

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF CONSIDERING THE ASSIGNMENT AND MODIFICATION OF METRO CONTRACT NO. 924826 CONCERNING A LEASE AGREEMENT FOR A PORTABLE SIMULATION THEATRE AT THE OREGON ZOO,

RESOLUTION NO. 04-3438A

Introduced by Michael Jordan, Chief Operating Officer in concurrence with Council President David Bragdon

WHEREAS, the Oregon Zoo is dependent on enterprise income for over 60% of its operating budget; and

WHEREAS, in 2003, SimEx, Inc. and Metro, acting through the Oregon Zoo, entered into an equipment lease agreement by which SimEx leased a portable simulation theater for use at the Oregon Zoo; and

WHEREAS, simulator sales have increased enterprise income by over \$300,000 since 2003; and

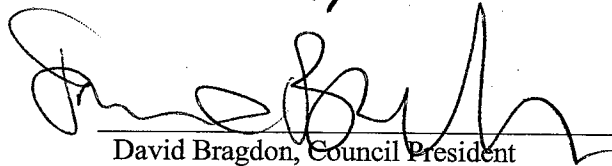
WHEREAS, the parties desire to amend certain terms and payment provisions of the lease agreement and to incorporate other mutually-agreed provisions; and

WHEREAS, the parties desire to enter into a revenue share contract which will generate substantial revenue for the Oregon Zoo through April 2006; now therefore,


BE IT RESOLVED, THAT

That the Metro Council, acting as the Metro Contract Review Board authorizes the Chief Operating Officer to execute a Consent to Assignment and Modification of Lease Agreement in a form substantially similar to that attached hereto as Exhibit "A".

ADOPTED by the Metro Council this 1st day of April, 2004

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



## CONSENT TO ASSIGNMENT AND MODIFICATION OF LEASE AGREEMENT

This Contract Amendment No. 1, dated as of the last signature date below, amends Metro Contract No. 924826, entitled Lease Agreement, dated March 24, 2003, and is made by, between and among Metro, an Oregon metropolitan service district ("Metro"), Simex, Inc., a Canadian corporation, and Iwerks Entertainment, Inc, a California corporation ("Iwerks").

### RECITALS

1. In March 2003, SimEx, Inc. ("SimEx") and Metro, acting through the Oregon Zoo ("Zoo") entered into an equipment lease agreement, by which SimEx leased a portable simulation theater for use at the Oregon Zoo.
2. The parties desire to amend certain terms and payment provisions of the lease agreement and to incorporate other mutually agreed provisions. In addition, to facilitate these desired contract amendments, SimEx has requested the Zoo's consent under the lease agreement to the assignment of the agreement to Iwerks, a California corporation wholly owned by SimEx, and the Zoo is amenable to the request of Simex

Accordingly, in exchange for the promises and other considerations set forth in the lease agreement and in this Amendment No. 1, the parties hereby agree as follows:

### CONSENT TO ASSIGNMENT OF LEASE

Zoo hereby provides its consent to the assignment by Simex to Iwerks of the obligations and duties of performance, without exception, owed to the Zoo under and pursuant to the lease agreement and this Amendment No. 1.

### PROVISIONS OF CONTRACT AMENDMENT

1. Extension of Contract Term. The provisions of Lease Agreement, paragraph 1, Term, are amended to read as follows:

"Unless sooner terminated in accordance with Section 7 hereof, this Agreement shall continue until April 30, 2006, at which time Oregon Zoo agrees to return to Iwerks one portable simulation theater and related software."

2. The provisions of paragraph 2(C) are amended to read as follows:

“Iwerks shall provide the film software to be utilized in conjunction with the portable simulation theater from all titles that have been programmed for the portable simulation theater. The license fees for such titles shall be deemed to be \$30,000 per year, which sum shall further be deemed to be included in the consideration calculated under Paragraph 4 of this Contract Amendment.”

3. The provisions of paragraph 4, Upgrades and Retrofits, are amended to include the following:

“Metro shall bear one-half the cost of upgrading the portable simulation theater to provide three-dimensional display capability (‘3D operation’) up to a maximum expenditure of \$25,000.”

4. The provisions of paragraph 6 of the Lease Agreement are amended to provide as follows:

“In consideration of the lease of the theater to be provided by Iwerks and the rights to be granted hereunder, the Oregon Zoo will pay to Iwerks 65% of the net revenue derived from the sale of admissions to the portable simulation theater. For the purposes of this paragraph, “net revenue” means the total amount of revenue derived from sales for admissions to the portable simulation theater, less the following expenses: the Metro Excise Tax; expenses associated with marketing the portable simulation theater as an attraction at the Oregon Zoo up to the amount of \$15,000 per year; operating facilities expenses, including utilities; and operations staff expenses. The consideration for the lease of the portable simulation theatre shall be payable within twenty one (21) calendar days following the close of each calendar month for sales during such period, beginning with the period in which the first sale or disposition of tickets occurs.

5. The following provisions are added to and made a part of the lease agreement:

- (a.) Zoo shall develop a ticketing strategy for groups of adults, children, seniors or schools with the intention of attracting more than 108,747 paying visitors per year and generating an average contribution of \$3.50 per visitor to the portable simulation theatre. Such ticketing strategy shall include sales of tickets for the portable simulation theatre alone or in combination with any admission to any or all of the Oregon Zoo, the Oregon Zoo Train or the Winged Wonders Butterfly Exhibit.
- (b.) The parties agree that in the event of the sale of any discounted combination admission tickets, the same discount percentage shall be applied both to the admission price to the portable simulation theatre and to any other admission price combined with the theatre admission. All ticket combinations shall be sold at various locations, which may include Zoo ticket booths and group sales locations.

- (c.) The parties agree that the Zoo shall make all ticket sales by use of Zoo staff and shall collect and account for all ticket revenues received on a periodic accounting basis.
  - (d.) Financial statements and any supporting documents such as, without limitation, ticket audits statements, invoices, timesheets, shall be prepared each period for review by the parties and included with payment to Iwerks.
6. Except as modified herein, all other terms and conditions of the original Lease Agreement shall remain in full force and effect. Any material conflict between the provisions of the original Lease Agreement and this Amendment No. 1 shall be resolved by reference to and reliance upon this Lease Agreement Amendment No. 1.

OREGON ZOO

SIMEX, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

IWERKS ENTERTAINMENT, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF MODIFYING AND  
EXTENDING THE LEASE AGREEMENT  
BETWEEN METRO AND SIMEX, INC.,  
CONTRACT NO. 924826

RESOLUTION NO. 04-3438

Introduced by Michael Jordan, Chief  
Operating Officer in concurrence with  
Council President David Bragdon

WHEREAS, the Oregon Zoo is dependent on enterprise income for over 60% of its operating budget;  
and

WHEREAS, in 2003, SimEx, Inc. and Metro, acting through the Oregon Zoo entered into an equipment  
lease agreement, by which SimEx leased a portable simulation theater for use at the Oregon Zoo; and

WHEREAS, simulator sales have increased enterprise income by over \$300,000 since 2003; and

WHEREAS, the parties desire to amend certain terms and payment provisions of the lease agreement  
and to incorporate other mutually-agreed provisions; and

WHEREAS, the parties desire to enter into a revenue share contract which will generate substantial  
revenue for the Oregon Zoo through April 2006; now therefore,

BE IT RESOLVED,

That the Metro Council, acting as the Contract Review Board,

1. Authorizes the Chief Operating Officer to execute the modification and extension of the lease agreement  
substantially similar to the attached as Exhibit "A" with SimEx, Inc.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**MODIFICATION TO THE LEASE AGREEMENT  
BETWEEN METRO AND SIMEX, INC.**

This Contract Amendment No. 1, dated as of the last signature date below, amends Metro Contract No. 924826, entitled Lease Agreement, dated March 24, 2003.

**RECITALS**

1. In 2003, SimEx, Inc. ("SimEx") and Metro, acting through the Oregon Zoo ("Zoo") entered into an equipment lease agreement, by which SimEx leased a portable simulation theater for use at the Oregon Zoo.
2. The parties desire to amend certain terms and payment provisions of the lease agreement and to incorporate other mutually-agreed provisions.

**PROVISIONS OF CONTRACT AMENDMENT**

1. Extension of Contract Term. The provisions of Lease Agreement, paragraph 1, Term, are amended to read as follows:

"Unless sooner terminated in accordance with Section 7 hereof, this Agreement shall continue until April 30, 2006, at which time Oregon Zoo agrees to return to SimEx one portable simulation theater and related software."

2. The provisions of paragraph 2(C) are amended to read as follows:

"SimEx shall provide the film software to be utilized in conjunction with the portable simulation theater from all titles available from the SimEx film library."

3. The provisions of paragraph 4, Upgrades and Retrofits, are amended to include the following:

"Metro shall bear one-half the cost of upgrading the portable simulation theater to provide three-dimensional display capability ('3D operation') up to a maximum expenditure of \$25,000."

4. The provisions of paragraph 6 of the Lease Agreement are amended to provide as follows:

"In consideration of the lease of the theater to be provided by SimEx and the rights to be granted hereunder, the Oregon Zoo will pay to SimEx 65% of the net revenue derived from

the sale of admissions to the portable simulation theater. For the purposes of this paragraph, "net revenue" means the total amount of revenue derived from sales for admissions to the portable simulation theater, less the following expenses: the Metro Excise Tax, expenses associated with marketing the portable simulation theater as an attraction at the Oregon Zoo, operating facilities expenses, including utilities, and operations staff expenses.

5. Except as modified herein, all other terms and conditions of the original Lease Agreement shall remain in full force and effect. Any material conflict between the provisions of the original Lease Agreement and this Amendment No. 1 shall be resolved by reference to and reliance upon this Lease Agreement Amendment No. 1.

OREGON ZOO

SIMEX, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Resolution No. 04-3438  
Exhibit B  
Metro Contract No. 924826**

**Oregon Zoo - SimEx Revenue Share ProForma Year 1**

	FY 04 April	FY 04 May	FY 04 June	FY 05 July	FY 05 August	FY 05 Sept	FY 05 Oct	FY 05 Nov	FY 05 Dec	FY 05 Jan	FY 05 Feb	FY 05 March	Totals
Simulator Attendance	8,000	10,850	15,732	18,573	22,706	9,796	5,070	2,654	7,882	562	1,922	5,000	108,747
Average Ticket Cost	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50
<b>Revenue (US\$)</b>	<b>\$28,000</b>	<b>\$37,975</b>	<b>\$55,062</b>	<b>\$65,006</b>	<b>\$79,471</b>	<b>\$34,286</b>	<b>\$17,745</b>	<b>\$9,289</b>	<b>\$27,587</b>	<b>\$1,967</b>	<b>\$6,727</b>	<b>\$17,500</b>	<b>\$380,615</b>
<b>Expenses:</b>													
Excise Tax 7.5%	2,100	2,649	3,842	4,535	5,544	2,392	1,238	648	1,925	137	469	1,221	26,701
Marketing	0	5,000	0	0	4,000	0	0	1,000	0	0	0	4,470	14,470
Operating Facilities	200	200	200	200	200	200	200	200	200	200	200	200	41,171
Operations Staff	2,000	2,784	5,007	5,185	4,811	3,825	2,106	612	3,060	350	850	1,500	32,090
<b>Expenditures (US\$)</b>	<b>\$4,300</b>	<b>\$10,633</b>	<b>\$9,049</b>	<b>\$9,920</b>	<b>\$14,555</b>	<b>\$6,417</b>	<b>\$3,544</b>	<b>\$2,460</b>	<b>\$5,185</b>	<b>\$687</b>	<b>\$1,519</b>	<b>\$7,391</b>	<b>\$75,661</b>
Revenue Minus Expense	\$23,700	\$27,342	\$46,013	\$55,085	\$64,916	\$27,869	\$14,201	\$6,829	\$22,402	\$1,280	\$5,208	\$10,109	\$304,953
Zoo Share:	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	
	8,295	9,570	16,105	19,280	22,720	9,754	4,970	2,390	7,841	448	1,823	3,538	\$106,734

Reflects actual sales from FY 03/04  
Marketing, labor, operations expenses based on actual in FY 03/04



## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3438, FOR THE PURPOSE OF  
MODIFYING AND EXTENDING THE LEASE AGREEMENT BETWEEN METRO AND  
SIMEX, INC., CONTRACT NO. 924826

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Date: March 15, 2004

Prepared by: Teri Dresler

### BACKGROUND

In 2003, Metro entered into an equipment lease agreement with SimEx, Inc., by which SimEx leased a portable simulation theater for use at the Oregon Zoo. Since 2003, simulator sales have increased enterprise income to the Zoo by \$330,000. In an effort to continue to increase enterprise revenue at the Zoo, the two parties are interested in modifying the existing agreement to create a revenue share agreement extending over the next two years.

The revenue share is based on net revenues; after excise tax, operations labor & expenses, and promotions. The share realized by the Oregon Zoo is 35% of the net revenue. Conservatively projected, the Zoo expects to generate over \$100,000 in net revenue the first year of the extension, and over \$150,000 in net revenue the second year of the extension. These projections are based on minimal increases to current ridership levels. Industry standards and experience indicate significantly higher ridership in the second and third year of operation.

The simulator has added an additional value for families visiting the Oregon Zoo. Many positive comments have been received from guests who noted a pleasant surprise at the Zoo having such an entertaining feature. Comments have continued to come in requesting additional shows and questions about the future plans for the simulator. It is due to the positive reception from our guests, and the potential to increase enterprise revenue that the Oregon Zoo wishes to continue operating the simulator, and the relationship with SimEx, Inc.

### ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** None
3. **Anticipated Effects** With the modification and extension of the existing lease agreement, it is expected that the projected net revenues help support the Zoo operating budget. In addition, we anticipate receiving many more positive comments from Zoo guests who have not yet experienced the simulator shows.
4. **Budget Impacts** The Zoo expects to receive at a minimum of \$100,000 in net revenues in the first year of this extension, and a minimum of \$150,000 in net revenues in the second year of this extension. Please see attached Exhibit B.

### RECOMMENDED ACTION

Approval of Resolution No. 04-3438.