

RESOLUTION NO. 26420

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH FRIENDS OF THE ZOO FOR THE LEASE AND MANAGEMENT OF THE CHATTANOOGA ZOO AT WARNER PARK.

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 agreement with Friends of the Zoo for the lease and management of the Chattanooga Zoo at Warner Park.

ADOPTED: August 31, 2010

/mms

**LEASE AGREEMENT BETWEEN CITY OF CHATTANOOGA AND FRIENDS OF
THE ZOO, INC.**

THIS AGREEMENT is entered into this ____ day of _____, 2010, between the CITY OF CHATTANOOGA, a municipal corporation of the State of Tennessee (hereinafter referred to as "City") and FRIENDS OF THE ZOO, INC., a Tennessee non-profit corporation with its principal address at 301 Holtzclaw Avenue, Chattanooga, Tennessee, 37404 (hereinafter referred to as "FOZ").

WITNESSETH:

WHEREAS, FOZ is dedicated to the advancement of the Chattanooga Zoo at Warner Park (hereinafter "Zoo") as a superior zoological institution and therefore supports the stated mission of the Zoo; and

WHEREAS, City recognizes the Zoo as a vital cultural and recreational community asset and wishes to enhance the Zoo's contributions to citizens in the areas of recreation, education and conservation; and

WHEREAS, City and FOZ are committed to the development and support of the Zoo and its goal of becoming the best rated Zoo in a mid-sized city; and

WHEREAS, City and FOZ have been working together to promote and support the operation and development of the Zoo; and

WHEREAS, City is the owner of the Zoo; and

WHEREAS, City has determined that it would be in the best interest of City to enter into an Agreement with FOZ to lease the Zoo Premises to FOZ and allow it to provide for the entire Zoo operation under the terms and conditions set forth herein; and

WHEREAS, the Parties entered into a Memorandum of Understanding on April 30, 2004 regarding the operation of the Zoo.

NOW, THEREFORE, for and in consideration of the mutual efforts of the parties to promote and support the development of the Zoo, and in consideration of the respective covenants, agreements, conditions and terms stated herein, the parties agree that the previous Memorandum of Understanding shall be terminated and replaced by this Agreement as follows:

1. PREMISES AND PERSONAL PROPERTY.

1.1 **Premises.** Subject to the terms, covenants and conditions set forth in this Agreement, City leases to FOZ and FOZ leases from City Approximately fourteen (14) acres of land and improvements shown on Exhibit 1 attached hereto on which the Zoo is currently operated, located at 301 Holtzclaw Avenue in Chattanooga, Tennessee, hereinafter referred to as "Premises." The Premises and the equipment, buildings, and furnishings of the Zoo shall be

used exclusively to operate Zoo business. FOZ shall not use or permit the Premises or said equipment, buildings, or furnishings to be used for any other purpose without prior written consent of City.

1.2 **Personal Property.** Subject to the terms, covenants, and conditions set forth in this Agreement, City leases to FOZ and FOZ leases from City the personal property, vehicles, and equipment currently in use at the zoo and necessary to the operation and maintenance of the Zoo, a list of which is attached as Exhibit 2. City hereby authorizes employees of the FOZ to operate any vehicles and other equipment owned by the City and leased to FOZ pursuant to and in furtherance of this agreement, provided that the operation shall be specifically covered by the insurance policies required to be maintained by FOZ under this agreement. FOZ shall maintain all such personal property in good condition and repair, and shall replace with items of similar quality any of the Personal Property that becomes inoperable or unusable and is necessary for the operation of the Zoo in FOZ's reasonable discretion. All personal property obtained by FOZ during the Term of this Agreement for use at the Zoo shall become City property upon termination of this Agreement. Further, FOZ agrees to comply with all state laws and City policies and procedures for the disposal of any personal property.

2. **TERM OF AGREEMENT.**

2.1 **Term.** This Agreement shall be for an initial term of five (5) years, commencing on the date of execution of this Agreement by the City. The Parties agree to meet in February of each year during the term of the Agreement to discuss changes in the allocation of funds and other budgetary concerns.

2.2 **Extended Terms.** The extended terms of this Agreement shall be for two additional three (3) year periods commencing at the end of the initial term, in which the Parties shall have the option to accept the extended terms or terminate the Agreement following the Initial Term. However, this option must be exercised by joint agreement of the Parties at least six (6) months prior to the end of the initial term.

3. **NAME.** The name of the Zoo shall remain "The Chattanooga Zoo at Warner Park", during the term of this Agreement, unless both Parties agree to a name change in writing.

4. **RENT.** During the Term of this Agreement, FOZ shall pay to City annual rent equal to one dollar (\$1.00).

5. **ANNUAL APPROPRIATION.**

5.1 **Payment of Annual Appropriation.** As compensation for all of FOZ's services in operating the Zoo pursuant to this Agreement, and for payment by FOZ of all operating expenses, City shall pay FOZ an annual appropriation (hereinafter "Appropriation") of not less than SIX HUNDRED THIRTY NINE THOUSAND DOLLARS (\$639,000.00). The Appropriation paid by City shall not exceed forty-five (45%) of the total operating budget of the Zoo. The Appropriation shall be paid to FOZ in twelve equal monthly installments on or before

the fifteenth (15th) day of each month, with the first payment beginning on July 1, 2010. To the extent that any employees elect to remain City employees under Section 6 of this Agreement, the Appropriation shall be reduced by the total annual amount of the employee's total salary and benefits paid by the City.

5.2 **Funding of Appropriation.** City intends to fund the payment of the Appropriation in each City fiscal year as part of the Parks and Recreation Department for the City. The payment of the Appropriation in any City fiscal year shall also be governed and subject to the budget and fiscal constraints of City. In the event that the City is unable to pay the Appropriation due fiscal constraints, City shall be entitled to terminate this Agreement as set forth in Section 14 of this Agreement.

6. **EMPLOYEES.** All employees of City currently employed at the Zoo will remain in those positions until September 30, 2010. As of September 30, 2010, all City Zoo positions, including Zoo Director, Assistant Zoo Director, Education Curator, Community Partnerships Director, and all Zookeeper positions shall be eliminated. At that time, any employees in City positions with less than ten (10) years of service with the City will have the opportunity to apply for transfer to other open positions in the City or apply with FOZ for lateral positions. Employees with more than ten (10) years of service with the City shall be given the option to remain City employees under the management of FOZ until June 30, 2013 or retire and apply with FOZ for lateral positions. After July 1, 2013, all personnel engaged in the Zoo operation shall be employees of FOZ subject to its sole supervision, direction and control, and under no circumstances shall they be considered employees of the City. FOZ shall control and supervise the conduct, demeanor and appearance of its employees and shall train its employees to render a high degree of courteous and efficient service to the public. FOZ shall comply with all applicable federal, state and local laws, ordinances and regulations pertaining to all employees of the Zoo. FOZ shall be responsible for any employment benefits provided to all FOZ employees, including health insurance benefits.

7. **USE OF PREMISES.**

7.1 **Permitted Use.** FOZ shall use and continuously occupy the Property during the Term of this Agreement solely for the operation of a public zoo and related and incidental purposes, and for no other purpose. City shall be allowed to use the Property for the annual special event, known as GoFest, and any other special events upon reasonable notification to FOZ and based upon availability of dates. For all City events other than GoFest, City shall pay all expenses associated with incidentals for the event, including catering and FOZ employee over-time. City shall have unrestricted access to the Property to the extent allowed by the Association of Zoos and Aquariums (hereinafter "AZA") guidelines during the Lease term and FOZ shall provide a complete set of all keys and access codes to the City's Department of General Services.

7.2 **Days and Hours of Operation.** Except in the case of public disaster or other major emergency, or as otherwise authorized in writing by the Administrator of Parks and Recreation, the Zoo shall remain open at least 350 days per year for a minimum of six (6) hours per day, the specific opening and closing times established by FOZ and provided to the City.

7.3 **No Improper Uses or Nuisances.** FOZ shall not use, nor suffer or permit any person to use, in any manner whatsoever, the Premises for any improper, immoral or offensive purpose, nor for any purpose in violation of any federal, state, City or County law, ordinance, rule, order or regulation, or of any applicable governmental rule or regulation now in effect or hereafter enacted or adopted. FOZ shall exercise reasonable efforts not to permit to be carried on any activity that would constitute an actionable nuisance under the laws of the State of Tennessee.

8. **MANAGEMENT AND SUPERVISORY RESPONSIBILITIES.** FOZ is hereby given general authority by City to manage and supervise the day-to-day operation of the Zoo as an independent contractor and to perform the specific duties set forth in this Agreement.

9. **PERMITS, LICENSING, AND ACCREDITATION.** Throughout the Term of this Agreement, FOZ shall cause both itself and the Zoo to be at all times accredited and in good standing with the AZA. Any failure on part of FOZ to comply with this requirement shall constitute a material breach of this Agreement. Attached as Exhibit 3 to this Agreement is a list of all licenses and permits currently held by the City or FOZ in connection with the operation of the Zoo. FOZ shall cause all listed licenses and permits to remain current during the term of this Agreement. To the extent that any licenses or permits are in the name of the City, FOZ is hereby authorized to perform such services under the licenses and permits as are required in the operation of the Zoo.

Upon the termination of this Agreement, FOZ shall transfer all licenses or permits listed in Exhibit 3 back to the City and shall use its best efforts to assist City with the documentation of any such transfer or reapplication as may be required after termination of the Agreement. Further, FOZ shall obtain and pay for any and all additional necessary permits and licenses necessary for it to perform its obligations under this Agreement and shall comply with all laws governing the responsibility of an employer with respect to persons employed by FOZ. In the performance of its obligations under this Agreement, FOZ shall comply with all existing and future applicable rules, regulations and laws of the City of Chattanooga, Hamilton County, the State of Tennessee, or the United States Government.

10. **CAPITAL IMPROVEMENTS AND ALTERATIONS.**

10.1 **Improvements and Alterations.** FOZ may make such capital improvements and alterations to the Premises and the Zoo facilities as FOZ shall determine in its reasonable discretion are necessary to operate the Zoo; provided, however, that, other than routine maintenance and repairs or any capital expenditures of Fifty thousand dollars (\$50,000.00) or less, FOZ shall not make any expenditures of funds for a capital improvement or alteration to the Premises of the Zoo facilities without the express written permission of the City's Administrator of the Department of Parks and Recreation and the Mayor. FOZ shall not make any expenditures of funds for a capital improvement or alteration to the Premises of the Zoo facilities of fifty thousand dollars (\$50,000.00) or more without the express written permission of the City's Administrator of the Department of Parks and Recreation and the Mayor. Upon completion of any such project, FOZ shall provide copies of the final as-built plans and specifications to the Department of Parks and Recreation and Department of General Services. Any alterations or capital improvements made by FOZ shall comply with any and all applicable local, state and federal laws, rules and regulations, and FOZ shall obtain any required permits for such

alterations and capital improvements, at its expense. FOZ shall maintain records of all capital projects and provide a report of all capital projects to the City's Administrator of Parks and Recreation on a semi-annual basis.

10.2 **Title to Improvements.** All appurtenances, fixtures, improvements, equipment, additions and other property attached to or installed in the Premises during the Term of this Agreement shall be and remain the property of City and shall not be removed by FOZ.

10.3 **Capital Appropriations.** City may make capital appropriations to FOZ for use on capital projects to the extent allowed by the budget for each fiscal year of the Term of this Agreement.

11. **ZOO ANIMALS.**

11.1 **Ownership of Animals.** Except those animals under loan from other institutions or governmental entities, all animals currently and in the future exhibited, housed or otherwise kept or cared for on the Premises (hereinafter collectively "Zoo Animals"), shall be and remain the sole property of City.

11.2 **Care of Animals.** FOZ shall care for all Zoo Animals; provided, however, that such animal care shall be provided in accordance with all federal, state and local laws and regulations, and in accordance with the policies and guidelines adopted by AZA.

11.3 **Sale and Purchase of Animals.** Subject to the conditions set forth below, FOZ shall have the authority to sell or otherwise acquire or dispose of Zoo Animals in the course of FOZ's operation of the Zoo:

(a) The purchase, sale or other disposition of Zoo Animals shall be made in strict accordance with all applicable federal, state or local laws, regulations and policies, and the guidelines and policies of the AZA, including any applicable City policies and procedures regarding disposal of property; and

(b) FOZ may purchase and sell Zoo Animals; however, all funds from the sale of Zoo Animals must be specifically restricted to animal purchases and may not be used for any other operating or capital expense at the Zoo.

12. **MAINTENANCE.** FOZ shall maintain the Zoo in a clean, safe, sanitary and sightly condition, and as necessary to maintain all licenses and accreditations in accordance with Section 9 above. Any contractor engaged by FOZ to perform work on the Premises shall be required by FOZ to maintain insurance in amounts, on policies of coverage and offered by companies satisfactory to City and insure against liability for injury to persons and property arising out of all such contractor's operations and naming the City as an additional insured.

13. **FISCAL MATTERS.**

13.1 **FOZ Capital Campaign.** FOZ shall use its reasonable efforts to initiate and complete a fund-raising campaign each year of the Term of this Agreement to finance the construction of capital improvements at the Zoo.

13.2. **Revenue and Payment of Expenses.** FOZ shall collect and manage through its accounts all earned revenue produced from the operation of the Zoo to be used to fund the future operation and maintenance of the Zoo. The Parties agree that all admission fees, rental fees, concessions, camp fees and any other fees shall be established by FOZ and reported to the Administrator of Parks and Recreation. All operating expenses shall be the obligation of FOZ and shall be paid by FOZ promptly when due. All expenditures of FOZ shall be made in the name of FOZ and not in the name of the City of Chattanooga or the Zoo. FOZ is not authorized to bind the City to any contract, agreement or obligation.

13.3. **Fee Schedule.** Parties agree that prices and fees charged for use of the Zoo shall be established by FOZ. All prices and fees must be displayed and visible by Zoo patrons. All prices and fees established by FOZ must be reported in writing to the Administrator of the Department of Parks and Recreation on an annual basis.

13.4. **Annual Budget.** On or before March 1st of each year throughout the Term of this Agreement, FOZ shall at its sole expense, prepare and submit to the City Council for its review an annual report and budget setting forth a summary of the operations of the Zoo and the services provided by FOZ at the Zoo, and the estimated gross revenues, operating expenses and capital expenses of the Zoo for the following fiscal year. The City Council may, at its discretion, provide comments or suggestions to FOZ on a submitted budget. In addition, the City Council shall have the right to disapprove the budget in the event that City Council determines that the Appropriation or other gross revenues are projected to be expended for purposes inconsistent with the requirements of this Agreement. If the submitted budget is not approved following discussion between the Parties, this Agreement shall immediately terminate as set forth in Section 14.

13.5 **Annual Accounting.** FOZ shall arrange for an audit of its books and records by an independent, certified public accountant, which audit shall be conducted at FOZ's sole cost and expense and shall cover the previous fiscal year. FOZ shall deliver to the City Council, City Mayor and Administrator of Parks and Recreation a signed copy of each such annual audit within one hundred twenty (120) days after the end of the fiscal year covered by the Audit.

13.6 **Books and Records.** FOZ shall establish and maintain books, records and systems of account relating to the Zoo's gross revenues, operating expenses, and capital funds in accordance with generally accepted accounting principles. Such books, records and systems of account shall be retained by FOZ in accordance with generally accepted accounting practices and all applicable laws, and, upon termination of this Agreement, all retained books, records and systems of account shall be delivered to the City. All FOZ revenues shall be supported by documentation of a daily reconciliation process of pre-numbered receipts (electronic data processing system generated at the point of sale being acceptable). FOZ shall provide a receipt to any person or entity remitting funds to FOZ. All FOZ expenditures shall be supported with documentation and information to clearly identify the purpose and use of funds expended.

13.7 **Records Audit.** City or its assign may audit all financial and related records (including digital) associated with the terms of this Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by FOZ. City may further audit any FOZ records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

FOZ shall at all times during the term of this Agreement and for a period of five years after the end of this Agreement, keep and maintain records of the work performed pursuant to this Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the FOZ. Documents shall be maintained by the FOZ necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. FOZ shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by City at all reasonable times and without prior notice.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the FOZ and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the FOZ's obligations to City. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings of misappropriation of City funds or property. FOZ shall reimburse City for the total costs of an audit that identifies significant findings that would benefit City. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

13.8 **Outstanding Loans.** The outstanding loan agreement or loan documents executed by the Parties shall be amended following execution of this Agreement to the extent negotiated by the Parties. In the event that FOZ does not meet its obligations under any amended outstanding loan agreement between the Parties, City shall have the right, after review of FOZ financial operations, to withhold an amount from the operation Appropriation sufficient to meet the annual required payment under the Amended Loan Agreement provided that said amount does not prevent or limit FOZ's ability to operate the Zoo in a reasonable manner.

14. **TERMINATION.** Should the FOZ be found to have failed to perform its services in a manner satisfactory to City as per the specifications and requirements of this Agreement, City may terminate said agreement immediately for cause. City shall be sole judge of non-performance. Further, either party may terminate this Agreement with or without cause by giving the other party not less than a ninety (90) days written notice of such intent.

On the termination of this agreement for any reason, City shall have full authority to re-enter and take full possession of the Premises without the necessity of obtaining any legal process. FOZ stipulates that City shall not be liable to prosecution or for damages for resuming possession of the Premises. FOZ shall quit and surrender the said Premises and the equipment

and furnishings to which the City holds title in as good or better condition as when accepted by FOZ, reasonable wear and tear excepted.

Except to the extent prohibited by applicable law, the occurrence of any one or more of the following events is grounds for immediate termination of this Agreement hereunder, at the election of City: a) the filing by FOZ of a voluntary petition in bankruptcy or the making of an assignment for the benefit of creditors, or b) the filing of an involuntary bankruptcy petition against FOZ which is not withdrawn or dismissed within 10 days or c) a consenting by FOZ to the appointment of a receiver or trustee of all or part of FOZ's assets; or d) the filing by FOZ of a petition or answer seeking an arrangement or reorganization under the Federal Bankruptcy Act or any other applicable state or federal law, or e) the filing by FOZ of a petition to take advantage of any insolvency act or law.

In the event of any violation of this Agreement by FOZ, or if City or its authorized representative shall deem any conduct on the part of FOZ to be unlawful or a danger to safety and/or health of FOZ, its employees or any other person, City shall have the right to immediately terminate this Agreement and remove FOZ and its employees from the Premises.

15. **INDEMNIFICATION.** FOZ agrees to protect, defend, indemnify and hold City and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the use of the Premises by FOZ.

16. **INSURANCE.** 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 16(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.

17. **NOTICES.** All notices from City to FOZ shall be deemed duly served if mailed, postage prepaid, by registered or certified mail to FOZ at the following address:

Friends of the Zoo, Inc.
301 Holtzclaw Avenue
Chattanooga, Tennessee 37404

All notices from FOZ to City shall be deemed served if mailed, postage prepaid, by registered or certified mail to City at the following address:

City of Chattanooga
Administrator of the Department of Parks and Recreation
1102 Watkins Street
Chattanooga, TN 37404

A courtesy copy of any notice sent to City shall be mailed to the City Attorney at the following address:

Chattanooga City Attorney
100 E. 11th Street, Suite 200
Chattanooga, Tennessee 37402

City Finance Officer
101 E. 11th Street
Chattanooga, Tennessee 37402

18. **NO PARTNERSHIP OR AGENCY.** Nothing herein contained shall create or be construed as creating a partnership between City and FOZ. FOZ is not an agent of the City. It is understood and agreed by the parties that the relationship of FOZ and City is to be and shall remain that of an independent contractor with respect to all services performed under this Agreement.

19. **RULES OF OPERATION.** FOZ agrees to draft, adopt and publish rules for the use of the Zoo by the public. The rules shall include at a minimum requirements for Zoo visitor conduct, hours of operation, and daily schedule. All rules adopted by FOZ shall be in accordance with existing City Code provisions and must be approved by the Administrator of Parks and Recreation prior to any adoption or publication of Zoo rules. FOZ shall draft, adopt, publish and enforce written policies to ensure ethical and prudent business practices. Such policies should include, but not be limited to the following topics: conflicts of interest, nepotism, fraternization, related party transactions, personal use of zoo property, outside employment, comprehensive accounting and financial policies, cash disbursements, travel expenditures, employee leave and payroll documentation.

20. **ASSIGNMENT.** FOZ may not assign this Agreement, or any part hereof, without prior written approval of the City Council. Any attempt to assign without such approval shall be void and shall constitute grounds for the cancellation of this Agreement at the option of the City. FOZ agrees that without prior written consent of the City, no shareholder shall sell, assign, transfer or convey his/her stock (except by operation of law), nor shall the corporation issue any additional shares of stock, if any such transfer or issuance will effectively change the ownership without City's consent.

21. **UTILITIES.** FOZ shall be responsible for paying all utility expenses for the Premises, including but not limited to water, sewer, electric, telephone and information services. However, City will, at the option of FOZ, be responsible for paying all utilities for up to six (6) months following the execution of this Agreement. Any amounts paid during this six (6) month period for utilities by the City will be deducted from the Appropriation paid to FOZ. City will separately meter the City pump storage facility and Warner Park public restrooms currently metered with the Zoo Premises within six (6) months following the execution of this Agreement.

22. **WAIVER.** The waiver by City of any breach of any term contained in this Agreement shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term. The subsequent acceptance of services under this Agreement by City shall not be deemed to be a waiver of any prior occurring breach by FOZ of any term contained in this Agreement regardless of the knowledge of City of the prior existing breach at the time of the acceptance of such services.

23. **FORCE MAJEURE.** In the event the Premises or equipment are damaged by fire, flood, civil disorder, acts of God or other casualty to such an extent, that in City's sole opinion, the continued operation of such premises and use thereof by the Parties as a Zoo is not practicable or desirable, City may immediately terminate this Agreement. City shall not be responsible for any profits lost by FOZ due to such partial or complete destruction of the Premises.

24. **REMOVAL OF PROPERTY.** FOZ shall not remove from the Zoo any personal property brought thereon or any replacements thereto by FOZ for the purpose of this Agreement, except such items as may be removed with the express written permission the Administrator of the Department of Parks and Recreation. Upon termination of this Agreement for any reason, FOZ may remove its personal property and shall do so within fifteen (15) days following the

termination of this Agreement, all personal property shall thereupon become the sole and exclusive property of City.

25. **COOPERATION AND PERFORMANCE REPORTS.** FOZ agrees to cooperate with City to conduct surveys, as needed, and to provide reports of visitor usage of all Zoo services. FOZ agrees to provide performance reports to the City Council on an annual basis.

26. **REPRESENTATIONS AND WARRANTIES.**

26.1 **Experience.** FOZ is experienced in the operation and management of zoo facilities and hereby agrees to apply its best efforts and most efficient methods in the operations and management of the Zoo.

26.2 **Formation.** FOZ is a non-profit corporation duly incorporated, validly existing and in good standing under the laws of the State of Tennessee. FOZ shall at all times during the Term of this Agreement maintain its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

26.3 **Authority.** FOZ has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of FOZ and not other corporate or other action on the part of FOZ is necessary to authorize execution of this Agreement.

27. **NO LIENS.** FOZ will not suffer or through its actions or by anyone under its control or supervision, cause to be filed upon the property any lien or encumbrance of any kind. In the event any lien is filed, FOZ shall cause such lien to be discharged within ten (10) days after written notice to do so from City and any such lien shall be cause for immediate termination of this Agreement.

28. **NO DANGEROUS MATERIALS.** FOZ shall not use or permit in the Premises the storage of illuminating oils, oil lamps, turpentine, benzine, naphtha, or other similar substances, hazardous materials or explosives of any kind, or any substance or articles prohibited in the standard policies of fire insurance companies doing business in the State of Tennessee, nor operate any machinery that may cause damage to the Premises. Nothing contained in this paragraph shall preclude FOZ from maintaining material and equipment for conducting activities on the Premises that are customary in operating a Zoo. In all cases, dangerous materials and other potentially harmful equipment will be stored in a locked area.

29. **NON-DISCRIMINATION.** There shall be no discrimination as to race, gender, religion, color, creed or national origin against any worker, employee or applicant or any member of the public in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation of the Premises, nor will FOZ allow any subcontractors to so discriminate. All facilities located on the Premises shall be made available to the public, subject to the right of FOZ to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the facilities.

30. **SECURITY.** FOZ agrees to provide security services for the Zoo through contracted security agencies between the hours of 4:00pm and 5:00am, seven (7) days per week. FOZ also agrees to provide any necessary security or alarm systems and provide monitoring and repairs associated with those security systems.

31. **TENNESSEE LAW.** This Agreement shall be governed by and construed in accordance with the Law of the State of Tennessee.

32. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.

33. **ENTIRE AGREEMENT.** This Agreement contains the sole and entire agreement of the parties and no prior or contemporaneous oral or written representation or agreement between the parties shall have legal effect. No provision of this Agreement shall be waived unless such waiver is expressly made in writing and signed by an authorized representative of such party.

34. **OPEN MEETINGS LAW AND OPEN RECORDS ACT.** FOZ shall be required to comply during the term of this Agreement with the Tennessee Open Meetings ("Sunshine") Law pursuant to Tennessee Code Annotated Section 8-44-102(b)(1)(B). FOZ shall be required to comply during the term of this Agreement with the Tennessee Open Records Law pursuant to Tennessee Code Annotated Section 10-7-501, *et seq.*

IN WITNESS WHEREOF, City and FOZ have caused this Agreement to be executed in duplicate on this _____ day of _____, 2010.

ACCEPTED AND AGREED TO:

FRIENDS OF THE ZOO, INC.

By: _____
(Print Name) _____
Title: _____

CITY OF CHATTANOOGA
DEPARTMENT OF PARKS AND RECREATION

By: _____
(PRINT NAME) _____
Title: _____