

RESOLUTION NO. 26425

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AMENDED LOAN AGREEMENT WITH FRIENDS OF THE ZOO RELATIVE TO WARNER PARK IMPROVEMENTS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks and Recreation be and is hereby authorized to enter into an Amended Loan Agreement with Friends of the Zoo relative to Warner Park improvements.

ADOPTED: August 31, 2010

/add

AMENDED LOAN AGREEMENT

THIS AMENDED AGREEMENT, is made and entered into this _____ day of _____, 2010, by and between the FRIENDS OF THE ZOO, INC., a Tennessee nonprofit corporation with its principal place of business located at 1254 East Third Street, Chattanooga, Tennessee 37404 ("FOZ"), and the CITY OF CHATTANOOGA, TENNESSEE, a Tennessee municipal corporation ("City").

RECITALS

WHEREAS, City Council Ordinance No. 12071 adopted on February 5, 2008 authorized the Administrator of the Department of Parks and Recreation to enter into the original Agreement and to appropriate two million dollars (\$2,000,000.00) to be used for site improvement to the Chattanooga Zoo;

WHEREAS, upon the execution of the original Agreement, FOZ indicated a desire to construct improvements to the Chattanooga Zoo (the "Improvements") on property owned by City and more fully described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), which will serve the citizens of the City of Chattanooga. A description of the Improvements is set forth on Exhibit "B" attached hereto and incorporated herein by reference;

WHEREAS, City's support hereunder is conditioned on FOZ's agreement to construct the Improvements for the continued use and enjoyment of the citizens of Chattanooga, Tennessee, and the terms contained herein;

WHEREAS, City will retain right, title, and interest in the Improvements and FOZ will relinquish any ownership right in the Improvements;

WHEREAS, FOZ and City are entering into a Lease Agreement for the Property wherein FOZ will operate the Chattanooga Zoo;

WHEREAS, FOZ has indicated to City its inability due to financial constraints of complying with the terms of the original Agreement and has requested modification of the original terms;

WHEREAS, the outstanding balance under the terms of the original Agreement as of the date of this Amended Agreement is one million seven hundred thousand dollars (\$1,700,000.00).

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations of the parties as set forth herein, the parties agree as follows:

1. City previously agreed to advance funds on behalf of FOZ to pay for the construction of the Improvements in an amount of Two Million Dollars (\$2,000,000.00) (the "Cost of Improvements"). City has complied with this requirement and has advanced Two Million Dollars (\$2,000,000.00) for the construction of Improvements as required under the terms of the original Agreement. Under the original Agreement, FOZ agreed to pay City \$400,000 annually as set forth in the amortization table. To date, FOZ has reimbursed City in an amount of three hundred thousand dollars (\$300,000.00). The Parties have agreed to renegotiate the terms of the original Agreement as set forth in this Amended Agreement.

2. This Amended Agreement shall commence upon execution of this Agreement by the parties and shall terminate upon the full repayment of the Cost of Improvements by FOZ.

3. FOZ agrees to raise funds to reimburse City for the Cost of Improvements or otherwise allocate funds from operation of the Zoo to reimburse City.

4. FOZ agrees that all funds expended by City must be directly paid to construction companies providing products and services. In order for City funds to be expended, FOZ submitted to City property documentation of costs incurred demonstrating compliance with the Tennessee Municipal Purchasing Law and federal tax law. Upon approval by FOZ, City made direct payments to vendors for which proper documentation has been provided.

5. FOZ agrees to repay the remaining Cost of Improvements of one million seven hundred thousand dollars (\$1,700,000.00) to City in an amount of one hundred fifty thousand dollars (\$150,000.00) per year. The initial one hundred fifty thousand dollar (\$150,000.00) payment shall be due to City on July 1, 2011. The yearly payment shall be due and payable on or before July 1 of each year thereafter until the total remaining Cost of Improvements are paid in full by FOZ.

6. As an early payoff incentive to FOZ, City agrees to appropriate to FOZ an amount equal to one dollar for every two dollars raised by FOZ through donations for capital improvements to be used to reduce the outstanding balance of funds advanced to FOZ under the original Agreement. The maximum City appropriation to reduce the balance owed shall be two hundred fifty thousand dollars (\$250,000.00) per City fiscal year. Any City appropriation to reduce the balance owed shall be subject to annual appropriation each City fiscal year by the City Council. Any City appropriation shall be in addition to the amounts paid under Section 5.

7. FOZ agreed to oversee and manage the construction of the Improvements. Construction of the Improvements which were completed in compliance with all applicable local, state, and federal rules, regulation, ordinances, and laws. All contracts or subcontracts, including, but not limited to, the procurement of equipment, services, supplies, and professional services (architects and engineers) and subject to public advertising and bidding consistent with

the provisions of the Municipal Purchasing Act, T.C.A. § 6-56-301, *et seq.* City agreed to make payments to vendors, with proper documentation and FOZ's approval.

8. All contractors must be licensed and shall comply with all requirements of the State of Tennessee Contractor's Licensing Act. All contractors, subcontractors and professionals involved in the construction of the playground must be approved by City.

9. Within fifteen (15) days following the end of each calendar quarter during the term of the original Agreement, FOZ submitted a report of its progress on construction of the Improvements, which included copies of change orders and records of in-kind donations designated for repayment of the Cost of Improvements. FOZ submitted cumulative reporting in a format agreeable to City of expenditures with each request for payment on a monthly basis.

10. This original Agreement contemplated that the construction of the Improvements to the Chattanooga Zoo presents special opportunities to both parties herein and is a special inducement to them for entering into the original Agreement. As a result, neither party shall assign its rights or delegate its duties hereunder, or any interests herein, or any portion hereof. Any attempt at assignment or delegation shall be void, and any assignee or delegatee shall acquire no right or interest by reason of such attempted assignment or delegation. Assignment of this Agreement by either party or by a trustee in bankruptcy shall be a material, non-curable breach of this Agreement entitling the non-breaching party to terminate this Agreement immediately.

11. FOZ shall procure the following insurance with insurance companies licensed in the State of Tennessee, and shall file evidence of such insurance with City's Manager of Real Property.

- A. **Commerical General Liability:** Coverage shall have minimum limits for bodily injury of \$5,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability. Minimum liability requirements subject to adjustment by City, upon thirty (30) days written notice to FOZ.
- B. **Workers' Compensation:** Insurance covering all employees meeting Statutory Limits in compliance with all then applicable State and Federal laws.
- C. **Automobile Insurance:** Vehicles owned and used by FOZ and its employees for business purposes relating to the Zoo operations under this agreement shall at all times be insured against loss or damage resulting to persons with minimum liability limits of \$500,000 per occurrence, \$1,000,000 aggregate and against loss or damage to property with minimum liability limits of \$100,000 per occurrence.
- D. **Errors and Omissions:** Insurance covering errors and omissions by FOZ Board member or directors.

Special Requirements: City shall be listed as the Certificate Holder and included as an **Additional Insured** on the Comprehensive General Liability, Automobile and Errors and Omissions policies, as required by Section 11(A) (C) and (D) of this Agreement.

Current, valid insurance policies meeting the requirement herein identified shall be maintained by FOZ during the duration of this Agreement. Renewal certificates shall be sent to City's Manager of Real Property at least thirty (30) days prior to any expiration date. There shall be a thirty (30) day notification to City in the event of cancellation or

modification of any required insurance coverage. This indemnification shall survive the expiration of this Agreement.

12. During the term of this Agreement and for a period of three (3) years after the termination of this Agreement (the "Audit Period"), FOZ shall maintain financial and operational records related to this Agreement or to any other agreement with City. FOZ shall make all books and records open to inspection by the City Auditor or assigned designee(s) during normal business hours for the period of this Agreement. During the Audit Period, FOZ hereby grants to City or its designee(s) upon three (3) days' prior notice to FOZ, access to and the right to make copies of any of FOZ's books, statements, documents, papers or records (in whatever form they may be kept, whether written, electronic or other) which arise from or relate to the terms and conditions of this Agreement, or any other agreement between the parties, in order to permit City to conduct audits and examinations. City's right to audit and to make copies shall apply whether such information is located at FOZ's place of business or at FOZ's banks, financial institutions, or at the office of FOZ's financial consultants, accountants, or bookkeepers. For the purposes of such audit, FOZ waives its right to the confidentiality of all financial information and FOZ authorizes City or its designee(s) to access, obtain, and make copies of financial information directly from FOZ's banks, financial institutions or lenders, or from FOZ's financial consultants, accountants, or bookkeepers. City agrees to provide FOZ an opportunity to discuss and respond to any finding before a final audit report is filed.

13. Any notice given under this Amended Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, Certified, Return Receipt Requested, to City, care of its Mayor at City Hall, 101 East 11th Street, Chattanooga, Tennessee 37402 and with a copy to its City Attorney at 801 Broad Street, Suite 400, Chattanooga,

Tennessee 37402, and to FOZ at the address first shown above. Change of address shall be given in the same manner as stated herein for other notices.

14. The acceptance of performance or the payment of monies shall not operate as a waiver of any provision of this Agreement, or of any rights herein. The waiver of any breach of this Amended Agreement shall be in writing and shall not constitute a waiver of any other or subsequent breach of this Amended Agreement.

15. This Amended Agreement shall not be modified, amended, or terminated orally, and no such amendment, modification, or termination shall be effective for any purpose unless same is in writing.

16. This Amended Agreement shall be governed by and construed pursuant to the laws of the State of Tennessee.

17. This Amended Agreement constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

18. Subject to applicable laws, rules, and regulations, the parties shall not discriminate in the performance of this Amended Agreement on the basis of sex, race, age, color, religion, handicapped status or national origin.

19. This Amended Agreement shall be binding on and inure to the benefit of and be enforceable by the respective successors of FOZ and City.

20. This Amended Agreement may be executed by the parties independently in any number of identical counterparts, and upon execution of both parties of any such independent counterparts, this Amended Agreement shall be in full force and effect on the date the last party executes an identical counterpart (the "Effective Date") as if the parties had executed one

and the same counterpart, and all of such counterparts when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this document to be executed with all of the formalities required by law as of the date first stated above.

FRIENDS OF THE ZOO, INC.

By: _____

CITY OF CHATTANOOGA, TENNESSEE
DEPARTMENT OF PARKS AND RECREATION

By: _____
LAWRENCE A. ZEHNDER, *Administrator*