

THE STATE OF TEXAS *
 *
COUNTY OF DALLAS *

MANAGEMENT CONTRACT
DALLAS MUSEUM OF NATURAL
HISTORY ASSOCIATION

This contract, by and between the City of Dallas, a municipal corporation, hereinafter called "City" and the Dallas Museum of Natural History Association, a Texas nonprofit corporation of Dallas County, Texas hereinafter called "Museum Association" shall be as follows:

W I T N E S S E T H

WHEREAS, Dallas Museum of Natural History ("Museum") is dedicated to collecting, preserving, exhibiting, and interpreting the record of the natural world, of humans and their environment; and

WHEREAS, the Museum provides valuable educational services to the community and is one of the City's most important centers for environmental education; and

WHEREAS, the Museum is a division of the City of Dallas' Office of Cultural Affairs and the City is currently responsible for the operation of the Museum; and

WHEREAS, the building which houses the Museum ("Facility") is located upon real estate approximately as shown in Exhibit A which is attached and made a part of this Agreement; and

WHEREAS, the City Council of the City of Dallas passed a Cultural Policy for the City on June 12, 1991 (91-1837) which addresses cultural facility development and management; and

WHEREAS, the Museum Association is a nonprofit corporation which was organized to support, assist, and promote the activities of the Museum; and

WHEREAS, the Museum Association has significantly increased its support of the Museum's operations during the last three years and has raised over \$2,000,000 for the Museum's capital campaign and established an endowment of approximately \$2,000,000 to support the Museum operations; and

WHEREAS, the City and the Museum Association believe it will be in the best interests of the Museum and the City to transfer the operation and management of the Museum from the City to the Museum Association; and

WHEREAS, the City and the Museum Association desire to transfer the operation and management of the Museum from the City to the Museum Association.

NOW, THEREFORE, for and in consideration of the services provided on behalf of the City by the Museum Association for the maintenance, operation and management of the Museum, and the funding provided by the Museum Association in support thereof, as hereinafter provided, the City and the Museum Association covenant and agree as follows:

1.0 OBJECTIVE

It shall be the objective of the parties to jointly establish, promote and operate a public museum on the property wholly owned by the City and identified on Exhibit A attached hereto and incorporated by reference herein.

2.0 TERM

The term of this agreement shall be a period of twenty (20) years commencing on the date of execution hereof with up to two (2) five year renewal options (each a "Renewal"). The Museum Association shall notify City, no less than 90 or more than 360 days before the date on which this agreement would otherwise expire as to whether it desires a Renewal. If the Museum Association desires such a Renewal, City will respond within 90 days of its receipt of the Museum Association's notice as to whether City desires a Renewal.

3.0 TITLE TO PROPERTY

3.1 TITLE TO BUILDINGS AND GROUNDS

The Museum Association acknowledges without reservation that the City holds and shall hold the title to the Facility and the grounds surrounding it as identified on Exhibit A.

3.2 TITLE TO PERSONAL PROPERTY

It is acknowledged and agreed by the City that the title to all property (except City owned collections and City property listed in Exhibit B) which shall or may be placed in the Museum continue to be and remain absolutely the property of the Museum Association.

The Museum Association acknowledges that the items of personal property listed on Exhibit B are and shall remain property of the City. The property listed on Exhibit B may be returned to the City, or the City may provide additional personal property to the Museum Association, from time to time, without formal amendment to this agreement. The property listed on Exhibit B shall be audited and inspected periodically by an authorized representative of the Office of Cultural Affairs. Exhibit B shall be revised when necessary to reflect additions or deletions thereto, and shall be verified by the signatures of the Director of the Office of Cultural Affairs and the Director of the Museum Association. Personal property not listed on

Exhibit B which is used by the Museum Association in connection with the operation of Facility shall not be considered property of the City.

3.3 TITLE TO CURRENT COLLECTIONS

It is irrevocably acknowledged and agreed by the Museum Association that all right, title and interest in and to all of the natural history specimens, artifacts, books and other objects which, prior to the date of this agreement were purchased by, donated to or collected by the Museum are absolutely and unconditionally vested in the City under the operational and jurisdictional control of the Office of Cultural Affairs. Title to specimens, artifacts, books, or other objects owned by the Museum Association remains in such owners.

3.4 SALE OF COLLECTIONS

Any sale or exchange of objects or specimens owned by the City shall be approved by the Office of Cultural Affairs and shall be made in conformance with the provisions of the charter and ordinances of the City regarding the sale of surplus property.

4.0 SUBLEASING

No space in the buildings shall be subleased (except on a daily rental basis) by the Museum Association without first obtaining written consent and approval of the Office of Cultural Affairs. The Museum Association also has the right to lease on a daily rental basis the adjoining amphitheater/courtyard indentified in Exhibit C. All maintenance and operating costs relating to the daily rental of the amphitheater will be the responsibility of the Museum Association.

5.0 PUBLIC ACCESS AND ADMISSION FEES

It is expressly understood and agreed by and between the parties that the building and all exhibits shall be kept open and accessible to the public, at all reasonable hours as shall be agreed upon from time to time by the Museum Association and the Office of Cultural Affairs. The Museum Association shall have the authority and privilege to charge either a general admission fee or an admission fee for special exhibits, provided that the Museum Association shall first request written approval from the Office of Cultural Affairs at least 30 days prior to the commencement of each exhibit.

6.0 CITY RIGHT OF ENTRY

The City shall have access at all times to every part of the building for the purpose of the performance of the duties delegated to it by the Charter and the Ordinances of the City of Dallas, and the laws of the State of Texas. The police power of the City shall extend to and through the building. The City shall also have access

to every part of the building for the purpose of general inspection, visitation and supervision at all reasonable times. The Museum Association may appoint, direct, control and remove all persons employed within the building and in and about the care of the building and exhibits therein contained, save and except those assigned by the City in performance of those duties imposed upon it by this agreement or imposed upon it by the Charter provisions of the City.

7.0 USE BY THE CITY OF DALLAS

Notwithstanding the other terms hereof, the City shall have the right, authority, and power to reasonably use and occupy the premises and/or to cause or permit others to reasonably use and occupy the premises, for such period being at a time which does not unreasonably interfere with the general operations of the Museum or a function scheduled by the Museum Association. The City shall give the Museum Association a minimum of 30 days prior notice before using the premises for such activities. Such notice shall be in writing and shall describe the area desired to be used and the time of such usage by or under the City. Prior to giving such notice the City shall contact the Museum Association to establish the date that the premises will be available. All direct costs for such use shall be borne by the City.

8.0 FAIR PARK ISSUES

8.1 EMPLOYEE PARKING

The Museum Association shall have the right to continue its exclusive use of the existing employee parking area as indicated on Exhibit D at no charge.

8.2 SECURITY

Both the City and the Museum Association acknowledge that security at Fair Park, both for visitors and facilities, is a critical issue for the success of the Museum. Both City and the Museum Association further acknowledge that security in the years immediately prior to the effective date has generally been adequate and that the crime rate within Fair Park is generally less than that in the surrounding geographic area. Therefore, to the extent possible, the City will continue to provide the current level of security within Fair Park, and make reasonable efforts to provide and maintain enhancements both in technological improvements and manpower additions. The Museum Association shall be responsible for all security within the Facility. City shall, subject to the availability of funding authorized by City Council, develop and implement a security policy for Fair Park that seeks to enhance visitor and facility safety.

9.0 ALTERATIONS, ADDITIONS AND IMPROVEMENTS

The Museum Association shall not make any structural changes, additions, or alterations to the Facility without the written consent and approval of the Office of Cultural Affairs and the Park and Recreation Board, and then only after the approval by all appropriate state and local boards and commissions of detailed architectural plans for such work as required.

10.0 SUBCONTRACTS WITH CONCESSIONAIRES

The City reserves the right to approve any subcontracts with terms of more than one year entered into by the Museum Association for concessions services in the Facility.

11.0 PRINTED MATERIALS

The Museum Association shall credit the City of Dallas Office of Cultural Affairs for its support of the Facility in all publicly disseminated printed materials which provide for such credits.

12.0 OPERATING POLICIES AND RESPONSIBILITIES

The Museum Association shall submit its operating policies and procedures to the Office of Cultural Affairs in written form for review. These operating policies shall be consistent with the policies of the City, and shall ensure nondiscriminatory opportunities for all citizens of Dallas. The Museum Association agrees that its policies and operations will be designed to preserve and maintain the historical integrity of all buildings, grounds and improvements existing at Fair Park and shall be consistent with the policies of the City regarding cultural and recreational facilities.

13.0 CARE OF COLLECTIONS

The Museum Association agrees to properly care for the Facility, library and all collections and other items under its supervision, including future additions to the present collections, save and except those obligations expressly undertaken by the City pursuant to the terms of Section 18.0 hereof.

14.0 INSURANCE AND INDEMNITY

The Museum Association agrees to meet the minimum insurance requirements and indemnity provisions as defined by Exhibit E and to provide funds for such insurance in its annual budget. In addition, the Museum Association agrees to maintain sufficient cash reserves to cover any of its deductibles or retained risk.

15.0 ENDOWMENT FUND

The Museum Association shall establish an operating endowment fund and shall also use its best efforts to raise contributions from year to year in order to augment such endowment. Earnings shall be

used for the benefit of the Museum Association's operations.

16.0 ELECTION OF THE TRUSTEES OF THE MUSEUM ASSOCIATION

It is stipulated and agreed by the Museum Association that said organization, through its board of trustees, utilizes and manages property owned by the City. The Museum Association hereby expressly agrees to exercise appropriate care, prudence, and diligence in the solicitation of members and the election of trustees for the purpose of assuring broad community representation and participation in its programs and the promotion of the Museum Association, and to act always in accordance with community goals and in the highest public interest. The Museum Association agrees that in making appointments to the board of trustees, it will take into consideration both the ethnic and geographical composition of the City. Further, the Museum Association hereby expressly agrees to supply on an annual basis the names of those persons selected as trustees of the Museum Association to the Office of Cultural Affairs as a public record.

17.0 CHARTER AND BYLAWS

The Museum Association shall file a true and correct copy of its corporate charter, with amendments, if any, and an accurate and complete copy of its bylaws and any amendments thereto, and copy of its I.R.S. letter of determination of I.R.S. Sec. 501(c)(3) status with the Office of Cultural Affairs to be maintained as a public record available for inspection to any person upon request during normal business hours. In the event of subsequent amendments to such charter and bylaws, true and correct copies of the same shall be timely filed with the Office of Cultural Affairs.

18.0 MUSEUM ASSOCIATION'S RESPONSIBILITIES

The Museum Association shall exercise sole operational and supervisory authority over all activities conducted on the premises of the Museum, over all the personnel working therein, and over all such matters as private security, safety, planning, collections and displays, and the purchase, exchange, or acquisition of additional items to be added to its collections. The Museum Association will be responsible for all educational, research, and informational programs conducted on the premises of the Museum and all related material. The Museum Association will submit for prior approval by the appropriate City and state boards and commissions all facility plans for future improvements to be located on the premises of the Museum, to include, but not be limited to, entrances, parking, and pedestrian paths, both inside the building and outside on the grounds. The Museum Association shall have the sole authority for hiring, firing, supervising and otherwise directing all personnel and volunteer workers in the Museum. The Museum Association will supervise all other matters relating to the general operation of the Museum. In addition, the Museum Association shall provide the cost of telephone service and all personnel incidental to its operation of the building including all necessary supplies, tools and equipment.

19.0 CITY'S RESPONSIBILITIES:

19.1 MAINTENANCE AND UPKEEP BY CITY

In addition to other obligations undertaken by the City under this agreement, the City agrees, subject to annual City Council appropriation, to provide funding in its departmental budgets for the following items for the Facility:

(1) All structural maintenance and repairs of the building, building systems, and future improvements (excluding telephone systems and janitorial services).

(2) Minor, non-structural improvements to the building (the Museum Association may, at its option and expense, perform minor improvements; provided, however, that the City has the right to review all plans and specifications for such improvements and all such improvements shall be done in conformance with City codes, ordinances, regulations, design criteria and building standards and all City and state boards and commissions having jurisdiction over the Premises); and

(3) Maintenance of all landscaping on the grounds surrounding the Facility and for all grounds maintenance, which shall include, without limitation, snow removal and sanding in inclement weather, and property upkeep.

(4) Conservation of exterior and interior City-owned artwork (murals, statuary) located at the Museum.

To the extent of available funding, the City shall provide for the preventative maintenance of the Facility.

19.2 UTILITY SERVICES

The City shall pay the cost of electric, gas, sewer, waste disposal, and water utility services to the Facility.

19.3 PROPERTY INSURANCE

The City shall maintain in full force and effect during the continuance of this agreement, standard fire and extended coverage insurance, of the type prescribed for use in Texas from time to time by the applicable authorities, covering the Facility in amounts at least equal to the full replacement cost thereof. The Museum Association shall cooperate with the City's insurer on all matters, including but not limited to, Facility inspections and loss adjustments. City agrees to purchase reasonable property insurance or self insurance for the Facility, related City improvements, City owned property and City owned collections. Such insurance shall include the Museum Association as an additional insured or alternatively shall contain a waiver of subrogation as to the Museum

Association. In the event that the Facility shall suffer damage or destruction, the City shall cause same to be repaired or rebuilt to the extent allowable from the proceeds of insurance. To the extent of the dollar value of the deductible stated in the City's insurance policy covering such loss, however, and for the purposes hereof, the City shall be considered self-insured and shall be responsible for the repair or replacement cost of any loss excluded from such insurance coverage by reason of such deductible amount. Proceeds of personal property insurance shall be used, to the extent available, to replace any personal property, collections or artwork which has been destroyed and which is located within or on the exterior of the building and owned by the City.

19.4 DIRECT SUPPORT

It is understood that the cost of operation of the Museum shall be primarily borne by the Museum Association. Direct payments, if any, to the Museum Association shall be made pursuant to its annual cultural service agreement with the City, following City Council approval. The Museum Association understands that the level of payment authorized by the annual cultural service agreement is solely within the discretion of the City Council. All other necessary operating expenses of the Museum Association (excluding those paid by the City under this agreement) shall be paid by the Museum Association. In addition, the Museum Association from time to time may apply to the Office of Cultural Affairs for additional service contracts for programs or special projects, all in accordance with the City's established policy for procurement of services from cultural organizations, as such policy may change from time to time.

A. It is also understood that the Museum Association is providing a valuable service to the City and citizens of Dallas by assuming the management of the Museum and the care of City owned collections. It is further understood that the assumption of management responsibilities by the Museum Association will not result in a reduction to the City's annual general fund allocation to the Museum Association that is greater than the average annual percentage reduction to the City's general fund appropriation for cultural services contract programs (if such reductions are necessary) for Fiscal Year 1993/94 through Fiscal Year 1997/98. It is acknowledged that City's budgeted allocation for the Museum in Fiscal Year 1993/94 was \$661,000.00 and that this amount shall serve as the baseline allocation for the purposes of this contract.

It is the intention of the Museum Association to comply with the provisions of the City's Cultural Policy regarding city support by Fiscal Year-1997/98 after a three year transition period which shall begin in Fiscal Year 1994/95. During this transition phase, the Museum Association will be required to submit annual business and long range plans to the Office of Cultural Affairs demonstrating its progress toward complying with the City's Cultural Policy provisions regarding the annual cultural services contract amounts and indirect support an organization is eligible to receive from the City. The

Museum's annual general fund allocation will remain as an administrative line in the Office of Cultural Affairs' budget until Fiscal Year 1997/98 and annual allocations will be determined by the City Manager with the advice of the Director of the Office of Cultural Affairs subject to the conditions of this contract and approval by the City Council. Beginning in Fiscal Year 1998/99, the Museum Association will be required to conform to the City's established cultural policy, as such policy may exist from time to time, and annual allocations shall be recommended to the City Manager by the Director of the Office of Cultural Affairs and the Cultural Affairs Commission.

B. The City agrees subject to approval of costs by the Office of Cultural Affairs and annual City Council appropriation to provide funding directly to the Museum Association for the following:

i. The City's pro rata portion of insurance coverage for the collection to be obtained by the Museum Association on behalf of the City if the City elects not to obtain insurance on its own behalf.

ii. A pro rata portion of the costs of off-site storage of City-owned collections based on the percentage of the space needs of City-owned collections as related to the space needs of the total collections of the Museum.

iii. 50% of the annual costs and expenses (excluding office supplies, travel and staff education expenses) incurred by the Museum Association for salaries, customary benefits and related expenses for curators, scientific assistants, registrars, preparators and conservators used by the Museum Association, which relate to the storage and care (including preservation and restoration) of the City-owned collections in the Museum Association's possession.

iv. 50% of the annual costs for the security monitoring company and salaries and customary benefits for security personnel for the Museum, which relate to the protection of the City-owned collections in the Museum Association's possession

From time to time, beginning in FY 1995/96, in addition to the annual review of appropriations, the City and the Museum Association shall review the portions of direct operations costs borne by the City pursuant to clauses (i) through (iv) immediately above. The objectives of any such review shall be the possible reduction or increase as appropriate of such operating expenses borne by the city, after consideration of the following factors, among others: (a) the portion of the collection owned by the City in relation to the total collection of the Museum; (b) the fair market value of the respective collections owned by the City and the Museum Association; and (c) the degree of conservation, restoration, storage care and general care of the respective collections of the City and the Museum Association.

19.5 RIGHT TO EXPAND

The Museum Association shall have a right to expand the Museum by either the construction of an addition or new building on the area indentified in Exhibit F.

19.6 USE OF VEHICLES

The vehicles owned by the City and designated in the City's inventory as Vehicle Number 7601 (Suburban) and Vehicle Number 9522 (Jeep), which were donated to the City for use at the Museum, shall be made available for use by the Museum Association; provided that: (i) the use of the vehicles shall be restricted to those uses reasonable and necessary in the operation and management of the Museum; (ii) the Museum Association shall be responsible for all required maintenance; and (iii) the Museum Association shall procure and maintain insurance for the vehicles.

20.0 OPERATING PERSONNEL

The Museum Association shall employ and pay the necessary museum staff and administrative personnel as established in the Museum Association's annual operating budget. It is understood that all Museum staff employed by the City prior to the effective date of this agreement will be subject to the transfer policies and procedures described in the attached employee transition plan (Exhibit G). It is further understood, that by October 1, 1995, all Museum employees shall be employees of the Museum Association and not the City. The City assumes no obligations to any person employed by the Museum Association. The City shall in no sense ever be deemed to be an employer of, or partner or joint venturer with the Museum Association or any of its employees, other than with respect to an employment relationship between the City and a given employee prior to the effective date hereof.

21.0 REPORTS AND PROPOSED OPERATING BUDGETS

The Museum Association shall submit annually to the Office of Cultural Affairs a proposal for services which shall be assembled in the format required by the Office of Cultural Affairs, and which shall reflect the income and expenditures for the immediate past and current fiscal years and proposed income and expenditures for the next fiscal year. The proposal shall be submitted in complete and final form not later than the annual date set by the Office of Cultural Affairs. The City Manager, with the advice of the Director of the Office of Cultural Affairs and the Cultural Affairs Commission, may recommend to the City Council from year to year that funds be included in the proposed budget of the Office of Cultural Affairs for procurement of services from the Museum Association in operating the Museum and related programs. Any payments for such services shall be provided on a monthly reimbursement basis following submission of monthly expenditure reports by the Museum Association to the Office of Cultural Affairs. In no instance shall

the cumulative payments for any twelve (12) month period exceed the total of the Museum Association's service contract amount as authorized by the City Council, in its sole discretion. The Museum Association shall provide the Office of Cultural Affairs with such reports as it may request from time to time concerning its operations. At a minimum, the following reports shall be required:

A. An annual audit prepared by an independent certified public accounting firm, which shall include, but not be limited to, financial reports relative to the income, expense, assets, liabilities and financial stability of the Museum Association, and other reports as may be customarily available with such audits, and

B. Any other reports as may reasonably be required.

22.0 COMPLIANCE WITH LAWS

The Museum Association agrees that in the performance of its responsibilities under this agreement, it will strictly observe and abide by the ordinances of the City of Dallas, the laws of the State of Texas and of the United States of America as the same now exist or as the same may hereafter be amended or any new ordinances or laws which may be enacted. The Museum Association shall observe and abide by the highest principles of civic responsibility to the end that neither public funds nor public property shall be used in any manner which is inimical to public confidence in the administration of the City of Dallas.

23.0 NONDISCRIMINATION

During the period of this agreement, the Museum Association agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, age, handicap, or national origin; nor shall any person be denied admittance nor be prevented from participating in any portion of any public function or activity at the Facility because of race, creed, color, sex, religion, age, handicap, or national origin.

24.0 DEFAULT BY THE MUSEUM ASSOCIATION

Failure to comply with any term, condition, or covenant of this Contract shall constitute an event of default by the Museum Association.

24.1 RIGHT TO NOTICE AND OPPORTUNITY TO CURE

The City shall give the Museum Association written notice of any default by the Museum Association. Such notice shall specify what action or lack thereof has led to the Museum Association's default. The Museum Association shall have ninety (90) days following its receipt of any such notice in which to cure the default (the "Cure Period"). If said default cannot be cured within said Cure Period,

provided the Museum Association has with reasonable diligence and good faith attempted to cure same, the Cure Period shall be extended as needed to permit the Museum Association to cure said default, provided that the Museum Association continues to attempt said cure with due diligence and in good faith. Should the Museum Association fail to cure any default within the Cure Period, the City may pursue its remedies as set forth in this Contract. Notwithstanding the foregoing, upon receipt of any written notice of default, the Museum Association may (but shall not be obligated to) request a hearing before the City Manager. Such request shall be granted if the Museum Association files the request promptly with the Director of the Office of Cultural Affairs. From any written order of the City Manager issued after any such hearing, but not otherwise, the Museum Association may, within fifteen (15) days of receipt of written notice, ask the City Council to review the subject matter of the controversy and the City Council in its discretion may pass on the matter or grant a hearing thereon. The decision of the City Council shall be final and binding. Wrongful failure or refusal of the Museum Association to comply with any such order of the City Manager, if the same be not reversed by the City Council, shall authorize the City to terminate this Contract and assume full control of the Facility in conformance with the provisions of Section 24.2 hereof.

24.2 CITY'S REMEDIES FOR DEFAULT

If the Museum Association defaults hereunder, fails to cure any such default within the Cure Period, and upon conclusion of the review procedure set forth in Section 24.1, City shall have the option to terminate this Contract upon thirty (30) days written notice to the Museum Association. The Museum Association shall vacate the Facility on or before the thirtieth (30th) day following the date of such notice. If the Museum Association fails to so vacate, the City may, without prejudice to any other remedy which it may have in its possession, enter upon and take possession of the Facility and expel or remove the Museum Association and any other person who may be occupying the Facility or any part thereof, except by use of force. Should City be forced to remove the Museum Association or its personalty from the Facility, excluding property owned or leased by or from third parties, any personalty so removed shall be handled with due care and shall be stored by the City within a secure storage facility at the Museum Association's expense. If the City is unable to obtain possession of the Facility by a means other than the use of force, the City may pursue such other remedies as are provided to it by statute, by law or in equity.

Notwithstanding the foregoing remedies for default, where public safety is at issue, the Museum Association shall take immediate action as directed by the Director of the Office of Cultural Affairs, or his/her designee, pending the appeal process.

25.0 CONFLICT OF INTEREST OF CITY EMPLOYEES

The following section of the Charter of the City of Dallas shall

be one of the conditions of, and a part of, the consideration of this Contract, to-wit:

Chapter XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED -- "No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office, or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

The provisions of this section shall not apply to the participation by City employees in federally funded housing programs to the extent permitted by applicable federal or state law."

26.0 GIFT TO PUBLIC SERVANT

A. The City may terminate this agreement immediately if the Museum Association has offered, conferred, or agreed to confer any benefit on a City employee or official that the City employee is prohibited by law from accepting. (The City has been advised by the prosecuting authorities that the Section 36.10(4) exception to Sections 36.08 and 36.09 of the Texas Penal Code is not available to public servants who have no legal reporting requirements.)

B. For purposes of this Section, "benefit" means anything reasonably regarded as economic gain and economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include (a) a contribution or expenditure made and reported in accordance with law or (b) employment by the Museum Association upon the effectiveness of this agreement.

C. Notwithstanding any other legal remedies the City may require the Museum Association to remove any employee of the Museum Association who has violated the restrictions of this section or similar state or federal law, and obtain reimbursement for any ~~expenditures made to the Museum Association as a result of the~~ improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

27.0 SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of

the parties hereto and their respective successors and, except as otherwise provided in this Contract, their assigns.

28.0 APPLICABLE LAWS

This Contract is made subject to the charter and ordinances of the City, as amended, and all applicable laws of the State of Texas. This Contract shall be construed under and governed by the laws and court decisions of the State of Texas.

29.0 NO PARTNERSHIP; NO AGENCY RELATIONSHIP

Nothing contained in this Contract shall be deemed to constitute the City and the Museum Association partners or joint venturers with each other. Further, nothing contained in this Contract is intended, nor shall it be construed, to create the relationship of principal and agent or to create any fiduciary obligations between the City and the Museum Association.

30.0 NO WAIVER

No waiver by the City or any default or breach of any term, covenant, or condition of this Agreement shall be treated as a waiver of any subsequent default or breach of the same or any other terms, covenant, or condition of this Contract.

31.0 FORCE MAJEURE

If (a) the Facility or any portion thereof is destroyed or damaged by fire or other calamity so as to prevent the use of the Facility for the purposes and during the periods specified in this Contract or (b) the use of the Facility by the Museum Association is, in whole or in part, prevented by act of God, strike, lockout, material or labor restrictions by any governmental authority, civil riot, flood, or any other cause beyond the control of the City, the Association may terminate this Agreement, or if this Agreement is not so terminated, the parties hereto shall be excused from performance hereunder for such period of time as reasonably necessary after such occurrence until the condition preventing such use has passed or been remedied other than maintenance of the Facility.

32.0 VENUE

The obligations of the parties under Contract are performable in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Dallas County, Texas.

33.0 NOTICES

Any notices required to be given under this Contract shall be in writing and shall be hand delivered and addressed to the parties as

follows:

If to City:

Director
Office of Cultural Affairs
1925 Elm Street, Suite 500
Dallas, Texas 75201

If to Museum Association:

Director, Dallas Museum
of Natural History Association
P.O. Box 150349
Dallas, Texas 75315

34.0 APPROVALS

Whenever in this Contract the approval of the City is required for any purpose, the Museum Association shall file the appropriate documents with the Office of Cultural Affairs with notice of the action proposed to be taken in connection therewith. The City agrees to notify the Museum Association of its approval or disapproval of same within ninety (90) days of the filing thereof. Approval shall be by the City Council where required by the City Charter.

35.0 ABATEMENT OF NUISANCES

The Museum Association shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by the Museum Association, its activities, its officers, agents, or employees, in or upon or connected with the Facility, and shall pay for any costs of such compliance.

36.0 LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Contract for any reason is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

37.0 CAPTIONS

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

38.0 AMENDMENT AND REFORMATION

It is not the intention of either party to cause or impose

unreasonable burdens upon the other by this Contract. It is the intention and understanding of the parties hereto that all necessary provisions of law have been inserted herein. However, if by mistake or otherwise, some such provision is not inserted herein, or is not in proper form, then upon written request of either party this Contract shall be amended to comply with the law without prejudice to the rights of either party hereunder. Further, this Contract may be amended from time to time, upon mutual consent of the parties hereto and approval of any such amendment shall be subject to approval by the City Council.

39.0 EFFECTIVE DATE:

This agreement supersedes any prior contract between the parties hereto, and shall become effective on October 1, 1993.

40.0 WORLD CUP:

The City and Museum Association accept and agree that although World Cup USA, 1994, Inc. has been granted no rights in the Facility because it is outside the licensed premises as described in the agreements between the City and World Cup USA, 1994, Inc. dated December 11, 1991 and March 20, 1992 ("Licenses"), access to the Facility and the parking available to the Museum Association may be limited during the term of the Licenses. Any agreement for use of the Museum during the term of the Licenses shall be made in accordance with the terms and conditions of this Agreement.

41.0 TERMINATION BY MUSEUM ASSOCIATION

The Museum Association may terminate this agreement upon 30 days' prior written notice, in the event that:

- (i) City fails to appropriate funds pursuant to this agreement which, in the Museum Association's good faith discretion, severely limits its ability to operate the Museum;
- (ii) the Facility is not functional for a period of 30 days; or
- (iii) City breaches any of its obligations under this agreement and fails to cure such breach within 90 days.

In the event that the Museum Association exercises its option to terminate pursuant to the provisions of this section or Section 31 hereof, the Museum Association shall have 90 days to vacate the Museum, removing all of its collections and personal property, whereupon neither party will have any further obligation to the other.

42.0 FURTHER ASSURANCE


Both City and the Museum Association acknowledge that the terms of this agreement provide for a long-term relationship between the

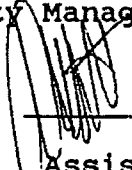
City and the Museum Association. Both parties acknowledge that certain unanticipated events dictate a need for certain modifications of this agreement and both parties agree to work together, in good faith, to develop, as needed mutually agreeable modifications.

IN TESTIMONY WHEREOF, WITNESS the signature of the parties hereto this 11th day of August, 1993, the City of Dallas signing by and through its City Manager, as authorized by Resolution No. 93-2933, and the Museum Association, signing by and through its President and attesting by its corporate Secretary.

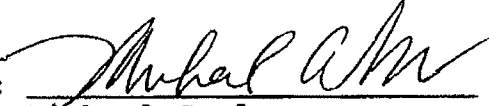
APPROVED AS TO FORM:
SAM LINDSAY
City Attorney

CITY OF DALLAS
JOHN WARE
City Manager

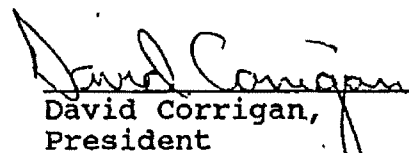
By: 
Tim Ketchersid
Assistant City Attorney
Submitted to City Attorney

By: 
Assistant City Manager

ATTEST:

By: 
Michael Saslaw,
Secretary

DALLAS MUSEUM OF NATURAL
HISTORY ASSOCIATION

By: 
David Corrigan,
President