

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND



2011 JUN 30 PM 12:27

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
P. Lamont Ewell
Interim City Administrator

(510) 238-3301

July 12, 2011

Life Enrichment Committee
Oakland, California

Chair Desley Brooks and Members of the Life Enrichment Committee

RE: **A Report And Resolution Authorizing The City Administrator To Amend Master Agreement Between City Of Oakland And The East Bay Zoological Society / Oakland Zoo Pursuant To Grant Requirements From Proposition 84 Funds From The California Department Of Parks And Recreation, Which Require 1) Extension Of The Agreement To 30 Years; And 2) Elimination Of The "At-Will" Termination Clause**

SUMMARY

The East Bay Zoological Society ("EBZS") applied for and was awarded a \$7,000,000 grant for the Oakland Zoo's California Trail Project from the California State Department of Parks and Recreation Office of Grants and Local Services' ("OGALS") Namre Education Facilities grant program, funded by Proposition 84. In order to execute a contract with EBZS to finalize this grant award, OGALS requires two changes to the existing Oakland Zoo Management Agreement between the City and EBZS (the "Management Agreement") concerning land tenure and termination. The first change is to extend the current fifteen (15) year term to thirty (30) years and the second change is to replace the current "at-will" termination clause with either a "no termination" clause or a new termination clause specifying that the agreement is revocable only for breach of the contract provisions or by mutual consent of the parties.

Item: _____
Life Enrichment
July 12, 2011

The current Management Agreement providing for maintenance, operation and improvement of the City-owned Oakland Zoo by EBZS was entered into by the City and EBZS on March 23, 2005 and has a fifteen (15) year term, expiring on October 31, 2019. The Management Agreement also contains an "at-will" termination clause allowing termination by either party "at any time without cause and without penalty upon 180 days prior written notice." Staff requests the City Council approve an amendment to the Management Agreement that satisfies the Proposition 84 grant program requirements by extending the Agreement's term to thirty (30) years and eliminating the "at-will" termination clause.

FISCAL IMPACT

No direct impact to City funds. The proposed contract amendment would allow EBZS to receive a \$7,000,000 grant award to fund a new exhibit at the City-owned Oakland Zoo.

BACKGROUND

On November 7, 2006, California voters passed Proposition 84, the \$5.4 billion "Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006." As part of Proposition 84, a \$93 million Nature Education Facilities ("NEF") grant program was established to fund the development of nature education facilities, buildings, structures and exhibit galleries that will educate visitors and inspire environmental stewardship. The NEF program is overseen by OGALS.

EBZS applied for and was awarded a \$7,000,000 NEF grant for the Zoo's California Trail Project, a 56-acre approved footprint in Knowland Park with more than twenty acres of open space habitat and approximately twenty acres of new exhibits featuring regionally extinct animals such as the grizzly bear. The inclusion of diverse native plant life and local cultural history will add to the hillside vistas and park experience for the Zoo's visitors. The California Trail exhibit will be designed to inspire the Oakland community and other Zoo visitors with a life-long commitment to environmental responsibility and stewardship while helping to save California's threatened natural history through education, exhibits, collaboration and awareness.

NEF grant program requirements are set forth in the Proposition 84 Statewide Park Program and NEF Grant Administration Guide, dated January 14, 2010. The grant program requires that all land tenure agreements for project sites not owned in fee simple by the applicant include specific provisions regarding term and termination. Because the NEF grant applicant is EBZS and the project site, the Oakland Zoo, is owned by the City of Oakland, these specific land tenure requirements apply to the Management Agreement. Two of these requirements are as follows:

Item: _____
Life Enrichment
July 12, 2011

- (1) Grant amounts greater than \$1,000,000 require at least 30 years of land tenure. OGALS will start counting the 30 year land tenure requirement from July 1, 2009. Therefore, the land tenure agreement must extend to at least June 30, 2039.
- (2) The land tenure agreement must contain either (a) a no termination clause stating that the agreement is non-revocable or (b) a termination clause specifying that the agreement is revocable for breach of the contract provisions or by mutual consent. The applicable land tenure requirements specifically state that a termination clause allowing the land owner to revoke the agreement without cause, i.e. "at will," is not acceptable and will not be approved.

The current Management Agreement was entered into on March 23, 2005 by the City of Oakland and EBZS and provides for the maintenance, operation and improvement of the Oakland Zoo by EBZS. Pursuant to paragraph 2, the current term of the Management Agreement is for fifteen (15) years, commencing with the date of execution and expiring on October 31, 2019. Pursuant to paragraph 45, the Management Agreement may be terminated by either party at any time without cause and without penalty upon 180 days prior written notice. These provisions regarding term and revocability do not satisfy the NEF grant program's land tenure requirements described above.

In order to execute a contract with EBZS for the awarded funds, OGALS requires that the existing Management Agreement be amended to satisfy the grant program's land tenure requirements concerning term and revocability. Such amendment must extend the term of the Management Agreement from fifteen (15) years to thirty (30) years and eliminate the current "at will" termination clause.

In support of the EBZS grant application for NEF funds, the City of Oakland and EBZS each provided a letter to OGALS indicating that the City and EBZS would cooperatively work together to meet the grant program's land tenure requirements. The City's support letter, dated June 4, 2010 from the Office of the City Administrator, states as follows:

"The City of Oakland has had a policy of not approving long term land tenure agreements with 501(c)(3) organizations for more than a 20 year span. However, should the Nature Education Facilities grant be awarded to the East Bay Zoological Society, the City of Oakland commits to extend the existing management agreement with the East Bay Zoological Society enough times to meet the 30 year site control provisions required by the Nature Education Facilities Program of 2008."

Item: _____
Life Enrichment
July 12, 2011

The NEF grant award letter, dated April 12, 2011 from OGALS, and following communications from OGALS to EBZS articulated that the existing Management Agreement does not satisfy the land tenure requirements. The award letter requests that all grant requirements be met by July 12, 2011, but EBZS has informed OGALS that the Oakland City Council is expected to hear the matter regarding amendment of the Management Agreement on July 19, 2011. Should the Council approve the amendment, OGALS will accept a letter from the City detailing such approval until the amendment has been negotiated and executed by the City and EBZS.

KEY ISSUES AND IMPACTS

Amendment of the Management Agreement as described above is a prerequisite to EBZS receiving the awarded grant funds from OGALS.

The NEF grant application process was highly competitive with nearly one billion dollars in requests, which far exceeded the \$93,000,000 available. EBZS's project proposal for The California Trail exhibit was one of forty-four (44) selected for NEF funding from a pool of over 300 applications. Individual NEF grant amounts ranged from \$32,000 to \$7,000,000, putting EBZS's award for \$7,000,000 at the very top of the grant range.

EBZS has been under contract with the City of Oakland to manage the Oakland Zoo for nearly thirty (30) years. Receipt of the awarded NEF grant funds would enable EBZS to break new ground in science education and conservation through education, exhibits, collaboration and awareness in connection with the new 56-acre exhibit.

The proposed amendment of the Management Agreement will be presented to the Parks and Recreation Advisory Commission on July 13, 2011 for the Commission's feedback.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed agreement amendment will allow EBZS to receive \$7,000,000 in Proposition 84 funds to create a new 56-acre exhibit at the City-owned Oakland Zoo.

Environmental: The new Oakland Zoo exhibit will promote science education, conservation, protection of natural resources and wildlife, and environmental responsibility and stewardship.

Social Equity: The proposed agreement amendment will have no social equity impacts.

DISABILITY AND SENIOR CITIZEN ACCESS

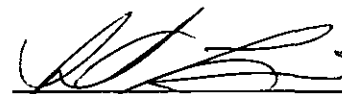
The Oakland Zoo is, and The California Trail will be, accessible to persons with disabilities.

Item: _____
Life Enrichment
July 12, 2011

ACTION REQUESTED OF THE CITY COUNCIL

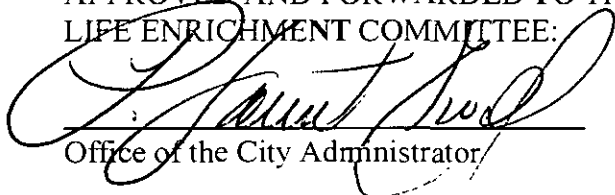
Staff requests the City Council approve a resolution authorizing the City Administrator to negotiate and execute an amendment to the Oakland Zoo Management Agreement between the City and the East Bay Zoological Society pursuant to grant requirements of Proposition 84 funds from the California Department of Parks and Recreation, which require (1) extension of the Management Agreement to thirty (30) years; and (2) elimination of the current "at-will" termination clause.

Respectfully submitted,



Margaretta Lin
Deputy City Administrator
City Administrator's Office

APPROVED AND FORWARDED TO THE
LIFE ENRICHMENT COMMITTEE:



Office of the City Administrator

Item: _____
Life Enrichment
July 12, 2011

DRAFT

City Attorney

OAKLAND CITY COUNCILOFFICE OF THE CITY CLERK
CITY OF OAKLAND, CALIFORNIA2011 JUN 22 PM 12:27
RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AMEND MASTER AGREEMENT BETWEEN CITY OF OAKLAND AND THE EAST BAY ZOOLOGICAL SOCIETY / OAKLAND ZOO PURSUANT TO GRANT REQUIREMENTS FROM PROPOSITION 84 FUNDS FROM THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, WHICH REQUIRE 1) EXTENSION OF THE AGREEMENT TO 30 YEARS; AND 2) ELIMINATION OF THE "AT-WILL" TERMINATION CLAUSE.

WHEREAS, on November 7, 2006, California voters passed Proposition 84, the \$5.4 billion "Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006"; and

WHEREAS, as part of Proposition 84, a \$93 million Nature Education Facilities ("NEF") grant program was created that is overseen by the California State Department of Parks and Recreation Office of Grants and Local Services ("OGALS") to fund projects related to the development of nature education facilities, buildings, structures and exhibit galleries that will educate visitors and inspire environmental stewardship; and

WHEREAS, the East Bay Zoological Society ("EBZS") applied for and was awarded a \$7,000,000 NEF grant for the Oakland Zoo's California Trail Project; and

WHEREAS, as a condition to receipt of the grant contract, EBZS must satisfy all Proposition 84 grant program requirements regarding land tenure and revocability; and

WHEREAS, pursuant to the Grant Administration Guide for Proposition 84 grant programs, the land tenure agreement for any grant project site not owned in fee simple by the applicant must provide for land tenure of at least thirty (30) years and such agreement must either be non-revocable or revocable for breach of the contract provisions or by mutual consent.

WHEREAS, as the fee owner of the Oakland Zoo, the City of Oakland has an active management agreement with EBZS, effective March 23, 2005, that has a fifteen (15) year term and expires on October 31, 2019 (the "Management Agreement"); and

WHEREAS, the City of Oakland has had a policy of not approving long term land tenure agreements with 501(c)(3) organizations for more than a twenty (20) year term; and

WHEREAS, the Management Agreement contains an "at-will" termination provision allowing for termination by either party "at any time without cause and without penalty upon 180 days prior written notice"; and

WHEREAS, as a condition to EBZS's receipt of the \$7,000,000 NEF grant for the Oakland Zoo,

OGALS requires EBZS to amend the Management Agreement with the City of Oakland to (1) extend the term of the Management Agreement to at least June 30, 2039 and (2) replace the “at-will” termination provision with either a “no termination” clause or a termination clause specifying that the Management Agreement is revocable for breach of the contract provisions (“for cause”) or by mutual consent of the parties; and

WHEREAS, in support of the EBZS grant application for NEF funds, the City of Oakland and EBZS each provided a letter to OGALS indicating that the City and EBZS would cooperatively work together to meet the grant program’s land tenure requirements; and

WHEREAS, the City Council finds that EBZS’s receipt of a \$7,000,000 grant for the Oakland Zoo warrants a one-time exception to the City’s twenty (20) year non-profit land tenure policy in order to allow amendment of the Management Agreement with EBZS to satisfy the Proposition 84 grant program requirements; now, therefore be it

RESOLVED, That this Resolution complies with the California Environmental Quality Act as the City Council is relying upon a Subsequent Mitigated Negative Declaration/Addendum, which it adopted on June 21, 2011 and no further environmental review is required; and be it

FURTHER RESOLVED, That the City Council hereby approves the amendment of the Management Agreement between the City of Oakland and EBZS to comply with the Proposition 84 grant program requirements regarding land tenure; and be it

FURTHER RESOLVED, That the City Administrator or her designee is hereby authorized to negotiate and execute an amendment to the Management Agreement that extends the term to thirty (30) years and eliminates the “at-will” termination clause; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator to conduct negotiations, execute documents, and take any other action with respect to the amendment of the Management Agreement consistent with this Resolution and its basic purpose; and be it

FURTHER RESOLVED: That prior to execution, all contracts and agreements shall be reviewed and approved for form and legality by the Office of the City Attorney and a final copy shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California