

ATTACHMENT B

FINANCING AGREEMENT BETWEEN

THE CITY OF FRESNO

AND FRESNO'S CHAFFEE ZOO CORPORATION

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FINANCING AGREEMENT

This Financing Agreement, ("Agreement") is made as of November 14, 2005, (the "Commencement Date"), by and between the City of Fresno, a municipal corporation ("City"), and Fresno's Chaffee Zoo Corporation, a privately created California public benefit corporation ("Corporation").

WHEREAS, to fulfill the plan of the voters of Fresno County to fund the privatization of the Fresno Chaffee Zoo ("Zoo"), City hereby enters into a Financing Agreement for the Zoo.

WHEREAS, it is mutually agreed that Corporation shall be responsible for the future operation of the Zoo for the benefit of the Fresno region; and

WHEREAS, it is mutually agreed that Corporation shall be responsible for operating and maintaining the facilities and operating the programs to support wildlife conservation, education, and professional animal management in the Fresno community.

NOW, THEREFORE, IT IS AGREED:

For good and valuable consideration, including (1) Corporation's acceptance of the responsibility to provide the Zoo related services including education to the Fresno Region, (2) the economic benefit from the additional visitors to the area for the Zoo and (3) the benefit to City of the return of the Leased Premises (as defined in the Lease) with substantially enhanced Improvements (as defined in Section 3 below), City hereby enters this Financing Agreement with Corporation to provide the funding and other consideration

including services to Corporation as set forth herein.

Section 1. Term. The term of this Agreement shall be from the Commencement Date defined herein and operate till termination of the term of the Lease between the parties, a copy of which is attached as Exhibit "A" (the "Lease") including all extensions of the Lease. If Corporation extends the Lease as provided therein, this Agreement shall be extended for the same term. If the Lease terminates for any reason, this Agreement shall terminate immediately.

Section 2. Lease Consideration. Lease rate will be \$1 per year paid at the inception of the Lease and every year thereafter through the term of the Lease.

Section 3. Ownership of the Improvements. At the Lease Commencement Date and throughout the term of the Lease, City shall be the owner of all of the buildings, structures, permanent fixtures, pavement, fencing, and other improvements, and all underground utility lines on the Leased Premises (as defined in the Lease) or serving only the Zoo, in existence on the Lease Commencement Date (collectively the "City Improvements"). During the term of this Financing Agreement and the Lease, Corporation will own all of the incremental buildings, structures, permanent fixtures, pavement, fencing, and other improvements on the Leased Premises (collectively the "Zoo Improvements") that are constructed by Corporation in accordance with the Lease. The City Improvements and the Zoo Improvements are hereinafter collectively referred to as the "Improvements."

Section 4. Conveyance of the Zoo Animals and Zoo Personal Property. Subject to the terms and conditions set forth herein, as of the Lease Commencement Date City shall

convey to Corporation all of the Zoo Animals defined within Exhibit "B" of the Lease and the Zoo Personal Property, as defined in Exhibit "B" of this Agreement which is attached hereto and incorporated by reference here, subject to the reversion to City of title to all Zoo Animals and Zoo Personal Property existing on the date of the termination or expiration of this Agreement.

Prior to the Lease Commencement Date, City shall inspect vehicles and shall provide any regularly scheduled maintenance and repair. After the Lease Commencement Date, Corporation shall, at its own expense, provide all vehicle and equipment maintenance and repair which may be required.

Upon termination or expiration of this Agreement, Corporation shall return to City all animals and a full complement of vehicles, equipment, and other assets necessary to operate and maintain the Zoo. City agrees that should the City or any entity approved by the City fail to continue normal operations of the Zoo for a period of 5 years from the termination of the Lease, the City will pay to Corporation, if Corporation is still an active corporation as registered with the California Secretary of States office, the sum equal to the depreciated value of the Zoo Personal Property at time the City terminates operation of the Zoo. Termination of operations at the Zoo for purposes of this section shall not mean the sublease of the Zoo or entering into a management agreement for a third party to operate the Zoo.

Section 5. Direct Payment Provisions.

A. In consideration for Corporation's operation of the Zoo as provided in the Lease, City shall provide to Corporation the funding indicated below:

YEAR from the Lease Commencement Date	OPERATIONS
YEAR ONE	\$1,200,000.00
YEAR TWO	\$960,000.00
YEAR THREE	\$720,000.00
YEAR FOUR	\$480,000.00
YEAR FIVE	\$240,000.00

City shall not have any obligations to provide funding for any years after the fifth year following the Lease Commencement Date. During the term of this Agreement, consistent with Section 10 of this Lease, every effort shall be made for the Zoo operations to become self sustaining. Should the County Zoo Tax, approved by Ordinance No. 2004-1 terminate, expire or if the Fresno County Zoo Authority Transactions and Use Tax discontinues being levied, the City and the Corporation agree that it is appropriate for any decision regarding City funding of the Zoo, other than that which is within the Lease, shall be approved by City Council existing at that time.

B. Except for year one, City shall pay to Corporation four equal quarterly installments during each year of the Lease beginning on the Lease Commencement Date and payable each three months thereafter on the first day of each calendar quarter. City agrees to advance within 10 days after the Commencement Date of this Agreement, City's initial payment obligation of \$600,000.00 in accordance with subsection A of this Section 5, subject to the Fresno County Zoo Authority ("FCZA") adopting a resolution or some other form of concurrence acceptable to City that the City's advancement of \$600,000.00 will represent that equivalent portion of City's obligation for the first two calendar quarters year one of this Agreement and the Lease consistent with the FCZA By-Laws. If the FCZA accommodates the City's early release of the first two quarters' funding at the beginning of year one, the City will pay the quarterly amounts due July 1, 2006 and October 1, 2006 on schedule. If the FCZA does not accommodate the City's early release

of the first two quarters' funding at the beginning of year one, the City will pay the quarterly amounts due January 1, 2006 and each subsequent calendar quarter on schedule.

C. Except as otherwise noted, City shall bill Corporation on a quarterly basis for any costs contracted for by Corporation with City, including, but not limited to, salaries, employee benefits, and utilities. City and Corporation agree to implement the Employee Transition Plan which is attached as Exhibit "C" hereto and incorporated by reference.

D. Corporation shall make full payment of said quarterly invoices within thirty days after the invoice date.

E. A late charge of three percent (3%) of the amount due shall be added to any amount not received by City Budget Division on or before fifteen (15) days following the due date. The amount due and late charge shall compound at a rate of 0.75% monthly until the outstanding balance is paid in full.

F. City shall pay Corporation a late charge of three percent (3%) of the amount due for any amounts due from City to Corporation hereunder not received by Corporation on or before fifteen (15) days following the due date. The amount due and late charge shall compound at a rate of 0.75% monthly until the outstanding balance is paid in full.

G. City may elect to withhold from any future support payments to Corporation any unpaid reimbursement amount then due to City.

H. Corporation may elect to withhold from any future payments to City, any unpaid amounts then due to Corporation.

Section 6. Future Improvements by Corporation.

A. After the Commencement Date, Corporation shall pay, or cause to be paid, the total cost and expense of Zoo Improvements on the Leased Premises. No such payment shall be construed as reimbursement for any sums owed to City.

B. Any Zoo Improvements placed by Corporation on the Leased Premises shall become the property of City upon termination of the Lease, without the requirement of reimbursement to Corporation therefore.

Section 7. Future Improvements within Roeding Park Requested by Corporation and Benefiting the Zoo.

City and Corporation will jointly plan certain improvements outside the Leased Premises which will benefit the operation of the Zoo. City and Corporation will pay for or share future improvement costs consistent with Section 13 of the Lease.

Section 8. Removal of Corporation Personal Property Upon Agreement Termination.

Upon the expiration of the term hereof, or sooner termination of this Agreement as provided for, Corporation shall within thirty (30) days of any cancellation or other termination, remove, at its own expense, its own furniture, furnishings, equipment, inventory, and trade fixtures. It is agreed that City, or City's assignee, during said thirty (30) day period, shall have the first right to purchase the furniture, furnishings, equipment, and trade fixtures of Corporation for the same price that Corporation would be willing to sell said goods to any other person. Personal property defined as Zoo Personal Property

within Exhibit "B" shall not be considered Corporation's own furniture, furnishings, equipment, inventory, and trade fixtures for purposes of this Agreement.

Section 9. Manager. City shall designate the Manager as the liaison between Corporation and City. The Manager shall be City Manager or City Manager's designee.

Section 10. Severability. The invalidity or illegality of any provisions shall not affect the remainder of this Agreement.

Section 11. Notices. All notices and orders that may be given under this Agreement may be served by first class mail or in person to City at 2600 Fresno Street, Fresno, California 93721; and to Corporation at 894 West Belmont, Fresno, California 93728, or such address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon delivery.

Section 12. Attorney's Fees. In the event either party hereto shall commence any legal action or proceeding including arbitration or an action for declaratory relief against the other by reason of the alleged failure of the other to perform or keep any term, covenant, or condition of this Agreement, the party prevailing in said action or proceeding shall be entitled to recover, in addition to other relief as may be granted in such litigation, a reasonable attorney's fee to be fixed by the court or arbitrator, the court costs and attorney's fees on appeal.

Section 13. Entire Agreement: Amendment in Writing. This Agreement, with the Lease, contains the entire Agreement between the parties as to City financing of Corporation and

supersedes any prior written or oral understandings. Any agreements or representations not contained herein are null and void. This Agreement may be amended only by a writing signed by both parties.

Section 14. Time of Essence. Time is expressly declared to be in the essence of this Agreement.

Section 15. Exhibits. All exhibits referred to in this Agreement are hereby incorporated by reference.

Section 16. Counterpart Signature. This Agreement may be executed in any number of counter parts, each of which shall be effective when upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one in the same instrument, for the same effect as if all of the parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counter part of this Agreement without impairing the legal effect of any signatures thereon and may attach to another counter part of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

Section 17. Successors and Assigns. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of City and Corporation and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third party beneficiaries to this Agreement.

Section 18. Relationship of Parties. The services to be rendered by Corporation pursuant to this Agreement are as an independent contractor only and the relationship between Corporation and City is solely that of landlord and tenant and owner and contractor, as applicable. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or a relationship of employment or agency.

CITY OF FRESNO
A Municipal Corporation

FRESNO'S CHAFFEE ZOO CORPORATION
A privately created California public benefit corporation

CITY MANAGER

CHAIRMAN

TREASURER / CFO

BOARD MEMBER

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY
ATTEST:

CITY CLERK

EXHIBIT "A" is Lease
EXHIBIT "B" is Zoo Personal Property
EXHIBIT "C" is Employee Transition Plan

**Parks, Recreation and Community Services Department
IT Inventory - September 2005**

Type	UserID	Asset #	Make	Model / Descrip	Op Sys	PrimUse	Loc. Installed	InstallDate
PC Desktop	DonnaF	A59919	Dell	Optiplex Pent4	Win2K	Mgmt	Zoo Office	Jul-03
Monitor	" "	52917	17"	CTV				
CDRom Burner	" "	59124	PacDitigal					
Color Printer	" "	P54992	HP	DeskJet 952c		Mgmt Prtng	Zoo Office	Jan-03
PC Desktop	DeniseB	A56415	Dell	Optiplex Pent4	Win2K	Staff	Zoo Office	Aug-03
Monitor	" "	53169	17"	CTX				
CDRom Burner	" "	59123	PacDitigal					
Scanner	" "	59131	HP	Scanjet 3570c				
DVD Rom	" "	59152	BackPack					
PC Desktop	ReneeG	61886	Dell	GX280 Pent4	WinXP	Accounting	Zoo Office	Aug-03
Monitor	" "	62086	CTX	LCD Flat Screen				
PC Desktop	ShelleyM	A56443	Dell	Optiplex Pent4	Win2K	Mgmt	Zoo Office	Aug-03
Monitor	" "	62070	17"	LCD Flat Screen				
Color Printer	" "	60454	HP	DeskJet 5122				
PC Desktop	DaleT	A59873	Dell	GX260	Win2k	Staff	Zoo Office	Apr-04
Monitor	" "		17"	CTX				
Color Printer	" "	P54323	HP	DeskJet 895c		Mgmt Prtng	Zoo Office	Oct-03

PC Desktop	AmberG	A56065	Dell	GX240	Win2K	Staff	Zoo Office	Apr-04
Monitor	" "	52524	17"	CTX				
PC Desktop	Zoo Extra	A55819	DFI	Pentium2	Win2K	Staff	Zoo Office	
Monitor	" "	51925	17"	CTX				
Network Prtr	Zoo Printer	P50507	Lexmark	OptraS 1650		Zoo Off Ptrng	Zoo Office	
Switch	Zoo Office	No Tag	D-Link	10Back-T Ethernet Hub-16Ports				

Computer Model	Location	Processor	Memory	Needs	Age	Quantity	Printer	Windows
iMAC G5	Curator's Office	1.8 GHz	1 GB RAM		2004	1	HP PSC 2355	OS X
iMAC G4-laptop	Camp Coordinator	1.7 GHz	1 GB RAM		2005	1	Lexmark	OS X
DELL-DIM 2300	Lab-Instructor	1.8 GHz	128 MB RAM	1 GB	2003	1	Dell 720	XP 2002
DELL-DIM 2400	Lab-Students	2.4 GHz	512 MB RAM	CD Burners	2004	6	Dell 720	XP 2002
DELL-Inspiron 1100-laptop	Lab-Students	2.0 GHz	256 MB RAM	CD Burners	2003	2		XP 2002
COMPAC AMD-laptop	Lab-Students	996 MHz	240 MB RAM	4 New laptops w/ CD Burners	2001	3		
DELL-DIM 3000	Biofacts Inventory	2.0 GHz	512 MB RAM		2003	1	Dell P1500	XP 2002
DELL-DIM 3000	Library	2.0 GHz	512 MB RAM		2003	1	Dell A960	XP 2002
DELL-DIM 3000	Cubby Camp Office	2.0 GHz	512 MB RAM		2003	1	HP 722C	XP 2002
DELL-DIM 3000	Lab Instructor's Office	2.0 GHz	512 MB RAM	Laptop	2003	1	Dell A960	XP 2002
DELL-DIM 2400	Biologist Office	2.2 GHz	128 MB RAM	1 GB CD Burner	2003	1	HP R 40	XP 2002
Sony VAIO	Volunteer Coordinator	2.9 GHz	15 GB RAM	No memory to defrag	2003	C Drive	Lexmark X6150	XP 2202
			90 GB RAM	Drive Inaccessible		D Drive	Dell 960	
HP Pavillion 750N	Volunteer Coordinator			Project Archive-No internet	2000			
DELL-DIM 2350	Administrative Clerk	2.0 GHz	128 MB RAM	1 GB	2002		Dell P1500	XP 2002
DELL-Inspiron 1150-laptop	Lynxline/Outreach	2.8 GHz	256 MB RAM		2004		Dell 720	XP 2002
DELL-DIM 2350	Bookkeeper	2.0 GHz	128 MB RAM	1 GB	2002		Dell P1500	

Item	Admin - Main	Admin - Donna	Admin - Shelley	Admin - Dale	Admin - Ray	Admin - Conference	Admin - Kitchen
desk	1		1	1	1		
2-part desk	2	1					
work station	1						
desk chair	5	1	1	1	1		
chair	5	2	3	1		8	1
table - small	1		0	0	0	1	1
table - large	0		1	0	0	0	0
computer table	0		1	1	0	0	0
conference table	1		0	0	0	0	0
credenza		1					
filing cabinet	3 two drawer						
lateral - 3 drawer	1	1					
lateral - 4 drawer	2		1	4	2		
lateral - 5 drawer	2						
lateral - 6 drawer					3		
shelves - small	1				1		
shelves - large	1	1		1	3		
cabinet	2						
chest of drawers	1						
other:							
9 drawer file					1		
refrigerator							1
microwave							1
stove/oven							
washer							
dryer							
food prep table							
stainless counter							
TV/VCR							
fire extinguisher							1
radio	1						
computer	3	1	1	1	1	0	0
printer	1	1	1	1	0	0	0
phone	4	621-5715	1	1	1	1	0
safe							
12 gauge shotgun							
reference books							
freezer							
lockers							

Item	Maintenance Shop	Senior Office	Break Room	Elephant Barn	Siamang Holding	Reptile House	Orang Building
desk	1	1		1			
2-part desk	0	1					1
work station	3		1	2			
desk chair	2	5					3
chair	5			3			
table - small	2	1					
table - large			2				
computer table	0	1					
conference table	0						
credenza							
filing cabinet		2					
lateral - 3 drawer							2-2 drawer
lateral - 4 drawer		2		4	1		1
lateral - 5 drawer							
lateral - 6 drawer							
shelves - small	7						1
shelves - large	1				1		
cabinet	29			1	2		1
chest of drawers							2
other:		blue print shelf					
9 drawer file							1
refrigerator	2		2	1			1
microwave	2		2				
stove/oven	1						1
washer	1						1
dryer	1						
food prep table	0			1		1	1
stainless counter							1
TV/VCR	1						1
fire extinguisher	0	1		4			
radio	1	1		2			1
computer		1					
printer	6	1					
phone	1	2					1
safe		1					
12 gauge shotgun		2					
reference books		2					
freezer							2
lockers			16	4			3

REPTILE HOUSE

2	Dollies
2	Ladders (1 small/1 Large)
1	Hand Fork Lift
65	Terrariums
4	A chambers
13	B chambers
14	C chambers
1	Wagon
2	Push carts
15	Books
1	36 tray mouse colony unit
1	16 tray rat colony unit
1	cricket chamber
2	Vaccuum chambers 1 gm/lb
2	fans
4	boxes-replacement lights
4	wooden sitting benches

ZOO EMPLOYEE TRANSITION PLAN

1. Corporation shall offer employment to desired Zoo employees. Zoo employees shall have the right to accept offers to work as employees of Corporation. Employees who accept offers from Corporation shall become Corporation employees as of the effective date agreed upon between employee and Corporation.
2. Zoo employees who do not receive employment offers from Corporation shall transition over to other City positions. Said transfers shall occur within a timeframe as agreed upon.
3. Zoo employees who reject employment offers from Corporation shall transition over to other City positions. Said transfers shall occur by December 31, 2006. The time period from January 1 through December 31, 2006 shall be the "Transition Period."
4. During such time as employees referenced in Section 3 above are transferring to City jobs during the Transition Period, the Corporation shall "lease" these employees to perform their Zoo duties. Corporation shall lease these employees at their fully burdened rate, which is defined by monthly salary, health and welfare benefit, workers' compensation, stipend, leave accruals (holiday, vacation, sick, annual, administrative, supplemental, etc.), vehicle allowance, FICA, Medicare, Life/LTD benefits and any applicable state and federal payroll taxes. The City shall send Corporation an invoice each month for the amount to be reimbursed by Corporation for the employee costs.
5. Corporation agrees to manage leased employees in accordance with the terms and conditions of the Charter of the City of Fresno, the Fresno Municipal Code, the Administrative Order manual, the Salary Resolution and existing Labor Agreements.
6. Employees who reject employment offers (Section 3 above) from the Corporation shall be placed in transition order mutually agreed upon by the City and Corporation based on the operational needs of the Zoo.
7. Transfers from the Zoo to City positions will be limited to four (4) employees per month during the Transition Period. Employee requests to transfer outside of the transition order mutually agreed upon by the City and Corporation will be granted based upon employee seniority with the City.

Notwithstanding the above, City and Corporation may mutually agree to allow a greater number than four (4) employee transfers during the same month.

8. Employee transfers to City positions shall be into vacant positions within the same job classification or positions for which employees meet the minimum qualifications. Employees have the right to pursue applicable promotional opportunities for vacant positions within the City organization (probationary employees will be treated as permanent employees for this purpose), in accordance with the terms and conditions of the Charter of the City of Fresno, the Fresno Municipal Code, the Salary Resolution and Labor Agreements. If the new position is a demotion from the employee's existing classification, such employee will be "Y-rated," consistent with the language contained in the Salary Resolution.

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List of existing Labor Agreements. For purposes of this Exhibit, each of the following shall be in effect until a new collective bargaining agreement is entered and such new agreement shall constitute an amendment thereto:

1. Memorandum of Understanding Between and For the City of Fresno and International Union of Operating Engineers, Stationary Engineers, Local 39.
2. Memorandum of Understanding Between and For the City of Fresno and the Fresno City Employees Association, Inc.
3. Memorandum of Understanding Between and For the City of Fresno and the City of Fresno Professional Employees Association.
4. Memorandum of Understanding Between and For the City of Fresno and the City of Fresno Management Employees Association.