMORANDUM OF AGREEMENT** is made between the **CITY OF DETROIT**, a municipal corporation, (the “City”), acting by and through the Detroit Zoological Institute (the “Institute”), and the **DETROIT ZOOLOGICAL SOCIETY**, a Michigan nonprofit corporation (the “Society”).

**WHEREAS**, the City owns and operates the Detroit Zoological Park located at 8450 West 10 Mile Road, Royal Oak, Michigan (the “Detroit Zoo”) and the Belle Isle Nature Zoo located on Belle Isle, Detroit, Michigan (the “Belle Isle Nature Zoo”, and together with the Detroit Zoo, and all assets relating to the Detroit Zoo and the Belle Isle Nature Zoo, including, without limitation, all real property, animals, personal property, facilities, programs, plans, and all other assets of any nature or kind, the “Zoo Assets”); and

**WHEREAS**, Section 7-1601 of the 1997 Detroit City Charter<sup>1</sup> establishes the zoological parks department, now known as the Detroit Zoological Institute, which shall maintain and operate the City’s zoological parks;

**WHEREAS**, Section 7-1602 of the 1997 Detroit City Charter<sup>2</sup> provides for a Zoological Parks Commission (the “Zoo Commission”) to advise the Institute on general program goals for the parks;

**WHEREAS**, the City has been the primary source of an operating-subsidy for the Institute’s operation of the Zoo Assets;

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<sup>1</sup> 1918 Detroit City Charter, T. 4, C. 25, Sec. 1-12.

<sup>2</sup> *Id.*

**WHEREAS**, the continued revenue shortfall now being experienced by the City makes it difficult for the City to provide the subsidy needed by the Institute to fulfill its mission; and

**WHEREAS**, the General Fund subsidy for the Institute's operation of the Zoo Assets has been eliminated from the 2005-2006 FY budget;

**WHEREAS**, to avoid serious curtailment of the operation of the Zoo Assets due to lack of revenues, the City has agreed to contract with the Society to take full responsibility for the operation of the Zoo Assets, including the identification of various non-City sources of revenue;

**WHEREAS**, the Society has assisted with the operation and growth of the Institute since the founding of the first Society in 1911 and is desirous to see its survival and continued growth;

**WHEREAS**, the Society is willing to accept the delegation of additional responsibilities for the governance, operation and management of the Zoo Assets;

**WHEREAS**, a Corporation Counsel has previously opined that a City may lawfully provide for activities and services through a contract with a nonprofit corporation;<sup>3</sup>

**WHEREAS**, the parties acknowledge the important role played by the Zoo Commission in advising the Institute and agree that its role is not diminished by the terms of this Agreement; and

**WHEREAS**, both the City and the Society believe it is important to maintain the Institute and other related property, including the extensive exhibits, animals, equipment, and other Zoo Assets and to provide for the continued growth of the Institute.

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<sup>3</sup> December 4, 1996 Opinion in relation to the Detroit Institute of Arts.

NOW, THEREFORE, the City and the Society hereby agree as follows:

**I. SOCIETY'S REPRESENTATIONS AND WARRANTIES**

**1.1 Society's Authority.**

The Society represents and warrants that it is a nonprofit corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and that it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement have been authorized by all necessary action, including the approvals and ratification by the Society's governing body prior to the effective date hereof.

**1.2 Society Has No Conflicting Contractual Obligations.**

The Society represents and warrants that, as of the execution date and the effective date of this Agreement, it is not a party to any agreement and understanding which would prevent, limit, or hinder in any material manner its performance of any obligations under this Agreement.

**1.3 Society Has No Conflict of Interest.**

The Society represents and warrants that, as of the execution date and the effective date of this Agreement, it has no interest, and that, during the contract term, it shall not acquire any interest, which would conflict in any manner or degree with the performance of its obligations under this Agreement. The Society further covenants that it shall employ no person or entity having such an interest unless full disclosure of the conflict has been made in advance to the City.

## **II. CITY'S REPRESENTATIONS AND WARRANTIES**

### **2.1 City's Authority.**

The City represents and warrants that it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement have been authorized by all necessary action, including the approval of this Agreement by the Detroit City Council (the "City Council"), which approval has been obtained prior to the effective date hereof.

### **2.2 City Has No Conflicting Contractual Obligations.**

The City represents and warrants that, as of the execution date and the effective date of this Agreement, it is not a party to any non-labor agreement or understanding which would prevent, limit, or hinder in any material manner its performance of any obligations under this Agreement.

### **2.3 City Has No Conflict of Interest.**

The City represents and warrants that, as of the execution date and the effective date of this Agreement, it has no interest, and that, during the contract term, it shall not acquire any interest, which would conflict in any manner or degree with the performance of its obligations under this Agreement.

## **III. ENGAGEMENT OF THE SOCIETY; RELATIONSHIP BETWEEN THE PARTIES**

### **3.1 Engagement.**

In the exercise of the Institute's authority granted by City Charter Section 7-1601, and pursuant to its oversight function through the Zoological Director of the Institute (the "Zoo Director") and the Zoo Commission as delineated in this Agreement, the City hereby engages the Society as manager and operator of the Zoo Assets, and the Society hereby agrees to faithfully

and diligently manage and operate the Zoo Assets in accordance with the terms and conditions of this Agreement, without any duty by the City of compensation of the Society for such services other than as contained in this Agreement.

### **3.2 Independent Contractor Relationship.**

The Society is an independent contractor and as such shall have full authority and responsibility to discharge the duties imposed upon it hereunder without restrictions other than those imposed by or pursuant to this Agreement. Neither the Society nor the City shall have the right or authority to bind the other party, without the express written authorization of such other party, to any obligation to a third party. Nothing contained in this Agreement shall constitute the parties as partners or joint venturers for any purpose, it being the express intention of the parties that no such partnership or joint venture exist and that each party has only those duties to the other than are specified in this Agreement.

### **3.3 Scope of the Society's Duties.**

The Society's duties include all aspects of the operations of the Zoo Assets, including day-to-day operations. As a result of the delegations by the City to the Society under this Agreement, the Society will have additional authority and responsibility to govern, manage, and operate the Zoo Assets.

The Society will make best efforts to ensure that all contractual work shall have at least 30% MBE/WBE/DBE (Minority Business Enterprise, Women Business Enterprise and Detroit-based Business Enterprise). In the event the City, by Executive Order or Ordinance, changes its purchasing goal, the Society agrees to modify this section but not to exceed 50%.

#### 3.4 Existing Institute Contracts.

The current and pending contracts for goods and professional services, excluding employment contracts or any collective bargaining agreements with any union, will be transferred by the City to the Society. Examples of these contracts include janitorial services, food and gift shop, trash hauling, heating system, and control system, but shall specifically exclude any and all employment contracts and any contracts with any union.

#### 3.5 Governance.

The members of the Detroit Zoological Commission, and their successors, as well as two individuals appointed by the City Council, will become voting members of the Society's Board of Directors so that the Detroit Zoological Commission and the City Council remain fully engaged in the Institute and the Society's newly integrated operational structure.

#### 3.6 Discretion as to Operating Conditions.

Subject to prior consultation with the Zoo Commission, the Society will have the authority to determine in its sole discretion the days and hours of operation, customer service performance standards, admission rates, policies, and all other similar operational matters. The Society will also have complete authority as to the exhibits, programs, services, and events presented, and all other matters related to the operation of the Institute.

#### 3.7 Operating Revenue and Contributions.

The Society will retain all revenues earned from the Institute's operations, including, but not limited to, all admission revenues, facilities or property rentals for private functions or use, parking revenues, revenues provided by the State of Michigan (including, but not limited to, Michigan Council of the Arts and Cultural Affairs funds, if any), funds received from federal or county sources, and all other revenues, funds, grants, donations or pledges, in cash or in kind

(such as donations of property or securities), from any private or public source. The Society is responsible for compliance with all conditions of any such funds received and responsible for all audit exceptions and payback of inappropriately spent funds. All funds so received by the Society must be used to further and promote the general welfare and interest of the Institute.

**3.8 Partnerships, Collaborations or Other Relationships.**

Subject to prior consultation with the Zoo Commission with respect to arrangements with other governmental authorities, the Society in its sole discretion may enter into partnerships, collaborations or other relationships with other entities and organizations to enhance the Institute's visitor experience, enhance operations, diversify sources of private or public funding, reduce costs, or realize other benefits or operational efficiencies.

**3.9 Human Resources.**

The Society will offer employment to all current (as of October 1, 2005), active, full-time Institute employees. All employees will be covered by the Society's benefit plans, as these are in effect from time to time, and as amended. All salaries, rates of pay, benefit packages, hours of work and other employment-related matters will be at the sole discretion of the Society. The Society will immediately engage in discussions with unions upon signing this Agreement.

The Society agrees to comply with all federal, state and local laws governing equal employment opportunity.

**3.10 Continuation of Services to Detroit Citizens.**

The Society will provide citizens of the City with several privileges, including summer camp scholarships for young people, discounted admission and membership fees and discounts for all of the City's children in school programs.



**3.11 Continuation and Possible Future Expansion of the Institute's Hours.**

The Institute shall not reduce the hours that the Detroit Zoo and the Belle Isle Nature Zoo are open to the public unless (a) adequate funding to maintain those hours is unavailable or (b) the Zoo Commission reviews any such change prior to the reduction in hours.

**3.12 Duty to Submit Annual Reports.**

Within forty-five (45) days of the expiration of each year of the contract during the contract term, and in any event no later than August 15 of each year, the Society shall furnish an annual report of its activities to the Mayor of the City (the "Mayor") and the City Council and such other reports as the Mayor or the City Council may from time to time reasonably require. A copy of the reports shall be furnished the Auditor General. Such reports shall be in a form reasonably prescribed by the Zoo Commission (in hard copy and/or electronic format as may be requested) and shall include the following subject matters:

- (a) itemized revenues and expenses;
- (b) fundraising activities;
- (c) number of visitors during the reporting period;
- (d) the schedule of hours of operation of the Institute during the reporting period and the average number of hours per week that the Institute was open to the public during the reporting period.

**3.13 Duty to Submit Internal Financial Statements.**

The Society shall furnish to the Zoo Commission copies of any quarterly financial statements that the Society prepares in the ordinary course of business and submits to its own Board of Directors and/or Officers. The Society shall provide all such documents to the Zoo

Commission promptly after their distribution to the Society's Directors. Upon receipt of such documents, the Zoo Commission shall provide copies thereof to the City's Auditor General.

**3.14 Duty to Submit Financial Statements.**

As soon as reasonably practicable, but in no event later than Ninety (90) days following the close of each City fiscal year, the Society shall deliver to the City the Society's annual financial statements, audited by an independent certified public accountant. A copy of such statements shall simultaneously be submitted to the City's Auditor General.

**3.15 Duty to Submit to Audit.**

Upon reasonable notification, the Society shall submit to an annual audit performed by the City's Auditor General or his/her designee.

**3.16 Duty to Provide Other Information Requested by the Zoo Commission.**

From time to time, the Society shall provide the Zoo Commission with such other information as the Zoo Commission may reasonably request.

**IV. RETENTION OF ASSETS BY CITY**

**4.1 City Retains Ownership of All Assets.**

The City will retain ownership of all current and after-acquired Institute-owned facilities to remain known as the "Detroit Zoo" and the "Belle Isle Nature Zoo" and their related assets. This excludes vehicles (all of which will be transferred to the Zoological Society) but includes animals (whether acquired by birth or otherwise), buildings, grounds, collections, artifacts, exhibits, furnishings, and other assets. The City will be responsible for capital expense associated with the Zoo Assets. The City agrees that no assets or other items important to the fulfillment of the Institute's mission will be sold or transferred without the prior written consent of the Society.

From and after the date of this Agreement, the City shall not be deemed to have acquired any asset from the Society until the Society formally decides to tender such asset to the City and the City accepts such asset. Annually, the Society shall provide a list of all completed assets and tender for acceptance by the City.

#### **4.2 Naming Contracts.**

Unless and until the Society receives approval from the Zoo Commission, the Detroit Zoo will continue to remain known as the "Detroit Zoological Park", and the Belle Isle Nature Zoo will continue to be known as the "Belle Isle Nature Zoo", in name and in all written correspondence, public notices, advertisements, or any other public medium of communication. Any request to change, alter or modify the name of the Detroit Zoological Park or the Belle Isle Nature Zoo shall require a formal request from the Mayor which shall be submitted to the City Council for approval as set forth in Charter Section 7.102.

**The City agrees to honor any contracts that the Society may enter into with third parties regarding the reasonable naming rights of any of the Zoo Assets.**

#### **4.3 Use of Zoo Assets.**

The City agrees not to take any action, or enter into any contract, or extend or renew any current contract, for any action to be taken or not taken, that would constrict or otherwise impair the use of any of the Zoo Assets (whether current or after-acquired) in any manner without the prior written consent of the Society. In addition, if any revenue is generated with respect the use or impairment of any of the Zoo Assets, the City agrees to pay or transfer such revenue to the Society. Provided however, that revenue generated in accordance with the current lease for the cellular antenna shall be forwarded to the City of Detroit, for the life of the instant agreement with the Society.

**4.4 All Assets Are Owned by the City, a Municipal Corporation.**

Nothing in this Memorandum of Agreement will be construed to create a private business, proprietorship, or other taxable business entity, nor are the terms of this Memorandum of Agreement intended to result in any Institute facility being subject to additional taxation or regulation by the City of Royal Oak or the City of Huntington Woods. The City will remain the public owner and municipal authority over the assets of the Institute, while the control of the facilities and their day-to-day operation are the responsibility of the Society.

**V. OBLIGATIONS OF THE CITY**

**5.1 Access.**

The City grants to the Society full access and use of Institute facilities, grounds, equipment, programs, trademarks, and other real and intellectual properties, as well as access to and across any City property or right-of-way necessary for the operation of the Institute's programs and facilities.

**5.2 City Commitment Regarding Funding.**

To insure the continued integrity of the Institute, and in recognition of the City's continued ownership of all Zoo Assets in accordance with Section 4.1 above, the City agrees to budget for and provide funding on an annual basis in accordance with the terms of this Section 5.2.

For the first two (2) years of this agreement, such funds shall be in an amount that will adequately provide for the insurance and security costs of the Zoo Assets. The parties shall mutually agree to an annual amount.

For the first year of this agreement, the City agrees to provide the following:

- Funds to the Society in the amount of Six Hundred Thousand Dollars (\$600,000.00) to provide for security needs with regard to its operation of the Zoo Assets (including, but not limited to, alarm monitoring and contracted services);
- Funds to the Society in the amount of Three Hundred Thousand Dollars (\$300,000.00) to provide for costs of insurance (including, without limitation, liability and property insurance premiums);

For the third and all successive years of this agreement, pursuant to the City's budget process, the parties shall agree to an annual amount necessary to provide for the liability and property insurance costs of the Zoo Assets that takes into the account the projected amount of such costs. Such amount of insurance shall be based upon consultation with the City Risk Management Council, who, in conjunction with the parties, shall analyze and assess the appropriate levels of liability and property insurance, and the City agrees to fund such amount.

[See Exhibit A]

For the third and all successive years of this agreement, pursuant to the City's budget process, the Society will approach the City with a request for an appropriation to cover the costs of security. Taking into consideration the Society's ability to pay, the City agrees to appropriate such additional amount as necessary to cover such costs.

### 5.3 Indemnification.

The Society is liable for and will indemnify, defend and hold the City harmless of and from any and all liability from injuries, including disease and death, to a person or damage to property of third parties arising from or claimed to have arisen out of the City's ownership or Society's operation, maintenance or use of the Zoo Assets, providing such injury or damage is

alleged to have occurred during the term of this Agreement. The City and the Society shall both be named as insured parties on any insurance policies concerning the Zoo Assets.

The City expressly assumes the risk of and accepts full responsibility for any and all damage or destruction of its real or personal property which may occur or be alleged to occur as a result of the Society's operation of the Zoo Assets that are not the result of gross negligence or willful, wanton or intentional misconduct on the part of the Society. The City hereby releases from liability the Society, its officers, directors, agents, representatives, heirs and employees except as set forth in this Section. The City hereby waives any and all claims the City may hereafter have against the Society as a result of any and all damage or destruction of its real or personal property that are not the result of gross negligence or willful, wanton or intentional misconduct on the part of the Society.

After consultation with the City Risk Management Council, the parties shall analyze and assess the appropriate levels of insurance for the operation of the Zoo Assets pursuant to the terms of this agreement.

The Society shall establish and maintain risk management programs, safety programs and other similar controls consistent with the standard of care required by state-of-the-art practices of leading zoos.

#### **5.4 Funds.**

It is contemplated by the parties that within two years, the Society will assume full fiscal responsibility for the operation of the Zoo, securing all necessary operating resources from earned revenues, the public sector (federal, state, region) and private sector (foundation, corporations, individuals), with the goal to increase and diversify revenue streams.

The parties recognize that a subsidy from the Capital Account will be required for capital expenditures to ensure the viability of this transition.

(a) The City will transfer to the Society the sum of Five Million Dollars (\$5,000,000.00) within fifteen (15) days of the State of Michigan appropriation of funds in accordance with Section 7.14.

(b) In addition, the City agrees that it is the City's full intent to transfer a like sum of Five Million Dollars (\$5,000,000.00) to the Society during the City of Detroit Fiscal Year 2006-2007. The amounts set forth in Section 5.4(a) above and this Section 5.4(b) are in addition to, and shall not be paid from, existing Capital Appropriations or Allocations to the Institute.

(c) The City will include the Society in the annual capital budget process, including funding authorized under voter-approved bonding authority. This includes all extant approvals of capital appropriations for the Institute, as well as any subsequently approved funding, for improvements to infrastructure, as well as other voter-approved projects (such as new exhibits like the Belle Isle Nature Zoo). Nothing in this Agreement is intended to prevent the Zoo Dept., Zoo Institute or the Society from participating in the City's future bonds proposals. All such capital improvement funds used for capital improvement contracts will continue to be approved by the City and this City Council in the manner prescribed by the charter, ordinance and state law, to ensure that the public interest and public trust are duly safeguarded.

(d) The Society is responsible for compliance with all conditions of any such funds received and responsible for all audit exceptions and payback of inappropriately spent funds. All funds so received by the Society must be used to further and promote the general welfare and interest of the Institute.

**5.5 Retention of City Services.**

In addition to support provided by the City as in Section 5.2 above, the City will continue to provide, at the Society's request, the following services at no charge to the Society: mowing, snow removal, and other grounds keeping services in public pedestrian and parking areas of the Institute's Belle Isle Nature Zoo facility.

**VI. ROLE OF THE ZOO COMMISSION**

**6.1 Zoological Parks Commission Oversight of Agreement.**

Pursuant to Section 7-1601 of the 1997 Detroit City Charter, the Zoological Park Department [hereinafter "Zoo Department"] is headed by the Zoological Director. The Zoo Department shall maintain and operate the City's zoological parks by and through the instant management agreement with the Society. Pursuant to Section 7-1602, the Zoological Parks Commission shall continue to exercise its charter-mandated advisory responsibility and shall administer and monitor the performance by the Society of the Society's obligations, all as provided for in this Agreement.

**6.2 Zoo Commission to Prescribe the Form of, Receive and Review Reports.**

The Zoo Commission shall prescribe the form of reports to be submitted by the Society in accordance with Sections 3.11 through 3.14.

**6.3 Zoo Commission May Request Additional Information.**

From time to time, the Zoo Commission may reasonably request from the Society additional information concerning the operations and management of the Institute. The Society shall promptly respond to the written request of the Zoo Commission made pursuant to this Section.



**6.4 Zoo Commission's Audit Rights.**

Once per year, the Zoo Commission or its designees may audit on demand the operations and records of the Society, and the Zoo Commission or its designees may audit such operations and records at other times on which both the Zoo Commission and the Society agree.

**6.5 Annual Inspection.**

The Zoo Commission or its designees may on demand conduct an annual inspection of zoo facilities or any portion thereof specified by the Zoo Commission, at reasonable times to be arranged by mutual agreement of the Zoo Commission and the Society, but in any event to be commenced no later than fifteen (15) business days after demand is made.

**6.6 Auditor General Audit.**

The Auditor General shall have the authority to conduct audits of Institute properties consistent with Section 4-205 of the 1997 Detroit City Charter; the Auditor General may request additional audits in coordination with those conducted by the Zoo Commission, approval of which request the Society shall not unreasonably withhold.

**6.7 Evaluation of Services.**

On an annual basis, the Zoo Commission shall evaluate the services provided by the Society under this Agreement for the preceding year and shall provide a copy of such evaluation to the Mayor, the City Council and to the Society.

**6.8 Zoo Commission Meetings.**

During the two (2) year transition period after the effective date, and in its sole discretion, the Zoo Commission may require quarterly appearances by the Society at a meeting between the Zoo Commission and the Society, at which the Society shall report on and respond to the Zoo Commission's questions about the state of, and operations of, the Institute facilities. The Zoo

Commission shall have at least one (1) meeting during each of the two (2) years of the transition period. Thereafter, the Zoo Commission shall hold a meeting on at least an annual basis. The Zoo Commission may schedule other meetings at reasonable times and upon reasonable notice as it, in its sole discretion, deems necessary or desirable. The Zoo Commission shall establish the location of, date and time, as well as the agenda for any such meetings. All such meetings shall be subject to the provisions of the *Michigan Open Meetings Act*, MCL 15.261 *et seq.*

## **VII. JOINT COMMITMENTS OF THE CITY AND THE SOCIETY**

### **7.1 Human Resources Transition.**

The changes in operating procedures as contemplated by this Agreement will result in the elimination from the City's payroll of all positions currently existing at the Institute. While the City will be responsible for determining the employment status (termination or transfer) of its employees, the Society will have discretion on how positions eliminated by the City are to be restructured or replaced. The Society's goal is to treat all employees fairly and equitably, while maintaining efficient operations. The Society is committed to diversity at all levels of its workforce.

The Society will make its best efforts to ensure that at least fifty (50%) per cent of its workforce consists of Detroit residents.

### **7.2 Implementation.**

The City and the Society agree that they will execute and deliver any assignment agreements, consents or similar documents which may be necessary to implement this Memorandum of Agreement which the parties hereby stipulate sets forth all of the necessary principles of agreement.

**7.3 No Authority to Bind Other Party.**

The Society, its Board and its Chairperson will not have any right or authority to bind or obligate the City, nor will the City have any right or authority to bind or obligate the Society, without the other party's prior written consent.

**7.4 Designation of Point of Contact; Notice.**

The City Administration shall designate someone to serve as the Society's point of contact in order to insure the successful execution of the operational plan and its ongoing implementation as set forth in this Memorandum of Agreement. The City and the Society agree to operate in good faith on all matters. It is agreed that meetings, at least quarterly, will take place to insure performance expectations are being met by both parties.

All notices, consents, approvals, requests, reports and other communications required or permitted under this Agreement shall be in writing and sent and addressed as follows:

If to the City of Detroit:      City Clerk, City of Detroit  
201 Coleman A. Young Municipal Center  
Detroit, MI 48226

If to the Society:              Chairman, Detroit Zoological Society  
P. O. Box 8237  
Royal Oak, MI 48068

Either party to this Agreement may change its address of Notices at any time by giving Notice thereof to the other as herein provided.

**7.5 Term/Renewal/Termination.**

The initial term of this Agreement shall commence on the effective date, which shall be the date on which the fully executed Agreement is approved by the City Council and shall run through June 30, 2020, with an option to renew for successive ten (10) year terms, unless either party provides five (5) years' written notice of its intent not to renew. Notwithstanding the

foregoing, any time on or after June 30, 2015, this Agreement may be terminated by either party upon written notice given five (5) years prior to the effective date of the termination.

**7.6 Default; Early Termination.**

In the event of a Default (defined below) by either party (the "Defaulting Party") to this Memorandum of Agreement, then the party that is not in Default may terminate this Memorandum of Agreement by providing the Defaulting Party with written notice delivered one (1) year prior to the effective date of the termination.

For purposes of this Memorandum of Agreement, the term "Default" means a material breach of this Memorandum of Agreement by a party that continues after having received written notice of such breach and having had ninety (90) days opportunity to cure.

In the event the Defaulting Party, after receiving notice of said default, fails to cure within one (1) year after said notice; the Parties shall enter into negotiations to discuss how the Defaulting Party will remedy its default.

In the event the Parties are unable to agree to actions to remedy said breach, the Non-Defaulting Party may terminate the agreement and exercise all rights and remedies available under law.

In the event of the Society's Default, subject to the terms of this agreement, the Society will indemnify, defend and save the City harmless of and from any and all liability of the City for any damages which may arise from the Society's Default.

In the event of the City's Default, the City will indemnify, defend and save the Society harmless of and from any and all liability of the Society concerning its obligation to refund pledges, return membership fees, or any other contributions as a result of the City's Default.

If the event the Society determines it is not economically feasible to continue its operation of the Zoological Park pursuant to this Agreement, the Society may effect an early termination of this agreement and shall provide a one-year notice of its intention to exercise early termination; provided that nothing in this agreement is intended to permit such notice until the parties commence the second year of this agreement. In such event, the City may elect to continue operation of the Zoological Park, whereupon the City will expressly assume the risk of and accept full responsibility for said operation after the date of said termination pursuant to this provision. If the City elects to shut down the Zoological Park to the public, the City expressly assumes the risk of and accepts full responsibility for and any and all costs and expenses which may occur as a result of said shutdown; further the City will release from Liability the Society, its officers, directors, agents, representatives, heirs and employees for such shutdown costs and this Agreement shall terminate.

**7.7 Entire Agreement; Amendment; Waiver.**

This Memorandum of Agreement is and shall be deemed to be the complete and final expression of the agreement among the parties as to the matters contained in and related to this Memorandum of Agreement and supersedes any previous understandings, dealings and communications, including negotiations, discussions, representations, warranties, information, documents and agreements, among the parties pertaining to such matters. This Memorandum of Agreement shall not be modified or amended except pursuant to a written agreement signed by both parties. Any waiver of any party's rights or obligations under this Memorandum of Agreement must be in writing and must be signed by the party against which such waiver is to be enforced. No party's failure to exercise a right or to invoke a remedy in any particular circumstance shall be construed as a waiver of such right or remedy, and no waiver by either

party of any right or remedy in one situation shall constitute a waiver of such party's rights or remedies in any other subsequent situation, whether similar or not.

**7.8 Governing Law.**

This Memorandum of Agreement is governed by and will be construed in accordance with the laws of the State of Michigan.

**7.9 Headings.**

The headings of the provisions used in the Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions of this Agreement.

**7.10 Severability.**

If any court, agency, commission, legislative body or other authority of competent jurisdiction declares invalid, illegal or unenforceable any portion of this agreement, or its application to any person, that decision shall not affect the validity of the remaining portions of this agreement.

**7.11 No Third Party Beneficiaries.**

Except to the extent expressly contemplated in this Memorandum of Agreement, the obligations undertaken by the City and the Society in this Agreement are for the benefit of the City and the Society only, and neither any creditor of the City or the Society, nor any other party (other than as contemplated in Section 5), shall have the right to rely on or enforce the provisions of this Memorandum of Agreement as a third-party beneficiary or otherwise.

**7.12 Assignment.**

The Society shall not assign its rights, interests or obligations under this Memorandum of Agreement without the prior written consent of the City. However, this is not intended to limit the right of the Society to enter into subcontracts, joint ventures, or joint development

agreements for the performance of portions of its obligations hereunder; but the Society remains responsible to the City for the performance of all of its obligations hereunder. Provided that no funds provided by the City shall be used by the Society to enter into subcontracts, joint ventures or joint development agreements regarding any rights, interests, duties or obligations under this Agreement with any government entity without the prior written consent of the City of Detroit.

The Society will also submit an annual report detailing all contracts let in the previous year, the location of the firms, the dollar value of the contract and the type of service(s) performed.

**7.13 Successors and Assigns.**

This Agreement shall be binding on the Society, its successors and assigns, by merger, sale, transfer, consolidation and lease of either party and it shall not be modified, altered or changed in any respect whatsoever by change of ownership.

**7.14 Condition to the Obligations of Each Party to Effect this Agreement.**

The respective rights, duties and obligations of each party under this Memorandum of Agreement shall be subject to the consummation and effectiveness within sixty (60) days of the execution of this Agreement of an appropriation of Four Million Dollars (\$4,000,000.00) from the State of Michigan to the Society that permits, either explicitly or implicitly, the Society to use such funds for the general operations of the Zoo Assets in furtherance of this Agreement.

**7.15 Effective Date of this Agreement.**

The effective date of this agreement shall be the date that the State of Michigan appropriates the funds in accordance with Section 7.14.

7.16 Authorization and Capacity.

Each party warrants that the person signing this Memorandum of Agreement is authorized to do so, on behalf of its principal, and is empowered to bind its principal to this Agreement.



IN WITNESS WHEREOF, the City and the Society, by and through their duly authorized officers and representatives, have executed this contract as of the dates of their respective signatures:

WITNESSES:

1. Berlie J. Connor
2. Beck R. Evans

DETROIT ZOOLOGICAL SOCIETY

By: David W. [Signature]  
Its: Chairman

WITNESSES:

1. Roslyn J. Howard
2. Samara Bradley

CITY OF DETROIT

By: Kevin R. [Signature]  
Its: \_\_\_\_\_

APPROVED BY THE LAW DEPARTMENT  
PURSUANT TO SECTION 6-406 OF THE CHARTER

Date: [Signature]

THIS CONTRACT WAS APPROVED BY THE CITY COUNCIL ON

Date: \_\_\_\_\_

APPROVED BY THE PURCHASING DIRECTOR:

[Signature]  
Purchasing Director

Date: March 27, 2006

THIS CONTRACT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY  
RESOLUTION OF THE CITY COUNCIL AND SIGNED BY THE PURCHASING  
DIRECTOR.