

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

M. M. Morrison
City Attorney

RESOLUTION No. 83490 C.M.S.
11 JUL 25 AM 10:51

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 FROM 2009; 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, JUL 19 2011, 20

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LaTonda Simmons

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