

FRESNO COUNTY ZOO AUTHORITY

SPECIAL MEETING

9:00 am, Friday, December 6, 2013

Fresno County Employees' Retirement Association

1111 H Street, Fresno, CA 93721

(559) 457-0681

AGENDA

1. Call to Order

2. Public Comments

This time is made available to receive comments from the public on matters within the Board's jurisdiction that are not on the Agenda. Attention is called to the fact that the Board is prohibited from taking any action on matters that are not on the Agenda. Members of the public are limited to three minutes to speak during Public Comments as well as for each item on the agenda. In order to accurately record the minutes, members of the public are asked to speak only from the podium. Before beginning comments, please state for the record your name and affiliation, if any.

3. Consent Agenda

These matters are routine in nature and are usually approved by a single vote. Prior to action by the Board, the public will be given the opportunity to remove any item from the Consent Calendar. Items removed from the Consent Calendar may be heard immediately following approval of Consent Calendar.

A. Review and approve minutes of October 30, 2013

B. Review and approve payment of County of Fresno invoice for Professional and Specialized Services in the amount of \$16,722.94 for October 2013

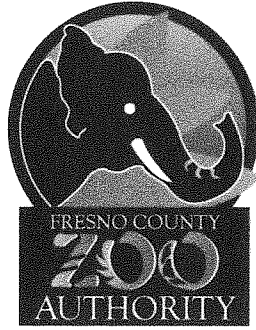
C. Receive Treasurer's Report for October 2013.

4. Receive Fresno Chaffee Zoo Director's Report
5. Receive Fresno Chaffee Zoo Finance Director's Report
6. Approval of Measure Z Funds for African Adventure
 - A. Consider the Environmental Impact Report for Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plan (EIR) previously certified by the Fresno City Council, June 30, 2011 and the EIR Addendum approved by the Fresno City Council on November 7, 2013, and adopt Resolution Adopting CEQA Findings and Statement of Overriding Considerations.
 - B. Approve Fresno Chaffee Zoo Corporation's request of Measure Z Capital Funds of \$51,699,682 for the African Adventure project.
7. Approve Fresno Chaffee Zoo Corporation request of Measure Z Capital funds of \$290,000 for additional utility infrastructure work.
8. Receive staff oral report on cost estimate for Measure Z renewal and 2014 election timeline.
9. Meeting Calendar
 - A. Adopt 2014 meeting calendar
 - B. Set next meeting date.
10. Chair's comments
11. Board Member comments
12. Adjourn

All supporting documentation is available for public review in the office of the Fresno County Zoo Authority, 2220 Tulare Street, 6th Floor, Fresno, 93721, during regular business hours.

For further information, please contact Catherine Crosby, Zoo Authority Coordinator, at 600-4305, email zooauthority@co.fresno.ca.us, or visit www.zooauthority.org.

Requests for disability-related modification or accommodation needed in order to participate in the meeting must be made to the Zoo Authority Coordinator no later than 9:00 a.m. on the day prior to the meeting.



FRESNO COUNTY ZOO AUTHORITY MEETING

9:00 am, Wednesday, October 30, 2013

Fresno County Employees' Retirement Association

1111 H Street, Fresno, CA 93721

(559) 457-0681

ACTION SUMMARY MINUTES

1. Call to Order

CHAIRMAN PAUL TOSTE CALLED THE MEETING TO ORDER AT 9:00 A.M. A QUORUM OF MEMBERS, JOHN GRAY, GERALD LYLES, PETER HERZOG, KENT STRATFORD, ASHLEY SWEARENGIN AND RALPH WATERHOUSE WERE PRESENT.

CHAIRMAN TOSTE NOTED THAT THE INVOICE AMOUNT ON THE AGENDA FOR 3B SHOULD BE CORRECTED TO \$11,782.36.

2. Public Comments

This time is made available to receive comments from the public on matters within the Board's jurisdiction that are not on the Agenda. Attention is called to the fact that the Board is prohibited from taking any action on matters that are not on the Agenda. Members of the public are limited to three minutes to speak during Public Comments as well as for each item on the agenda. In order to accurately record the minutes, members of the public are asked to speak only from the podium. Before beginning comments, please state for the record your name and affiliation, if any.

HELD – JOAN LE ROUX STATED THAT SHE HAD MADE A MISTAKE WHEN SHE SAID TO THE BOARD OF SUPERVISORS THAT MEMBER LYLES HAD VOTED ON THE FINANCING OF SEA LION COVE AND THE UTILITY PROJECT WORK DONE BY HARRIS CONSTRUCTION AND HAYDEN CONSTRUCTION. SHE ACKNOWLEDGED SHE WAS WRONG AND APOLOGIZED TO MEMBER LYLES.

3. Consent Agenda

These matters are routine in nature and are usually approved by a single vote. Prior to action by the Board, the public will be given the opportunity to remove any item from the Consent

Calendar. Items removed from the Consent Calendar may be heard immediately following approval of Consent Calendar.

- A. Review and approve minutes of September 25, 2013
- B. Review and approve payment of County of Fresno invoice for Professional and Specialized Services in the amount of \$11,761.66 for September 2013
- C. Receive Treasurer's Report for September 2013 and the Quarter ended September 30, 2013

APPROVED WITH THE NOTED CORRECTION TO 2B - GL/JG – 7 AYES, 0 OPPOSED

- 4. Receive Fiscal Year 2012-13 audit report from Brown-Armstrong Accountancy Corporation

RECEIVED – ERIK GONZALEZ OF BROWN ARMSTRONG ACCOUNTANCY CORPORATION PRESENTED AN UNMODIFIED OR CLEAN OPINION, AND THERE WERE NO INTERNAL ISSUES OR FINDINGS.

- 5. Receive Fresno Chaffee Zoo Director's Report

RECEIVED – DIRECTOR SCOTT BARTON PRESENTED. THE ZOO IS DOING VERY WELL. ATTENDANCE CONTINUES TO CLIMB AND BROKE THE 600,000 MARK, WHICH IS AN ALL-TIME RECORD. STAFF IS ANTICIPATING THEY WILL REACH 640,000- TO 650,000 VISITORS BEFORE THE END OF THE YEAR. THERE IS STRONG COMMUNITY SUPPORT AND THEY RECEIVE MANY POSITIVE COMMENTS.

THE MEASURE Z CAMPAIGN IS GEARING UP AND GAINING MOMENTUM. ALL INDICATIONS ARE THAT NEXT YEAR'S MEASURE Z VOTE WILL PASS. IN CASE MEASURE Z DOES NOT PASS, DIRECTOR BARTON DISCUSSED HOW THE ZOO CORPORATION WOULD MAINTAIN THE ZOO'S SUSTAINABILITY THROUGH 2020.

THE ZOO IS STILL WAITING ON APPROVAL FROM THE NATIONAL PARK SERVICE. DIRECTOR BARTON PROPOSED THAT AT THE NEXT MEETING, THE ZOO CORPORATION REQUEST FUNDING FOR AFRICAN ADVENTURE, CONTINGENT ON THE NATIONAL PARK SERVICE APPROVAL. THIS WOULD ALLOW THE ZOO CORPORATION TO MOVE FORWARD ON CONSTRUCTION MORE QUICKLY.

MEMBERS GRAY, WATERHOUSE AND SWEARENGIN STATED THEY WERE READY TO FUND THE PROJECT AND GO FORWARD. MAYOR SWEARENGIN STATED THAT THE CITY OF FRESNO IS PREPARED TO DO WHAT IS NECESSARY TO MOVE THIS PROJECT FORWARD. MEMBER LYLES STATED HE HAD RESERVATIONS REGARDING POSSIBLE LEGAL ISSUES.

COUNSEL JANELLE KELLY INFORMED THE BOARD THAT IN ORDER FOR APPROVAL BY THE BOARD TO MOVE FORWARD, CITY OF FRESNO STAFF WOULD NEED TO REVIEW THE EIR AND DETERMINE THAT IT IS AN ADEQUATE ENVIRONMENTAL DOCUMENT TO USE, EVEN THOUGH THE APPROVALS OF THE FEDERAL GOVERNMENT HAVE NOT BEEN RECEIVED. COUNTY PLANNING STAFF WOULD

ALSO HAVE TO REVIEW THE PROPOSAL AND THE EIR, AND PROVIDE THE BOARD WITH THEIR VIEW ON ITS ADEQUACY.

MEMBER LYLES TOOK THIS OPPORTUNITY TO GO BACK TO THE MEASURE Z DISCUSSION, AND WANTED CLARIFICATION AS TO WHETHER OR NOT MEASURE Z FUNDS COULD BE USED TO PAY FOR THE COST OF PLACING THE MEASURE Z RENEWAL ON THE BALLOT. IT WAS DETERMINED THAT COUNSEL WOULD LOOK INTO THIS MATTER AND ADVISE THE BOARD AT THE NEXT MEETING.

PUBLIC COMMENT WAS RECEIVE FROM JOAN LE ROUX.

6. Receive Fresno Chaffee Zoo Finance Director's Report

RECEIVED – DIRECTOR OF FINANCE BRIAN GOLDMAN PRESENTED THE REPORTS; ATTENDANCE IS WELL AHEAD OF PROJECTIONS. AS OF AUGUST 31, 2013, THERE WAS AN OPERATING SURPLUS IS OF \$1.2 MILLION. SELF-GENERATED REVENUE IS 23% AHEAD OF THE YEAR-TO-DATE BUDGET, PERSONNEL EXPENSES ARE 5 % UNDER BUDGET, AND OPERATING EXPENSES ARE 6% UNDER BUDGET. THE SEPTEMBER OPERATING EXPENSES ARE, 3% UNDER BUDGET AND PERSONNEL EXPENSES ARE STILL 5 % UNDER. AT THE END OF SEPTEMBER, ATTENDANCE WAS 26% AHEAD OF YEAR-TO-DATE EXPECTATIONS, AND REVENUE NUMBERS ARE WELL AHEAD OF PROJECTIONS.

MEMBER LYLES REQUESTED A REPORT ON THE ACCOUNTS RECEIVABLE AT THE NEXT MEETING.

PUBLIC COMMENT WAS RECEIVED FROM JOAN LE ROUX

7. Review and approve second draft of Fiscal Year 2012-13 Annual Report, or provide direction to staff

COORDINATOR CATHY CROSBY PRESENTED. MEMBER WATERHOUSE CONGRATULATED CATHY ON A JOB WELL DONE, AND MS. CROSBY GAVE CREDIT TO COUNTY GRAPHIC ARTIST GINA BARR.

PUBLIC COMMENT WAS RECEIVED FROM JOAN LE ROUX

APPROVED WITH CORRECTIONS NOTED – AS/RW – 7 AYES, 0 OPPOSED

- 8. Next meeting date**
- a. Reaffirm November 27, 2013 as next meeting date, or set new meeting date.**
 - b. Adopt 2014 meeting calendar**

ITEM 8A – ADOPTED THE NEXT MEETING DATE OF FRIDAY, DECEMBER 6, 2013 – JG/RW -- 7 AYES, 0 OPPOSED

ITEM 8B – DIFFERED UNTIL NEXT MEETING

9. Chair's comments

RECEIVED – CHAIRMAN PAUL TOSTE THANKED DIRECTOR SCOTT BARTON FOR THE SUSTAINABILITY REPORT. HE ALSO THANKED MEMBER SWEARINGEN FOR STATING HER OPINION ON THE NPS ISSUE AND FOR GIVING THE CITY SUPPORT. SPECIAL THANKS WERE GIVEN TO COORDINATOR CATHY CROSBY FOR HER EFFORTS IN PUTTING TOGETHER THE ANNUAL REPORT.

10. Board Member comments

NONE

11. Adjourn

THERE BEING NO FURTHER BUSINESS BEFORE THE BOARD, CHAIRMAN TOSTE CALLED FOR A MOTION TO ADJOURN. – AS/JG -- 7 AYES, 0 OPPOSED THE MEETING CONCLUDED AT 9:44 AM.

All supporting documentation is available for public review in the office of the Fresno County Zoo Authority, 2220 Tulare Street, 6th Floor, Fresno, 93721, during regular business hours.

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Invoice for Professional Services in Support of the Zoo Authority
Billing Hours and Expenses for October 2013

Invoice Number 10-ZOO-120613

December 6, 2013

TO: Zoo Authority Board
c/o County of Fresno
2220 Tulare St, 6th Floor MS 214
Fresno, CA 93721

Department / Title	Hours	Rate	Cost	Fiscal Year 13-14
<i>Financial Reporting & Audits</i>				
<i>Supervising Accountant</i>	23.00	\$80.06	\$1,841.38	
<i>Accountant I</i>	24.50	\$60.14	\$1,473.43	
<i>Public Works & Planning</i>				
<i>Analyst III</i>	155.30	\$63.10	\$9,799.43	
<i>County Counsel</i>				
<i>Assistant County Counsel</i>	4.00	\$113.00	\$452.00	
Professional Services Total	206.80		\$13,566.24	\$36,177.64
<i>Copies</i>			38.26	
<i>Office Supplies</i>			8.44	
<i>Audit</i>			3,110.00	
Office Expense Total			\$3,156.70	\$3,206.37
			\$16,722.94	\$39,384.01
			Invoice Total	FY 12-13 Total



**Fresno County Zoo Authority
Treasurer's Report
Unaudited Cash Basis
For the Month Ended October 31, 2013**

Summary of Measure Z Proceeds

Tax Proceeds Received:		
- Measure Z - Sales Tax Proceeds		\$ 857,400.00
Total Proceeds Received:		\$ 857,400.00
Tax Proceeds Allocated:		
- Allocation to Zoo Authority Fund (2%)		17,148.00
- Allocation to Trust Fund for Operations and Capital Projects (98%)		840,252.00
Total Proceed Allocations		\$ 857,400.00

Cash Balance by Fund

Zoo Authority Fund	>> Administrative Fund	2%	
	Beginning Cash Balance		\$ 1,011,863.86
Receipts:	- Measure Z Sales Tax Proceeds		17,148.00
	- Interest Received		656.52
Disbursements:	- PeopleSoft Charges		(32.98)
	Net Increase/(Decrease) to Cash		17,771.54
	Ending Cash Balance - Zoo Authority Administrative Fund		\$ 1,029,635.40
Trust Fund for FCZC Operations and Capital Projects	98%		
	Beginning Cash Balance		\$ 52,325,836.23
	>> Operations Fund		
	Beginning Cash Balance		5,045,172.09
Receipts:	- Measure Z Sales Tax Proceeds		280,084.00
	- Interest Received		3,334.98
Disbursements:	- FCZC Operations Claim # 2013-8		(267,801.18)
	Net Increase/(Decrease) to Cash		15,617.80
	Ending Cash Balance - Available for Operations		\$ 5,060,789.89
	>> Capital Facilities Project Fund		
	Beginning Cash Balance		\$ 47,280,664.14
Receipts:	- Measure Z Sales Tax Proceeds		560,168.00
	- Interest Received		31,375.46
	Net Increase/(Decrease) to Cash		591,543.46
	Ending Cash Balance - Available for Capital Projects		47,872,207.60
	Ending Balance Available for Operations and Capital Projects		\$ 52,932,997.49
	Total Interest Received During the Month		35,366.96

By Staff _____

Date _____

Accepted _____

Date _____

* Interest receipts are recorded in the month received rather than in the month earned and were calculated on an annual percentage rate of 1.207 as of September 30, 2013.



Fresno County Zoo Authority

SUMMARY OF MEASURE Z SALES TAX PROCEEDS

	PRIOR FISCAL YEARS								CURRENT FISCAL YEAR			
	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014			
	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	BUDGETED	ACTUAL	BUDGET TO ACTUAL	
	TAX RECEIPTS	TAX RECEIPTS	TAX RECEIPTS	TAX RECEIPTS	TAX RECEIPTS	TAX RECEIPTS	TAX RECEIPTS	TAX RECEIPTS	TAX RECEIPTS	TAX RECEIPTS	VARIANCE	
July	\$ 700,400	\$ 671,500	\$ 819,900	\$ 813,500	\$ 671,700	\$ 659,300	\$ 719,800	\$ 826,000	\$ 867,300	\$ 903,500	\$ 36,200	4.17%
August	933,800	895,400	1,093,200	1,084,700	885,300	857,600	921,200	1,033,100	1,084,755	1,106,000	\$ 21,245	1.96%
September	764,524	1,453,498	1,060,279	930,087	810,940	895,691	1,057,603	1,028,369	1,079,787	1,097,605	\$ 17,818	1.65%
October	705,400	679,300	853,500	792,200	678,000	677,000	694,100	850,500	893,025	857,400	\$ (35,625)	-3.99%
November	940,500	1,471,000	1,138,000	1,056,300	743,300	879,500	878,500	1,056,800	1,109,640	-	-	
December	1,324,459	1,047,118	827,112	872,815	971,061	932,350	1,240,028	1,083,021	1,137,172	-	-	
January	676,000	813,700	831,200	766,900	719,900	710,700	770,100	799,900	839,895	-	-	
February	901,300	1,081,800	1,108,200	841,000	944,000	919,900	978,600	1,086,700	1,141,035	-	-	
March	1,319,000	905,577	762,907	959,801	628,563	821,858	1,006,649	1,021,734	1,072,821	-	-	
April	678,900	748,000	699,000	652,000	594,300	618,400	716,100	846,500	888,825	-	-	
May	905,200	997,300	932,000	860,800	847,200	876,500	897,100	1,493,700	916,595	-	-	
June	1,113,269	900,178	1,026,580	730,781	821,511	963,040	1,191,688.64	1,015,391.00	916,595	-	-	
Total	\$ 10,962,752	\$ 11,664,371	\$ 11,151,878	\$ 10,360,884	\$ 9,315,775	\$ 9,811,839	\$ 11,071,469	\$ 12,141,715	\$ 11,947,445	\$ 3,964,505	\$ 39,638	0.17%

TOTAL MEASURE Z PROCEEDS FROM INCEPTION \$ 91,147,041



**Fresno County Zoo Authority
Receipt of Interest
Unaudited Cash Basis
For the Month Ended
October 31, 2013**

Summary of Quarter One Interest Receipts				
Fund	Subclass	Description	1st Alloc. October	Interest Received
4845	10000	Zoo Authority	\$ 656.52	\$ 656.52
4850	10000	FCZC - Operations	3,334.98	\$ 3,334.98
4850	42700	FCZC - CP	31,375.46	\$ 31,375.46
Total			\$ 35,366.96	\$ 35,366.96

DRAFT

Agenda Item 4a



FY13 September Financial Report

Board of Directors

Discussion of Financial Results

- **Key Facts & Figures*:**

- YTD operating surplus @ 9/30/13 is \$1,212,740 compared to a projected surplus of \$428,459*.
- Self generated revenue is 19% ahead of the YTD budget.
- Personnel expenses are 5% under YTD budget.
- Operating expenses are 3% under YTD budget.
- Attendance is 18% ahead of YTD budget.
- Admission revenue is 26% ahead of YTD budget .
- Attendance is 96% of the 2013 attendance goal of 585,000. Revised goal is 640,000.

* Excludes investment income (unrealized gain/loss on investments), capital fundraising, depreciation and capital expenditures.

Discussion of Financial Results

Liquid Assets:

Cash	<u>9/30/2013</u>	<u>8/31/2013</u>	<u>12/31/2012</u>
	\$726,482	\$868,515	\$425,865
Short-term Investments	\$461,562	\$461,524	\$11,391
Long-term Investments	\$4,906,865	\$4,759,703	\$4,587,106
Endowment/Board Designated	<u>\$3,718,487</u>	<u>\$3,578,900</u>	<u>\$3,328,648</u>
	\$9,813,396	\$9,668,642	\$8,353,010

Accounts Receivable:

	\$1,094,176	\$1,059,602	\$2,170,007
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Accounts Payable/Accrued Liabilities:

Accounts Payable	\$110,999	\$30,401	\$1,058,465
Accrued Liabilities	<u>\$73,899</u>	<u>\$185,607</u>	<u>\$307,287</u>
	\$184,898	\$216,008	\$1,365,752

Net Assets:

Unrestricted	\$26,925,603	\$26,669,911	\$23,573,785
Temporarily Restricted	\$419,167	\$415,334	\$379,376
Permanently Restricted	<u>\$45,291</u>	<u>\$43,664</u>	<u>\$40,850</u>
	\$27,390,061	\$27,128,909	\$23,994,011

Measure Z Balance @ 6/30/2013

Operating	\$4,938,283
Capital Funds	<u>\$46,751,055</u>
	\$51,689,338

MTD Attendance			Increase/ Decrease
	2013	2012	
Attendance	46,915	64,264	-27%
Paid	27,393	36,494	-25%
Members	12,249	18,144	-33%
Group	768	1,141	-33%
Other	6,505	8,485	-23%
Giraffe Feeding	5,586	5,862	-5%
Capture Rate	12%	9%	31%
Stingray Bay	13,247	19,707	-33%
Capture Rate	28%	31%	-9%
Winged Wonders	9,329	13,393	-30%
MTD Revenue			Increase/ Decrease
	2013	2012	
Admissions	\$143,863	\$198,937	-28%
Per Cap	\$3.07	\$3.10	-1%
Giraffe Feeding	\$11,775	\$13,124	-10%
Per Cap	\$0.25	\$0.20	25%
Stingray Bay	\$16,934	\$23,379	-28%
Per Cap	\$0.36	\$0.36	0%
Membership	\$67,317	\$83,042	-18%
Contracted Services			Increase/ Decrease
	2013	2012	
Food Services	\$23,854	\$32,949	-28%
Per Cap	\$0.51	\$0.51	0%
Gift Shop	\$28,188	\$37,725	-25%
Per Cap	\$0.60	\$0.59	2%

YTD Attendance			Increase/ Decrease
	2013	2012	
Attendance	560,168	473,401	18%
Paid	322,493	261,498	23%
Members	127,706	108,647	17%
Group	61,520	57,718	7%
Other	48,449	45,538	6%
Giraffe Feeding	71,363	47,683	50%
Capture Rate	13%	10%	33%
Stingray Bay	178,969	156,806	14%
Capture Rate	32%	33%	-1%
Winged Wonders	121,032	115,726	5%
YTD Revenue			Increase/ Decrease
	2013	2012	
Admissions	\$1,895,191	\$1,584,466	20%
Per Cap	\$3.38	\$3.35	1%
Giraffe Feeding	\$143,264	\$106,477	35%
Per Cap	\$0.26	\$0.22	18%
Stingray Bay	\$240,713	\$195,779	23%
Per Cap	\$0.43	\$0.41	4%
Membership	\$599,857	\$544,202	10%
# of Members	14,173	12,049	18%
Contracted Services			Increase/ Decrease
	2013	2012	
Food Services	\$232,749	\$197,846	18%
Per Cap	\$0.42	\$0.42	0%
Gift Shop	\$293,772	\$239,777	23%
Per Cap	\$0.52	\$0.51	2%

2012 Audit		
Attendance	580,226	
Paid	300,730	
Members	131,013	
Group	60,942	
Other	87,541	
Giraffe Feeding	56,571	
Capture Rate	10%	
Stingray Bay	177,141	
Capture Rate	31%	
Winged Wonders	120,851	
Admissions	\$1,816,543	
Per Cap	\$3.13	
Giraffe Feeding	\$125,276	
Per Cap	\$0.22	
Stingray Bay	\$219,535	
Per Cap	\$0.38	
Membership	\$691,189	
# of Members	12,368	
Food Services	\$230,324	
Per Cap	\$0.40	
Gift Shop	\$280,566	
Per Cap	\$0.48	

Key:

Equal to or ahead of 2012

2% or less behind 2012

More than 2% behind 2012

Fresno's Chaffee Zoo Corporation

Balance Sheet

September 2013

	FY13 @ 9/30/13	FY13 @ 8/31/13	FY12 Unaudited
ASSETS			
Cash	\$726,482	\$868,515	\$425,865
Short Term Investments	\$461,562	\$461,524	\$11,391
Long Term Investments	\$8,625,352	\$8,338,603	\$7,915,754
Accounts Receivable	\$1,094,176	\$1,059,602	\$2,170,007
Prepaid Expenses	\$117,135	\$105,398	\$266,723
Inventory	\$0	\$0	\$0
Building, Equipment, Vehicle and Furniture (net)	\$2,174,289	\$2,101,627	\$1,217,643
Construction in Progress	\$3,796,251	\$3,740,170	\$2,891,505
Exhibits	\$10,579,714	\$10,579,714	\$10,460,875
TOTAL ASSETS	\$27,574,959	\$27,255,152	\$25,359,763
LIABILITIES AND NET ASSETS			
Liabilities			
Accounts Payable/Accrued Liabilities	\$184,898	\$126,242	\$1,365,752
Total Liabilities	\$184,898	\$126,242	\$1,365,752
Net Assets			
1-3000-00 Fund Balance-Unrestricted	\$26,925,603	\$26,669,911	\$23,573,784
2-3000-00 Fund Balance-Temporarily Restricted	\$419,167	\$415,334	\$379,376
3-3000-00 Fund Balance-Permanently Restricted	\$45,291	\$43,664	\$40,850
Total Net Assets	\$27,390,061	\$27,128,909	\$23,994,011
TOTAL LIABILITIES AND NET ASSETS	\$27,574,959	\$27,255,152	\$25,359,763

Unrealized gain/(loss) on investments of \$596,498 at 9/30/13 and \$320,229 at 8/31/13. Impacts both Long Term Investments and Net Assets.

Fresno's Chaffee Zoo Corporation
Income Statement
@ September 30, 2013

		Current Month		Year-to-Date	
		Budget	Actual @ 9/30/13	Budget	Actual @ 9/30/13
REVENUE		FY13 Budget	Variance	Variance	FY12 Projected
Self Generated Revenue					
Admissions	\$1,860,300	\$144,690	\$143,863 (\$827)	\$1,507,320	\$1,895,191 \$387,871
Adopt an Animal	\$25,000	\$1,100	\$791 (\$309)	\$20,300	\$25,103 \$4,803
Board Designated for Endowment	\$50,000	\$12,500	\$122 (\$12,378)	\$37,500	\$3,454 (\$34,046)
Education	\$220,525	\$9,638	\$9,166 (\$471)	\$186,762	\$202,009 \$15,247
Food Services	\$234,000	\$18,500	\$23,854 \$5,354	\$189,700	\$232,749 \$43,049
Gift Shop	\$280,800	\$21,400	\$28,188 \$6,788	\$227,530	\$293,772 \$66,242
Giraffe Feeding	\$125,775	\$9,783	\$11,775 \$1,992	\$101,910	\$143,264 \$41,354
Grants/Fundraising	\$153,500	\$11,867	\$3,109 (\$8,758)	\$118,300	\$70,631 (\$47,669)
Group Event/Facility Rental	\$150,000	\$12,500	\$15,873 \$3,373	\$112,500	\$174,610 \$62,110
Interest Income	\$275,000	\$15,000	\$11,232 (\$3,768)	\$115,000	\$119,160 \$4,160
Investment Income	\$0	\$0	\$276,269 \$276,269	\$0	\$596,498 \$596,498
Membership	\$684,000	\$75,000	\$67,317 (\$7,683)	\$528,000	\$599,857 \$71,857
Special Events	\$444,000	\$105,000	\$67,595 (\$37,405)	\$224,500	\$180,660 (\$43,840)
Stingray Exhibit	\$239,850	\$19,400	\$16,934 (\$2,466)	\$211,350	\$240,713 \$29,363
Other	\$28,350	\$2,730	\$9,117 \$6,387	\$23,200	\$45,616 \$22,416
Total Self Generated Revenue	\$4,771,100	\$459,107	\$685,204 \$226,097	\$3,603,872	\$4,823,286 \$1,219,414
City of Fresno	\$0	\$0	\$0	\$0	\$0
Measure Z-Capital Funds	\$20,240	\$1,687	\$82,862 \$81,176	\$15,180	\$1,939,357 \$1,924,177
Measure Z Operating Funds	\$3,766,252	\$300,000	\$268,121 (\$31,879)	\$2,687,408	\$2,594,210 (\$93,198)
Transfer to/from Related Organization	\$0	\$0	\$0	\$0	\$0 (\$34,300)
TOTAL REVENUE	\$8,557,592	\$760,794	\$1,036,188 \$275,394	\$6,306,461	\$9,391,154 \$3,084,693
					\$17,421,453

Fresno's Chaffee Zoo Corporation

Income Statement

@ September 30, 2013

	Current Month		Year-to-Date		Variance	FY12 Projected
	FY13 Budget	Budget Actual @ 9/30/13	Budget	Actual @ 9/30/13		
EXPENSES						
OPERATING EXPENSES						
Personnel Expenses						
Administration	\$564,803	\$43,682	\$406,246	\$424,260	(\$18,013)	\$534,086
Animal	\$1,675,445	\$128,049	\$1,192,482	\$1,093,149	\$99,332	\$1,472,267
Education	\$721,211	\$51,486	\$536,409	\$579,823	(\$43,414)	\$687,294
Maintenance/Horticulture	\$575,809	\$43,402	\$410,706	\$320,653	\$90,053	\$480,231
Mem/Dev/Marketing	\$404,833	\$30,777	\$287,441	\$290,015	(\$2,574)	\$384,969
Veterinary	\$216,689	\$16,437	\$15,255	\$146,183	\$8,394	\$189,532
Visitor Services	\$576,977	\$45,883	\$419,513	\$388,585	\$30,928	\$519,240
Total Personnel Expenses	\$4,735,767	\$359,716	\$3,407,373	\$3,242,666	\$164,707	\$4,267,619
Other Expenses						
Advertising	\$302,000	\$25,833	\$226,000	\$204,068	\$21,932	\$288,933
Animal Feed	\$271,700	\$22,642	\$203,775	\$200,730	\$3,045	\$268,142
Computer/Software	\$48,445	\$1,962	\$41,809	\$45,028	(\$3,219)	\$43,934
Conservation	\$50,000	\$4,167	\$37,500	\$35,874	\$1,626	\$25,891
Depreciation Expense	\$246,456	\$25,001	\$171,452	\$137,104	\$34,348	\$415,059
Dues	\$35,600	\$1,188	\$30,062	\$32,545	(\$2,483)	\$35,619
Equipment	\$140,243	\$9,779	\$87,707	\$82,754	\$4,953	\$112,583
Fleet	\$37,600	\$3,133	\$28,200	\$21,328	\$6,872	\$36,410
Food/Catering	\$71,900	\$5,767	\$49,350	\$72,547	(\$23,197)	\$83,682
Insurance	\$140,000	\$10,000	\$120,000	\$121,561	(\$1,561)	\$123,804
Miscellaneous Business	\$14,300	\$1,398	\$10,955	\$8,994	\$1,961	\$8,215
Office Supplies	\$28,395	\$2,354	\$21,312	\$17,198	\$4,114	\$33,597
Postage	\$47,360	\$4,780	\$36,820	\$28,408	\$8,412	\$34,850
Printing	\$119,595	\$12,598	\$96,477	\$94,576	\$1,902	\$104,988
Repairs and Replacements	\$191,350	\$15,946	\$143,512	\$142,864	\$648	\$188,397
Service/Bank/Credit Card Fees	\$112,490	\$9,374	\$84,367	\$88,704	(\$4,337)	\$103,342
Signage	\$27,000	\$2,250	\$20,250	\$33,834	(\$13,584)	\$26,134
Specialized Services	\$612,475	\$53,883	\$452,975	\$515,173	(\$62,199)	\$573,272
Staff Development	\$62,550	\$4,546	\$45,562	\$47,533	(\$1,971)	\$39,224

Fresno's Chaffee Zoo Corporation

Income Statement

@ September 30, 2013

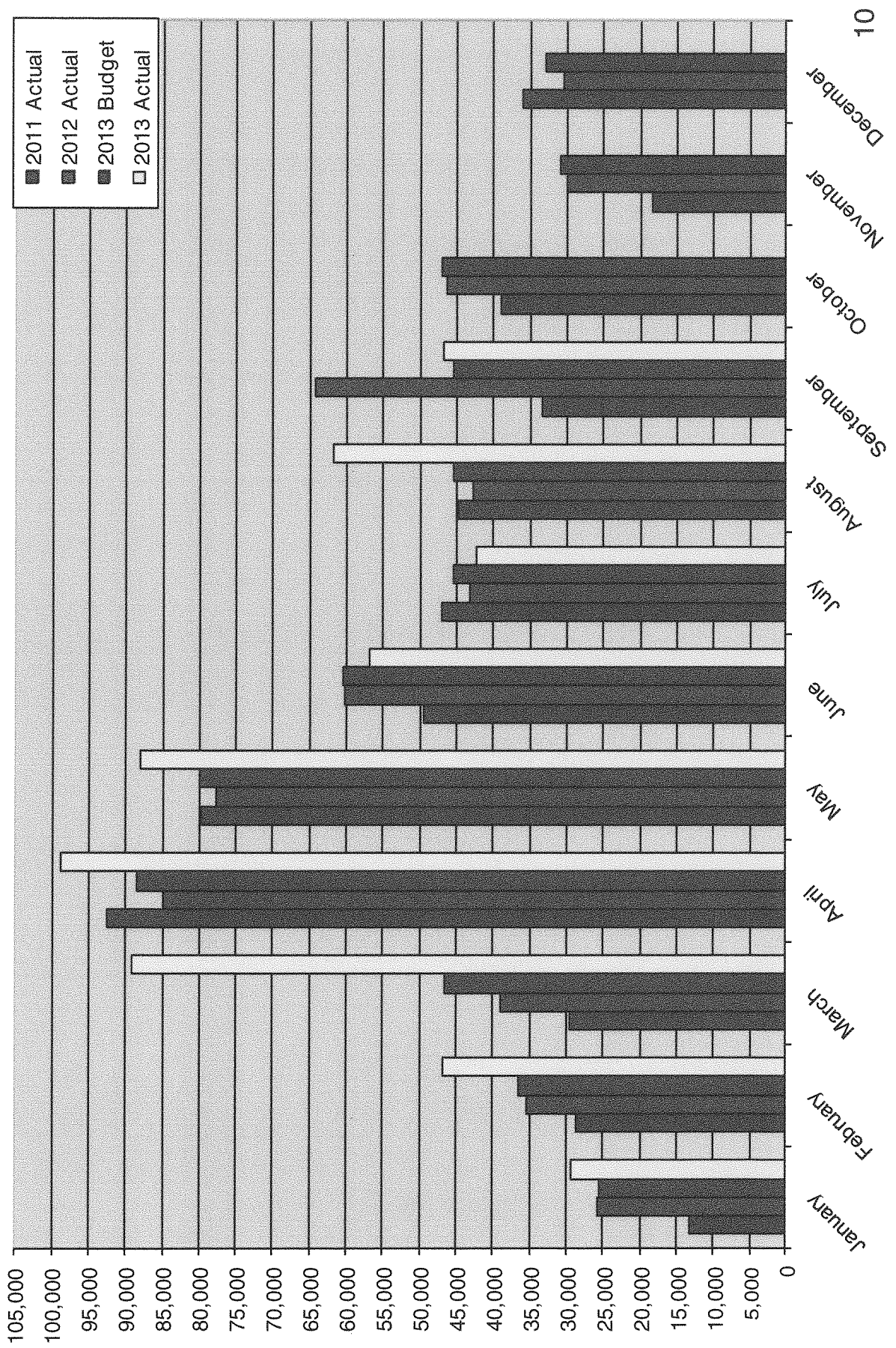
	Current Month			Year-to-Date				
	FY13 Budget	Budget	Actual @ 9/30/13	Variance	Budget	Actual @ 9/30/13	Variance	FY12 Projected
Supplies	\$275,855	\$27,109	\$17,214	\$9,895	\$198,528	\$188,035	\$10,493	\$243,758
Telephone	\$34,850	\$2,904	\$2,482	\$422	\$26,137	\$24,237	\$1,901	\$38,245
Uniforms	\$33,050	\$2,379	\$330	\$2,049	\$26,912	\$16,448	\$10,464	\$33,978
Utilities	\$450,000	\$37,500	\$44,343	(\$6,843)	\$337,500	\$295,196	\$42,304	\$383,797
Other	\$90,550	\$6,888	\$19,077	(\$12,190)	\$65,987	\$78,870	(\$12,883)	\$76,662
Total Other Expenses	\$3,443,764	\$293,381	\$394,298	(\$100,917)	\$2,563,151	\$2,533,611	\$29,540	\$3,322,517
TOTAL OPERATING EXPENSES	\$8,179,531	\$653,097	\$741,845	(\$88,748)	\$5,970,524	\$5,776,278	\$194,247	\$7,590,137
Expansion/Nonoperating Exp.								
Expansion/Nonoperating Exp.	\$330,000	\$35,000	\$33,191	\$1,809	\$225,000	\$218,826	\$6,174	\$94,090
Total Expansion/Nonoperating Exp.	\$330,000	\$35,000	\$33,191	\$1,809	\$225,000	\$218,826	\$6,174	\$94,090
TOTAL EXPENSES	\$8,509,531	\$688,097	\$775,036	(\$86,939)	\$6,195,524	\$5,995,103	\$200,421	\$7,684,227
BEGINNING FUND BALANCE	\$23,994,011	\$27,128,909	\$27,128,909	\$0	\$23,994,011	\$23,994,011	\$0	\$14,256,785
NET SURPLUS/(DEFICIT)	\$48,061	\$72,697	\$261,152	\$188,455	\$110,937	\$3,396,051	\$3,285,114	\$9,737,226
ENDING FUND BALANCE	\$24,042,072	\$27,201,606	\$27,390,061	\$188,455	\$24,104,947	\$27,390,061	\$3,285,114	\$23,994,011

Measure Z Revenue Summary of Tax Proceeds

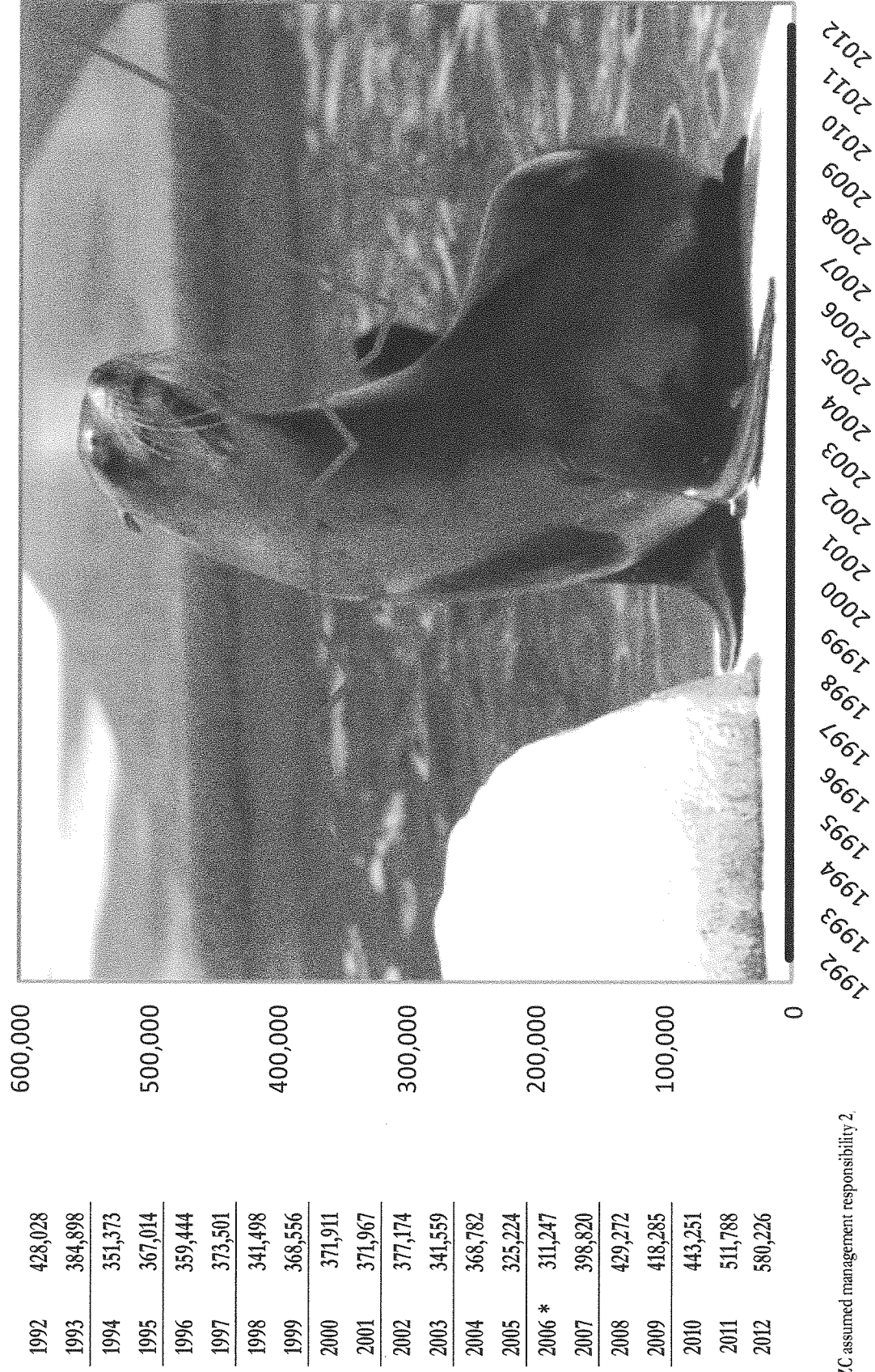
	2004-2005 ACTUAL	2005-2006 ACTUAL	2006-2007 ACTUAL	2007-2008 ACTUAL	2008-2009 ACTUAL	2009-2010 ACTUAL	2010-2011 ACTUAL	2011-2012 ACTUAL	2012-2013 ACTUAL	2013-2014 ACTUAL
July		\$700,400	\$671,500	\$819,900	\$813,500	\$671,700	\$659,300	\$719,800	\$826,000	\$903,500
August		933,800	895,400	1,093,200	1,084,700	885,300	857,600	921,200	1,033,100	\$1,106,000
September		764,524	1,453,498	1,060,279	930,087	810,940	895,691	1,057,603	1,028,369	
October		705,400	679,300	853,500	792,200	678,000	677,000	694,100	850,500	
November		940,500	1,471,000	1,138,000	1,056,300	743,300	879,500	878,500	1,056,800	
December		1,324,459	1,047,118	827,112	872,815	971,061	932,350	1,240,028	1,083,021	
January		676,000	813,700	831,200	766,900	719,900	710,700	770,100	799,900	
February		901,300	1,081,800	1,108,200	841,000	944,000	919,900	978,600	1,086,700	
March		1,319,000	905,577	762,907	959,801	628,563	821,858	1,006,649	1,021,734	
April		678,900	748,000	699,000	652,000	594,300	618,400	716,100	846,500	
May		905,200	997,300	932,000	860,800	847,200	876,500	897,100	1,493,700	
June	701,853	1,113,269	900,178	1,026,580	730,781	821,511	963,040	1,191,689	1,015,391	
Total	\$701,853	\$10,962,752	\$11,664,370	\$11,151,879	\$10,360,883	\$9,315,775	\$9,811,839	\$11,071,469	\$12,141,715	\$2,009,500

Total received from inception \$89,192,036

Fresno Chaffee Zoo Attendance Comparison 2011 - 2013



Fresno Chaffee Zoo Attendance Totals



* FCZC assumed management responsibility 2.

DRAFT

Agenda Item 4b



FY13 October Financial Report

Board of Directors

Discussion of Financial Results

- **Key Facts & Figures*:**

- YTD operating surplus @ 10/31/13 is \$1,364,487 compared to a projected surplus of \$558,214* .
- Self generated revenue is 19% ahead of the YTD budget.
- Personnel expenses are 5% under YTD budget.
- Operating expenses are 3% under YTD budget.
- YTD attendance has surpassed 2012 attendance of 580,226. At 10/31/2013, YTD attendance was 603,232.

* Excludes investment income (unrealized gain/loss on investments), capital fundraising, depreciation and capital expenditures.

Discussion of Financial Results

Liquid Assets:

	<u>10/31/2013</u>	<u>9/30/2013</u>	<u>12/31/2012</u>
Cash	\$328,775	\$786,861	\$425,865
Short-term Investments	\$861,562	\$461,562	\$11,391
Long-term Investments	\$5,014,410	\$4,906,865	\$4,587,106
Endowment/Board Designated	<u>\$3,824,033</u>	<u>\$3,718,487</u>	<u>\$3,328,648</u>
	\$10,028,780	\$9,873,775	\$8,353,010

Accounts Receivable:

	\$929,905	\$879,184	\$2,170,007
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Accounts Payable/Accrued Liabilities:

Accounts Payable	\$103,856	\$109,189	\$1,058,465
Accrued Liabilities	<u>\$66,489</u>	<u>\$81,143</u>	<u>\$307,287</u>
	\$170,345	\$190,332	\$1,365,752

Net Assets:

Unrestricted	\$27,243,630	\$26,713,108	\$23,573,785
Temporarily Restricted	\$502,645	\$471,142	\$379,376
Permanently Restricted	<u>\$46,668</u>	<u>\$45,291</u>	<u>\$40,850</u>
	\$27,792,943	\$27,229,541	\$23,994,011

Measure Z Balance @ 9/30/2013

Operating	\$5,045,172
Capital Funds	<u>\$47,280,664</u>
	\$52,325,836

October 2013

MTD Attendance				Increase/ Decrease
	2013	2012		
Attendance	43,064	46,329		
Paid	18,382	17,816		
Members	8,132	8,903		
Group	2,645	1,370		
Other	13,905	18,240		
Giraffe Feeding	4,078	3,449		
Capture Rate	9%	7%		
Stingray Bay	9,363	9,244		
Capture Rate	22%	20%		
Winged Wonders				
MTD Revenue				Increase/ Decrease
	2013	2012		
Admissions	\$100,881	\$115,211		
Per Cap	\$2.34	\$2.49		
Giraffe Feeding	\$8,430	\$7,478		
Per Cap	\$0.20	\$0.16		
Stingray Bay	\$12,000	\$11,486		
Per Cap	\$0.28	\$0.25		
Membership	\$51,370	\$41,917		
Contracted Services				
Food Services	\$17,004	\$17,108		
Per Cap	\$0.39	\$0.37		
Gift Shop	\$19,507	\$19,623		
Per Cap	\$0.45	\$0.42		

Key:	
Equal to or ahead of 2012	
2% or less behind 2012	
More than 2% behind 2012	

YTD Attendance				Increase/ Decrease
	2013	2012		
Attendance	603,232	519,730		
Paid	340,875	279,314		
Members	135,838	117,550		
Group	64,165	59,088		
Other	62,354	63,778		
Giraffe Feeding	75,441	51,132		
Capture Rate	13%	10%		
Stingray Bay	188,332	166,050		
Capture Rate	31%	32%		
Winged Wonders	121,032	115,726		
@ 9/30/13				
YTD Revenue				Increase/ Decrease
	2013	2012		
Admissions	\$1,996,072	\$1,699,677		
Per Cap	\$3.31	\$3.27		
Giraffe Feeding	\$151,694	\$113,955		
Per Cap	\$0.25	\$0.22		
Stingray Bay	\$252,712	\$207,265		
Per Cap	\$0.42	\$0.40		
Membership	\$651,211	\$586,119		
# of Members	13,398	12,182		
Contracted Services				
Food Services	\$249,753	\$214,985		
Per Cap	\$0.41	\$0.41		
Gift Shop	\$313,278	\$259,400		
Per Cap	\$0.52	\$0.50		

2012 Audit	
580,226	
300,730	
131,013	
60,942	
87,541	
56,571	
10%	
177,141	
31%	
120,851	
\$1,816,543	
\$3.13	
\$125,276	
\$0.22	
\$219,535	
\$0.38	
\$691,189	
12,368	
\$230,324	
\$0.40	
\$280,566	
\$0.48	

Fresno's Chaffee Zoo Corporation

Balance Sheet

October 2013

	FY13 @ 10/31/13	FY13 @ 9/30/13	FY12 Unaudited
ASSETS			
Cash	\$328,775	\$786,861	\$425,865
Short Term Investments	\$861,562	\$461,562	\$11,391
Long Term Investments	\$8,838,443	\$8,625,352	\$7,915,754
Accounts Receivable	\$929,905	\$879,184	\$2,170,007
Prepaid Expenses	\$95,416	\$117,135	\$266,723
Inventory	\$0	\$0	\$0
Building, Equipment, Vehicle and Furniture (net)	\$2,252,627	\$2,161,834	\$1,217,643
Construction in Progress	\$4,064,815	\$3,796,251	\$2,891,505
Exhibits	\$10,591,746	\$10,591,694	\$10,460,875
TOTAL ASSETS	\$27,963,288	\$27,419,873	\$25,359,763
LIABILITIES AND NET ASSETS			
Liabilities			
Accounts Payable/Accrued Liabilities	\$170,345	\$190,332	\$1,365,752
Total Liabilities	\$170,345	\$190,332	\$1,365,752
Net Assets			
1-3000-00 Fund Balance-Unrestricted	\$27,243,630	\$26,713,108	\$23,573,784
2-3000-00 Fund Balance-Temporarily Restricted	\$502,645	\$471,142	\$379,376
3-3000-00 Fund Balance-Permanently Restricted	\$46,668	\$45,291	\$40,850
Total Net Assets	\$27,792,943	\$27,229,541	\$23,994,011
TOTAL LIABILITIES AND NET ASSETS	\$27,963,288	\$27,419,873	\$25,359,763

Unrealized gain/(loss) on investments of \$800,774 at 10/31/13 and \$596,498 at 9/30/13 . Impacts both Long Term Investments and Net Assets.

Fresno's Chaffee Zoo Corporation
Income Statement
@ October 31, 2013

REVENUE	FY13 Budget		Current Month		Year-to-Date		FY12 Audited
	Budget	Actual @ 10/31/13	Budget	Variance	Budget	Actual @ 10/31/13	
Self Generated Revenue							
Admissions	\$1,860,300	\$100,881	\$120,120	(\$19,239)	\$1,710,300	\$1,996,072	\$1,816,543
Adopt an Animal	\$25,000	\$1,435	\$800	\$635	\$21,100	\$26,613	\$25,290
Board Designated for Endowment	\$50,000	\$78,023	\$0	\$78,023	\$37,500	\$81,477	\$31,298
Education	\$220,525	\$10,505	\$7,688	\$2,817	\$194,450	\$212,514	\$204,901
Food Services	\$234,000	\$17,004	\$18,700	(\$1,696)	\$208,400	\$252,580	\$230,324
Gift Shop	\$280,800	\$19,507	\$22,550	(\$3,043)	\$250,080	\$318,268	\$280,566
Giraffe Feeding	\$125,775	\$8,430	\$10,105	(\$1,675)	\$112,015	\$151,694	\$125,276
Grants/Fundraising	\$153,500	\$52,691	\$111,767	\$40,925	\$130,067	\$173,393	\$191,436
Group Event/Facility Rental	\$150,000	\$54,460	\$12,500	\$41,960	\$125,000	\$229,070	\$191,324
Interest Income	\$275,000	\$9,550	\$10,000	(\$450)	\$125,000	\$128,710	\$257,872
Investment Income	\$0	\$204,276	\$0	\$204,276	\$0	\$800,774	\$633,395
Membership	\$684,000	\$51,370	\$46,000	\$5,370	\$574,000	\$651,211	\$691,189
Special Events	\$444,000	\$143,933	\$137,500	\$6,433	\$362,000	\$328,600	\$419,160
Stingray Exhibit	\$239,850	\$12,000	\$13,600	(\$1,600)	\$224,950	\$252,712	\$219,535
Other	\$28,350	\$919	\$1,770	(\$851)	\$24,970	\$46,535	\$31,722
Total Self Generated Revenue	\$4,771,100	\$764,984	\$413,099	\$351,884	\$4,099,832	\$5,650,223	\$5,349,831
City of Fresno	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Measure Z-Capital Funds	\$20,240	\$277,972	\$1,687	\$276,285	\$16,867	\$1,994,477	\$8,941,678
Measure Z Operating Funds	\$3,766,252	\$270,438	\$308,844	(\$38,406)	\$2,996,252	\$2,864,318	\$3,129,944
Transfer to/from Related Organization	\$0	\$0	\$0	\$0	\$0	\$34,300	\$0
TOTAL REVENUE	\$8,557,592	\$1,313,393	\$723,630	\$589,764	\$7,112,950	\$10,543,319	\$17,421,453

@ October 31, 2013

EXPENSES	Current Month				Year-to-Date			
	FY13 Budget	Budget	Actual @ 10/31/13	Variance	Budget	Actual @ 10/31/13	Variance	FY12 Audited
OPERATING EXPENSES								
Personnel Expenses								
Administration	\$564,803	\$46,082	\$47,932	(\$1,850)	\$452,329	\$473,839	(\$21,511)	\$534,086
Animal	\$1,675,445	\$136,849	\$120,455	\$16,394	\$1,329,331	\$1,215,603	\$113,728	\$1,472,267
Education	\$721,211	\$54,941	\$53,811	\$1,130	\$591,350	\$633,810	(\$42,460)	\$687,294
Maintenance/Horticulture	\$575,809	\$48,596	\$38,547	\$10,049	\$459,302	\$359,815	\$99,487	\$480,231
Mem/Dev/Marketing	\$404,833	\$33,113	\$35,220	(\$2,107)	\$320,554	\$326,526	(\$5,971)	\$384,969
Veterinary	\$216,689	\$18,087	\$17,272	\$816	\$172,664	\$164,313	\$8,351	\$189,532
Visitor Services	\$576,977	\$47,145	\$43,240	\$3,905	\$466,658	\$432,482	\$34,176	\$519,240
Total Personnel Expenses	\$4,735,767	\$384,814	\$356,477	\$28,337	\$3,792,187	\$3,606,388	\$185,799	\$4,267,619
Other Expenses								
Advertising	\$302,000	\$26,333	\$21,654	\$4,679	\$252,333	\$225,722	\$26,611	\$288,933
Animal Feed	\$271,700	\$22,642	\$29,705	(\$7,063)	\$226,417	\$230,435	(\$4,018)	\$268,142
Computer/Software	\$48,445	\$2,212	\$260	\$1,953	\$44,021	\$44,012	\$9	\$43,934
Conservation	\$50,000	\$4,167	\$12,500	(\$8,333)	\$41,667	\$48,374	(\$6,707)	\$25,891
Depreciation Expense	\$246,456	\$25,001	\$20,531	\$4,471	\$196,453	\$157,635	\$38,818	\$415,059
Dues	\$35,600	\$4,863	\$900	\$3,963	\$34,925	\$33,445	\$1,480	\$35,619
Equipment	\$140,243	\$21,429	\$19,583	\$1,846	\$109,136	\$105,289	\$3,847	\$112,583
Fleet	\$37,600	\$3,133	\$2,045	\$1,089	\$31,333	\$23,373	\$7,961	\$36,410
Food/Catering	\$71,900	\$4,767	\$30,255	(\$25,489)	\$54,117	\$102,803	(\$48,686)	\$83,682
Insurance	\$140,000	\$11,000	\$10,036	\$964	\$131,000	\$131,597	(\$597)	\$123,804
Miscellaneous Business	\$14,300	\$1,348	\$2,812	(\$1,464)	\$12,303	\$11,806	\$497	\$8,215
Office Supplies	\$28,395	\$2,374	\$4,741	(\$2,366)	\$23,687	\$21,939	\$1,748	\$33,597
Postage	\$47,360	\$3,180	\$535	\$2,645	\$40,000	\$28,943	\$11,057	\$34,850
Printing	\$119,595	\$7,423	\$8,073	(\$650)	\$103,900	\$102,649	\$1,251	\$104,988
Repairs and Replacements	\$191,350	\$15,946	\$35,018	(\$19,072)	\$159,458	\$172,970	(\$13,511)	\$188,397
Service/Bank/Credit Card Fees	\$112,490	\$9,374	\$5,994	\$3,381	\$93,742	\$94,698	(\$956)	\$103,342
Signage	\$27,000	\$2,250	\$80	\$2,170	\$22,500	\$33,914	(\$11,414)	\$26,134
Specialized Services	\$612,475	\$51,483	\$57,280	(\$5,796)	\$504,458	\$571,630	(\$67,172)	\$573,272
Staff Development	\$62,550	\$7,396	\$8,069	(\$673)	\$52,958	\$54,546	(\$1,588)	\$39,224

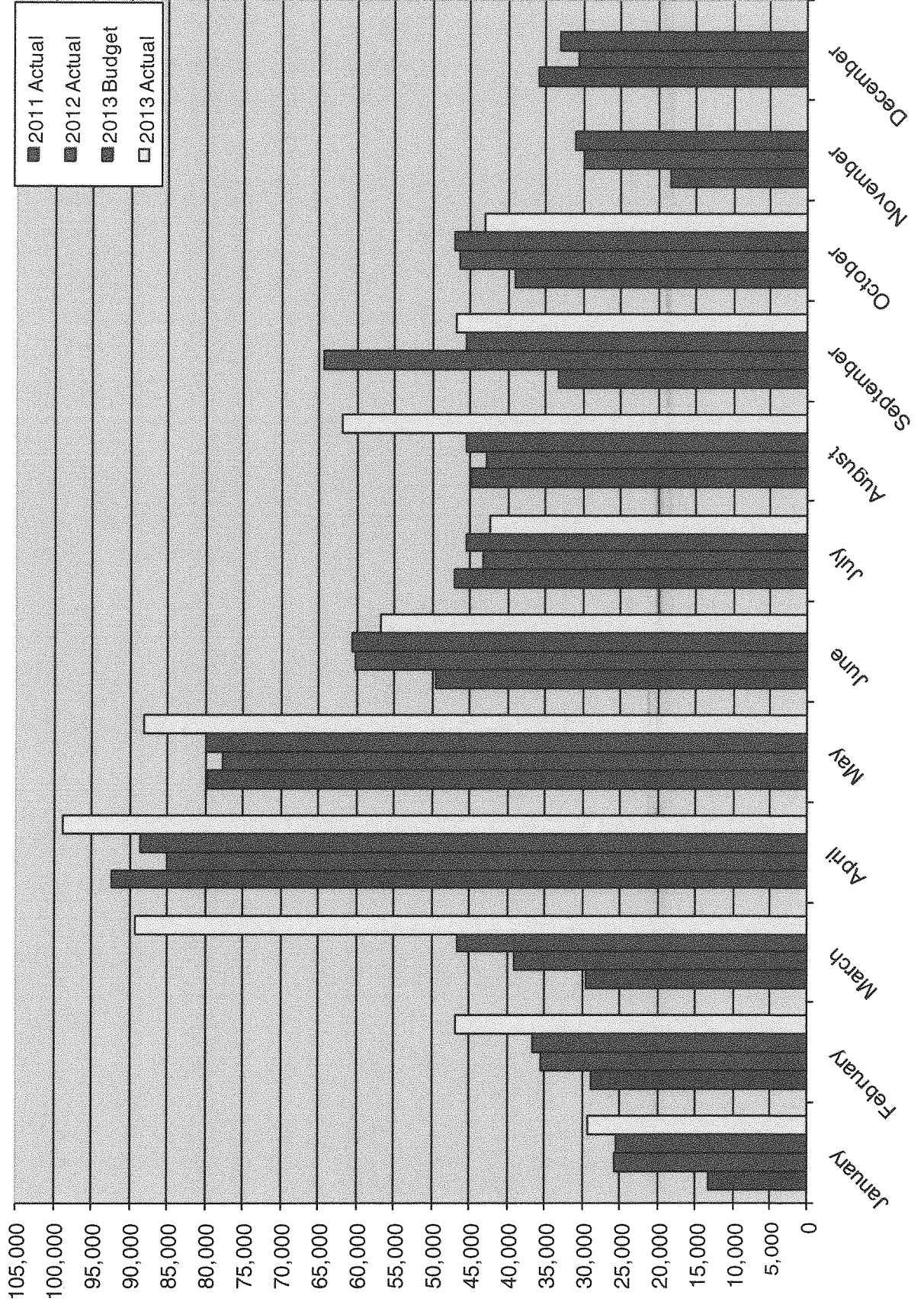
Fresno's Chaffee Zoo Corporation
Income Statement
@ October 31, 2013

	FY13 Budget	Current Month		Year-to-Date			FY12 Audited	
		Budget	Actual @ 10/31/13	Variance	Budget	Actual @ 10/31/13		Variance
Supplies	\$275,855	\$28,359	\$30,009	(\$1,650)	\$226,887	\$218,279	\$8,608	\$243,758
Telephone	\$34,850	\$2,904	\$2,870	\$34	\$29,042	\$27,157	\$1,885	\$38,245
Uniforms	\$33,050	\$2,379	\$591	\$1,788	\$29,292	\$17,040	\$12,252	\$33,978
Utilities	\$450,000	\$37,500	\$40,448	(\$2,948)	\$375,000	\$335,644	\$39,356	\$383,797
Other	\$90,550	\$10,688	\$9,671	\$1,017	\$76,675	\$88,370	(\$11,695)	\$76,662
Total Other Expenses	\$3,443,764	\$308,151	\$353,658	(\$45,507)	\$2,871,302	\$2,882,268	(\$10,966)	\$3,322,517
TOTAL OPERATING EXPENSES	\$8,179,531	\$692,965	\$710,135	(\$17,170)	\$6,663,489	\$6,488,656	\$174,833	\$7,590,137
Expansion/Nonoperating Exp.								
Expansion/Nonoperating Exp.	\$330,000	\$35,000	\$39,857	(\$4,857)	\$260,000	\$255,730	\$4,270	\$94,090
Total Expansion/Nonoperating Exp.	\$330,000	\$35,000	\$39,857	(\$4,857)	\$260,000	\$255,730	\$4,270	\$94,090
TOTAL EXPENSES	\$8,509,531	\$727,965	\$749,992	(\$22,026)	\$6,923,489	\$6,744,387	\$179,103	\$7,684,227
BEGINNING FUND BALANCE	\$23,994,011	\$27,229,541	\$27,229,541	\$0	\$23,994,011	\$23,994,011	\$0	\$14,256,785
NET SURPLUS/(DEFICIT)	\$48,061	(\$4,336)	\$563,402	\$567,737	\$189,461	\$3,798,932	\$3,609,471	\$9,737,226
ENDING FUND BALANCE	\$24,042,072	\$27,225,206	\$27,792,943	\$567,737	\$24,183,472	\$27,792,943	\$3,609,471	\$23,994,011

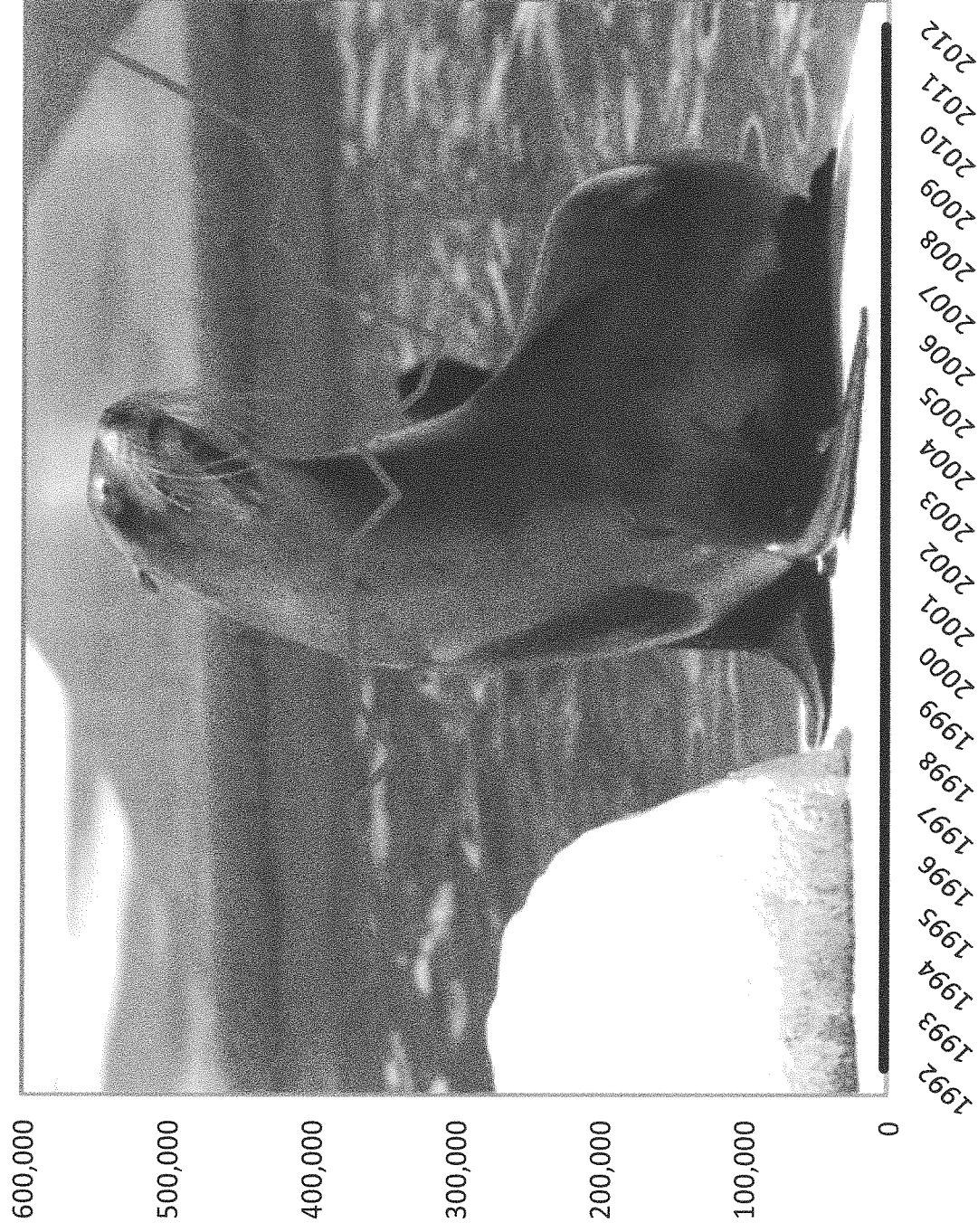
Measure Z Revenue Summary of Tax Proceeds

	2004-2005 ACTUAL	2005-2006 ACTUAL	2006-2007 ACTUAL	2007-2008 ACTUAL	2008-2009 ACTUAL	2009-2010 ACTUAL	2010-2011 ACTUAL	2011-2012 ACTUAL	2012-2013 ACTUAL	2013-2014 ACTUAL
July		\$700,400	\$671,500	\$819,900	\$813,500	\$671,700	\$659,300	\$719,800	\$826,000	\$903,500
August		933,800	895,400	1,093,200	1,084,700	885,300	857,600	921,200	1,033,100	\$1,106,000
September		764,524	1,453,498	1,060,279	930,087	810,940	895,691	1,057,603	1,028,369	\$1,097,605
October		705,400	679,300	853,500	792,200	678,000	677,000	694,100	850,500	
November		940,500	1,471,000	1,138,000	1,056,300	743,300	879,500	878,500	1,056,800	
December		1,324,459	1,047,118	827,112	872,815	971,061	932,350	1,240,028	1,083,021	
January		676,000	813,700	831,200	766,900	719,900	710,700	770,100	799,900	
February		901,300	1,081,800	1,108,200	841,000	944,000	919,900	978,600	1,086,700	
March		1,319,000	905,577	762,907	959,801	628,563	821,858	1,006,649	1,021,734	
April		678,900	748,000	699,000	652,000	594,300	618,400	716,100	846,500	
May		905,200	997,300	932,000	860,800	847,200	876,500	897,100	1,493,700	
June	701,853	1,113,269	900,178	1,026,580	730,781	821,511	963,040	1,191,689	1,015,391	
Total	\$701,853	\$10,962,752	\$11,664,370	\$11,151,879	\$10,360,883	\$9,315,775	\$9,811,839	\$11,071,469	\$12,141,715	\$3,107,105
Total received from inception										\$90,289,641

Fresno Chaffee Zoo Attendance Comparison 2011 - 2013



Fresno Chaffee Zoo Attendance Totals



* FCZC assumed management responsibility 2.



DATE: December 6, 2013

TO: Board of Fresno County Zoo Authority

FROM: Catherine Crosby
Zoo Authority Coordinator

RE: **Approval of Measure Z Funds for African Adventure**

RECOMMENDED ACTION:

- A. Consider the Environmental Impact Report for Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plan (EIR) previously certified by the Fresno City Council, June 30, 2011 and the EIR Addendum approved by the Fresno City Council on November 7, 2013, and adopt Resolution Adopting CEQA Findings and Statement of Overriding Considerations.
- B. Approve Fresno Chaffee Zoo Corporation's request of Measure Z Capital Funds of \$51,699,682 for the African Adventure project.

DISCUSSION:

Attached is the Zoo Corporation's request for Measure Z Capital Funds of \$51,699,682 for the African Adventure project. Zoo Corporation staff will present their request to the Zoo Authority Board and be available to answer any questions you may have.

The African Adventure project is partially located in the Fresno Chaffee Zoo expansion area that is now part of Roeding Park. By letter dated November 7, 2013, the State of California, Natural Resources Agency, notified the City of Fresno that the National Park Service (NPS) determined that the African Adventure project does not significantly contravene the overall purpose of the park and therefore NPS approval is not required. As NPS approval is not required, NPS determined that the African Adventure project does not trigger federal compliance requirements under such statutes as the National Environmental Policy Act and the National Historic Preservation Act. Copies of the letters from the State Natural Resources Agency and NPS are attached.

BOARD ACTION: DATE _____ APPROVED AS RECOMMENDED _____ OTHER _____

UNANIMOUS _____
GRAY _____ HERZOG _____ LYLES _____ STRATFORD _____ SWEARENGIN _____ TOSTE _____ WATERHOUSE _____

Previously, your Board has been provided with a copy of the Environmental Impact Report for Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plan (EIR) certified by the Fresno City Council on June 30, 2011, and your Board considered and approved this EIR when approving the Sea Lion Cove project, among others. On November 7, 2013, the Fresno City Council considered and approved an Addendum to the EIR. The Addendum was prepared for amendments to the Roeding Park Master Plan that were necessitated by the proposed High Speed Rail project that is planned adjacent to Roeding Park. Your Board has been provided a copy of the City approved Addendum for your review and consideration.

Should your Board choose to approve the funding of the African Adventure project, staff would recommend that your Board consider the EIR previously certified by the Fresno City Council on June 30, 2011 and the EIR Addendum approved by the Fresno City Council on November 7, 2013; and adopt the Resolution Adopting CEQA Findings and Statement of Overriding Considerations. This should be done prior to, or at the same time, your Board approves the funding of the African Adventure project.

ATTACHMENTS:

ATTACHMENT 1: Fresno Chaffee Zoo Corporation request for Measure Z Capital Funds of \$51,699,682 for the Africa expansion area, Harris Construction Contract and Exhibits.

ATTACHMENT 2: November 5, 2013 letter from National Park Service, and November 7, 2013 letter from Office of Grants and Local Services, California Department of Parks and Recreation.

ATTACHMENT 3: Fresno County Zoo Authority Board Draft Resolution Adopting CEQA Findings and Statement of Overriding Considerations for the Fresno Chaffee Zoo Africa Expansion.



Fresno Chaffee Zoo • 894 West Belmont Avenue • Fresno, California 93728
Phone (559) 498-5910 • Fax (559) 264-9226

DATE: December 6, 2013
TO: Fresno County Zoo Authority Board
FROM: Scott Barton, Chief Executive Officer
Fresno's Chaffee Zoo Corporation

SUBJECT:

Request 2013 Measure Z Capital Funds of \$51,699,682 for the African expansion area.

RECOMMENDED ACTION:

Approve Fresno's Chaffee Zoo Corporation request of Measure Z Capital funds of \$51,699,682.

FISCAL IMPACT:

The request will increase the 2013 Measure Z Capital budget by \$51,699,682 to \$53,354,806.98.

DISCUSSION:

1. The Zoo Authority approved \$150,000 at the July 27, 2011 meeting to begin conceptual design of the African expansion area.
2. The Zoo Authority approved \$4,081,091 at the March 28, 2012 meeting for design fees of the African expansion area.
3. The method used to procure the preconstruction phase and the construction phase services for the African expansion project is commonly known as "Construction Manager at Risk". When using this method of project procurement, a public announcement is made requesting a Statement of Qualification. Once the Statement of Qualifications are reviewed a select list of the Construction Management firms are chosen to participate in an interview process and issued a Request for Cost Proposal. When the interview process is completed each Construction Management firm is scored and Cost Proposals are reviewed. A formula is used taking into consideration the Cost Proposal and the Qualification score of each firm. This method is used on publicly funded projects as a way to competitively determine the best value to the Owner when hiring a Construction Management firm.

A Notice of Request for Qualification for the African expansion project was advertised on October 15, 2011 in the Fresno Bee, the Central California Builders Exchange, and on the Fresno Chaffee Zoo Website. Seven firms submitted Statement of Qualifications, and four were issued Request for Cost Proposals and granted interviews. At the end of this process, Harris Construction was awarded the contract to provide preconstruction and construction phase services.

4. Harris received \$20,000 for preconstruction services and will be compensated for their construction services based on a percentage of the cost of the Work, as defined in Article 1 of the General Conditions.
5. Harris Construction competitively bid the trade contractor work using processes described in the Request for Qualifications, section 2.01 paragraphs "h" and "i" and in Article 2.05 of the Contract General Conditions. The "major" trades (plumbing, mechanical, electrical, etc.) were directly solicited and prequalified prior to bidding. All other trade work was competitively bid through direct solicitation and using the Central California Builder's Exchange.
6. On May 21, 2013 a bid opening was held at the office of Harris Construction. Over the next few weeks bids were analyzed and qualified, and the total cost of the Work was ascertained. The total of all trade work was determined to be \$40,491,704. Harris Construction Fees for managing the work, providing job site support, profit and contingency is \$3,771,296. Harris Construction's Guaranteed Maximum Price to build the African Savannah project is \$44,263,000.
7. Other items included in the overall budget are design and management services, materials testing and special inspections, fixtures, furnishings and equipment. The overall budget also includes funds to relocate Roeding Park features that are currently within the Expansion area and required to be relocated by the Environmental Impact Report. These costs, as well as Harris Construction's Guaranteed Maximum Price, are shown on the following page.
8. The Africa exhibit is located in the Fresno Chaffee Zoo expansion area that is now part of Roeding Park. This phase includes space for many African species including lion, giraffe, elephant, rhinoceros, cheetah, and meerkat. There will also be a new café, visitor pathways, access roads, off-exhibit areas, and a food preparation area.

REFERENCE MATERIAL:

GMP from Harris Construction (exhibit A)

Fresno Chaffee Zoo Africa Exhibit Increments 2 and 3 List of Plans, Specs and Addenda (exhibit A.1)

Clarification, Assumptions and Exclusions (exhibit A.2)

Bid Summary (exhibit A.3)

Construction Schedule (exhibit A.4)

Contract General Conditions for Construction Manager at Risk (exhibit B)

Guaranteed Maximum Price Agreement for Construction Phase Services

THIS AGREEMENT, made on October 21, 2013, BY AND BETWEEN THE FRESNO CHAFFEE ZOO CORPORATION (hereinafter designated FCZC) and

Harris Construction Co., Inc.
5286 E. Home Ave.
Fresno, CA 93727

hereinafter designated the Construction Manager at Risk (CM)

WITNESSETH

1. That the CM agrees to furnish all labor, materials, and equipment, and to perform all Work necessary to construct the African Savannah Project per the drawings and specifications as outlined in Harris Construction's attached Guaranteed Maximum Price Proposal in a good workmanlike and substantial manner, and to the satisfaction of the FCZC in accordance with the Contract Documents. The Contract Documents include and are hereby incorporated in to this agreement as defined in the Contract General Conditions attached.

The CM agrees:

- a) that the total Actual Direct Construction Cost for this Project is: \$40,491,704.00
 - b) that the following fees are included in the Guaranteed Maximum Price (GMP):
 - 4.25% for Construction Phase Services - Site Management Fee is \$1,720,897.00
 - 0.75% of the Actual Direct Construction Cost for CM's Contingency is: \$303,688.00
 - 3.50% of the Actual Direct Construction Cost for CM's Overhead & Profit is: \$1,417,210.00
 - 0.75% of the total of the above items for Performance and Payment Bonds: \$329,501.00
 - c) to receive and accept a total GMP Not-to-Exceed Contract Amount of: \$44,263,000.00
- as full compensation for prosecution of the Work until its acceptance by the FCZC.

2. That the FCZC will fix the starting date of the Contract and issue a Notice to Proceed after the date of approval of the Contract by The CM shall fully complete all the Work of the Contract, in first class working order and ready for acceptance by the FCZC, on or before the expiration of 598 calendar days from the starting time so fixed.
3. That should there be any conflict between the terms of the Guaranteed Maximum Price Proposal and the other Contract Documents, the other Contract Documents shall control, and nothing contained herein shall be considered as an acceptance of any terms of the Guaranteed Maximum Price Proposal Form in conflict herewith.
4. That the Guaranteed Maximum Price Proposal attached hereto and by this reference are made a part of this agreement.

IN WITNESS WHEREOF, the parties to these presents have hereto set their hands the year and date first above written

Fresno's Chaffee Zoo Corporation

Harris Construction Company, Inc.

By: Sam Burt

By: Robert W. Harris

Title: CEO

Title: C. O. O.

Date: 1 Nov 13

Date: 11/4/13

Budget Breakdown for the African Savannah Project

Design, Inspection, Plan Review and Project Management

1	Soil Investigation and Analysis	\$8,700.00
2	Storm Water Pollution Prevention Plan	\$38,075.00
3	Survey of Site	\$22,900.00
4	Special Testing and Inspection	\$296,713.00
5	Project management	\$250,000.00
6	Architect fees	\$4,381,385.00
	Subtotal	\$4,997,773.00

Governmental Fees

7	Traffic Mitigation Fees	\$200,000.00
8	Transportation Mitigation Fees	\$200,000.00
9	Plan Review Fees	\$100,000.00
	Subtotal	\$500,000.00

Owner Provided Items

10	Interpretative Displays	\$1,000,000.00
11	Audio Visual and Camera Systems	\$350,000.00
12	Fixtures Furniture and Equipment	\$1,200,000.00
13	Builder's Risk Insurance	\$75,000.00
14	Owner's Contingency	\$3,000,000.00
	Subtotal	\$5,625,000.00

Park Items in Expansion Requiring Relocation

15	Police Cameras and Microwave Transceiver	\$100,000.00
16	Main Point of Entry for Phone System	\$50,000.00
17	Relocate Water Service for Offsite Park Irrigation	\$75,000.00
18	Relocate Zoo Administration Building	\$200,000.00
19	Relocate Roeding Park Entrance	\$100,000.00
	Subtotal	\$525,000.00

Construction Management Costs

20	Preconstruction Services	\$20,000.00
21	Guaranteed Maximum Construction Costs	\$44,263,000.00
	Subtotal	\$44,283,000.00

22	African Savannah Overall Project Costs	\$55,930,773.00
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Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
 INCREMENTS 2 AND 3
 LIST OF PLANS, SPECS AND ADDENDA

G - 010	4/15/13	D - 101.07	4/15/13	C - 101.07	4/15/13
G - 020	4/15/13	D - 101.08	4/15/13	C - 101.08	4/15/13
G - 030	4/15/13	D - 101.09	4/15/13	C - 101.09	4/15/13
G - 101	4/15/13	D - 101.10	4/15/13	C - 101.10	4/15/13
G - 102	4/15/13	D - 101.11	4/15/13	C - 101.11	4/15/13
G - 103	4/15/13	D - 101.12	4/15/13	C - 101.12	4/15/13
G - 104	4/15/13	D - 101.13	4/15/13	C - 101.13	4/15/13
G - 105	4/15/13	D - 101.14	4/15/13	C - 101.14	4/15/13
G - 106	4/15/13	D - 101.15	4/15/13	C - 101.15	4/15/13
G - 107	4/15/13	D - 101.16	4/15/13	C - 101.16	4/15/13
G - 108	4/15/13	D - 101.17	4/15/13	C - 101.17	4/15/13
G - 109	4/15/13	DE - 110	4/15/13	C - 101.18	4/15/13
G - 110	4/15/13	TP - 110.01	4/15/13	C - 101.19	4/15/13
V - 100	3/19/13	TP - 110.02	4/15/13	C - 101.20	4/15/13
V - 101	3/19/13	TP - 110.03	4/15/13	C - 101.21	4/15/13
DC - 100	3/19/13	TP - 110.04	4/15/13	C - 101.22	4/15/13
DC - 101	3/19/13	C - 100	3/19/13	C - 101.23	4/15/13
D - 100	4/15/13	C - 100.1	3/19/13	C - 101.24	4/15/13
D - 101.01	4/15/13	C - 101.01	4/15/13	C - 200.01	3/19/13
D - 101.02	4/15/13	C - 101.02	4/15/13	C - 200.02	3/19/13
D - 101.03	4/15/13	C - 101.03	4/15/13	C - 200.03	3/19/13
D - 101.04	4/15/13	C - 101.04	4/15/13	C - 200.04	3/19/13
D - 101.05	4/15/13	C - 101.05	4/15/13	C - 200.07	3/19/13
D - 101.06	4/15/13	C - 101.06	4/15/13	C - 200.08	3/19/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

C - 200.09	3/19/13	L - 111.03	4/15/13	L - 121.06	4/15/13
C - 200.12	3/19/13	L - 111.04	4/15/13	L - 121.07	4/15/13
C - 200.13	3/19/13	L - 111.05	4/15/13	L - 121.08	4/15/13
C - 200.14	3/19/13	L - 111.06	4/15/13	L - 121.09	4/15/13
C - 200.15	3/19/13	L - 111.07	4/15/13	L - 121.10	4/15/13
C - 200.16	3/19/13	L - 111.08	4/15/13	L - 121.11	4/15/13
C - 200.17	3/19/13	L - 111.09	4/15/13	L - 121.12	4/15/13
C - 200.20	3/19/13	L - 111.10	4/15/13	L - 121.13	4/15/13
C - 200.21	3/19/13	L - 111.11	4/15/13	L - 121.14	4/15/13
C - 200.22	3/19/13	L - 111.12	4/15/13	L - 121.15	4/15/13
C - 200.23	3/19/13	L - 111.13	4/15/13	L - 121.16	4/15/13
C - 200.24	3/19/13	L - 111.14	4/15/13	L - 121.17	4/15/13
C - 500	3/19/13	L - 111.15	4/15/13	L - 130	4/15/13
C - 501	3/19/13	L - 111.16	4/15/13	L - 131.01	4/15/13
C - 502	3/19/13	L - 111.17	4/15/13	L - 131.02	4/15/13
C - 503	3/19/13	L - 112	4/15/13	L - 131.03	4/15/13
C - 504	3/19/13	L - 120.01	4/15/13	L - 131.04	4/15/13
C - 505	3/19/13	L - 120.02	4/15/13	L - 131.05	4/15/13
C - 506	3/19/13	L - 120.03	4/15/13	L - 131.06	4/15/13
C - 507	3/19/13	L - 121.01	4/15/13	L - 131.07	4/15/13
C - 508	3/19/13	L - 121.02	4/15/13	L - 131.08	4/15/13
L - 110	4/15/13	L - 121.03	4/15/13	L - 131.09	4/15/13
L - 111.01	4/15/13	L - 121.04	4/15/13	L - 131.10	4/15/13
L - 111.02	4/15/13	L - 121.05	4/15/13	L - 131.11	4/15/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

L - 131.12	4/15/13	L - 181.17	4/15/13	L - 419	4/15/13
L - 131.13	4/15/13	L - 182	4/15/13	L - 430	4/15/13
L - 131.14	4/15/13	L - 190	4/15/13	L - 440	4/15/13
L - 131.15	4/15/13	L - 210	4/15/13	L - 443	4/15/13
L - 131.16	4/15/13	L - 211	4/15/13	L - 444	4/15/13
L - 131.17	4/15/13	L - 212	4/15/13	L - 450	4/15/13
L - 170	4/15/13	L - 213	4/15/13	L - 451	4/15/13
L - 180	4/15/13	L - 214	4/15/13	L - 500	4/15/13
L - 181.01	4/15/13	L - 215	4/15/13	L - 501	4/15/13
L - 181.02	4/15/13	L - 216	4/15/13	L - 502	4/15/13
L - 181.03	4/15/13	L - 217	4/15/13	L - 503	4/15/13
L - 181.04	4/15/13	L - 218	4/15/13	L - 504	4/15/13
L - 181.05	4/15/13	L - 219	4/15/13	L - 505	4/15/13
L - 181.06	4/15/13	L - 220	4/15/13	L - 506	4/15/13
L - 181.07	4/15/13	L - 221	4/15/13	L - 510	4/15/13
L - 181.08	4/15/13	L - 410	4/15/13	L - 511	4/15/13
L - 181.09	4/15/13	L - 411	4/15/13	L - 512	4/15/13
L - 181.10	4/15/13	L - 412	4/15/13	L - 513	4/15/13
L - 181.11	4/15/13	L - 413	4/15/13	L - 520	4/15/13
L - 181.12	4/15/13	L - 414	4/15/13	L - 521	4/15/13
L - 181.13	4/15/13	L - 415	4/15/13	L - 522	4/15/13
L - 181.14	4/15/13	L - 416	4/15/13	L - 523	4/15/13
L - 181.15	4/15/13	L - 417	4/15/13	L - 524	4/15/13
L - 181.16	4/15/13	L - 418	4/15/13	L - 526	4/15/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

L-530	4/15/13
L-533	4/15/13
L-540	4/15/13
L-541	4/15/13
L-542	4/15/13
L-543	4/15/13
L-544	4/15/13
L-545	4/15/13
L-550	4/15/13
L-552	4/15/13
L-553	4/15/13
L-554	4/15/13
L-555	4/15/13
L-556	4/15/13
L-560	4/15/13
L-570	4/15/13
L-580	4/15/13
L-590	4/15/13
L-591	4/15/13
L-592	4/15/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

G-011	4/15/13	A01-112	4/15/13	A01-501	4/15/13
G-021	4/15/13	A01-113	4/15/13	A01-502	4/15/13
G-031	4/15/13	A01-121	4/15/13	A01-503	4/15/13
A00-500	4/15/13	A01-122	4/15/13	A01-504	4/15/13
A00-501	4/15/13	A01-201	4/15/13	A01-505	4/15/13
A00-502	4/15/13	A01-202	4/15/13	A01-516	4/15/13
A00-510	4/15/13	A01-203	4/15/13	A01-517	4/15/13
A00-520	4/15/13	A01-204	4/15/13	A01-521	4/15/13
A00-530	4/15/13	A01-301	4/15/13	A01-531	4/15/13
A00-540	4/15/13	A01-302	4/15/13	A01-532	4/15/13
A00-600	4/15/13	A01-303	4/15/13	A01-533	4/15/13
A00-601	4/15/13	A01-311	4/15/13	A01-541	4/15/13
A00-611	4/15/13	A01-312	4/15/13	A01-542	4/15/13
A00-612	4/15/13	A01-313	4/15/13	A01-545	4/15/13
A00-613	4/15/13	A01-311	4/15/13	A01-546	4/15/13
A00-614	4/15/13	A01-312	4/15/13	A01-551	4/15/13
A00-615	4/15/13	A01-313	4/15/13	A01-552	4/15/13
A00-616	4/15/13	A01-401	4/15/13	A01-553	4/15/13
A00-617	4/15/13	A01-402	4/15/13	A02-101	4/15/13
A00-620	4/15/13	A01-403	4/15/13	A02-301	4/15/13
A00-621	4/15/13	A01-410	4/15/13	A02-501	4/15/13
A01-101	4/15/13	A01-411	4/15/13	A03-101	4/15/13
A01-102	4/15/13	A01-412	4/15/13	A03-201	4/15/13
A01-111	4/15/13	A01-413	4/15/13	A03-301	4/15/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

A03 – 501	4/15/13	A11 – 501	4/15/13	A31 – 113	4/15/13
A03 – 502	4/15/13	A12 – 101	4/15/13	A31 – 121	4/15/13
A04 – 101	4/15/13	A12 – 121	4/15/13	A31 – 122	4/15/13
A05 – 101	4/15/13	A12 – 301	4/15/13	A31 – 201	4/15/13
A05 – 201	4/15/13	A13 – 101	4/15/13	A31 – 301	4/15/13
A05 – 301	4/15/13	A13 – 201	4/15/13	A31 – 302	4/15/13
A05 – 501	4/15/13	A13 – 501	4/15/13	A31 – 303	4/15/13
A10 – 101	4/15/13	A30 – 101	4/15/13	A31 – 401	4/15/13
A10 – 102	4/15/13	A30 – 102	4/15/13	A31 – 402	4/15/13
A10 – 103	4/15/13	A30 – 111	4/15/13	A31 – 403	4/15/13
A10 – 104	4/15/13	A30 – 121	4/15/13	A31 – 501	4/15/13
A10 – 105	4/15/13	A30 – 201	4/15/13	A31 – 701	4/15/13
A10 – 111	4/15/13	A30 – 202	4/15/13	A31 – 702	4/15/13
A10 – 121	4/15/13	A30 – 301	4/15/13	A31 – 741	4/15/13
A10 – 201	4/15/13	A30 – 401	4/15/13	A32 – 101	4/15/13
A10 – 301	4/15/13	A30 – 701	4/15/13	A32 – 102	4/15/13
A10 – 302	4/15/13	A31 – 100	4/15/13	A32 – 111	4/15/13
A10 – 303	4/15/13	A31 – 101	4/15/13	A32 – 121	4/15/13
A10 – 311	4/15/13	A31 – 102	4/15/13	A32 – 201	4/15/13
A10 – 501	4/15/13	A31 – 103	4/15/13	A32 – 301	4/15/13
A10 – 502	4/15/13	A31 – 104	4/15/13	A32 – 701	4/15/13
A10 – 503	4/15/13	A31 – 105	4/15/13	A33 – 101	4/15/13
A11 – 101	4/15/13	A31 – 111	4/15/13	A33 – 102	4/15/13
A11 – 201	4/15/13	A31 – 112	4/15/13	A33 – 111	4/15/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

A33 - 121	4/15/13	A34 - 756	4/15/13	S00 - 000	4/1/13
A33 - 201	4/15/13	A40 - 101	4/15/13	S00 - 001	4/1/13
A33 - 301	4/15/13	A40 - 201	4/15/13	S00 - 002	4/1/13
A33 - 302	4/15/13	A40 - 301	4/15/13	S00 - 003	4/1/13
A33 - 401	4/15/13	A40 - 501	4/15/13	S00 - 101	4/1/13
A33 - 501	4/15/13	A41 - 101	4/15/13	S00 - 102	4/1/13
A33 - 502	4/15/13	A41 - 201	4/15/13	S00 - 103	4/1/13
A33 - 701	4/15/13	A41 - 301	4/15/13	S00 - 104	4/1/13
A34 - 101	4/15/13	A50 - 101	4/15/13	S00 - 105	4/1/13
A34 - 102	4/15/13	A50 - 201	4/15/13	S00 - 106	4/1/13
A34 - 103	4/15/13	A50 - 301	4/15/13	S00 - 107	4/1/13
A34 - 111	4/15/13	A51 - 101	4/15/13	S00 - 200.1	4/1/13
A34 - 121	4/15/13	A52 - 101	4/15/13	S00 - 200.2	4/1/13
A34 - 201	4/15/13	A52 - 102	4/15/13	S00 - 200.3	4/1/13
A34 - 202	4/15/13	A52 - 103	4/15/13	S00 - 200.4	4/1/13
A34 - 301	4/15/13	A52 - 104	4/15/13	S00 - 201	4/15/13
A34 - 302	4/15/13	A52 - 105	4/15/13	S00 - 202	4/1/13
A34 - 401	4/15/13	A52 - 111	4/15/13	S00 - 203	4/1/13
A34 - 402	4/15/13	A52 - 121	4/15/13	S00 - 410	4/1/13
A34 - 501	4/15/13	A52 - 201	4/15/13	S00 - 412	4/1/13
A34 - 701	4/15/13	A52 - 202	4/15/13	S00 - 415	4/1/13
A34 - 710	4/15/13	A52 - 301	4/15/13	S00 - 416	4/1/13
A34 - 741	4/15/13	A52 - 302	4/15/13	S00 - 506	4/1/13
A34 - 751	4/15/13	A52 - 501	4/15/13	S01 - 101	4/1/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

S01-121	4/1/13	S10-213	4/1/13	S34-211	4/1/13
S01-122	4/1/13	S11-101	4/1/13	S34-212	4/1/13
S01-123	4/1/13	S11-211	4/1/13	S34-213	4/1/13
S01-124	4/1/13	S12-101	4/1/13	S40-101	4/1/13
S01-125	4/1/13	S12-121	4/1/13	S41-101	4/1/13
S01-211	4/1/13	S12-211	4/1/13	S41-211	4/1/13
S01-212	4/1/13	S13-101	4/1/13	S50-101	4/1/13
S01-213	4/1/13	S13-211	4/1/13	S51-101	4/1/13
S01-214	4/1/13	S30-101	4/1/13	S52-101	4/1/13
S01-215	4/1/13	S30-121	4/1/13	S52-102	4/1/13
S01-216	4/1/13	S31-100	4/1/13	S52-211	4/1/13
S01-217	4/1/13	S31-101	4/1/13	S52-212	4/1/13
S02-101	4/1/13	S31-102	4/1/13	S52-213	4/1/13
S02-211	4/1/13	S31-121	4/1/13		
S04-101	4/1/13	S31-211	4/1/13		
S05-101	4/1/13	S31-212	4/1/13		
S05-211	4/1/13	S33-101	4/1/13		
S10-102	4/1/13	S33-121	4/1/13		
S10-103	4/1/13	S33-201	4/1/13		
S10-111	4/1/13	S33-211	4/1/13		
S10-121	4/1/13	S33-212	4/1/13		
S10-131	4/1/13	S34-101	4/1/13		
S10-211	4/1/13	S34-102	4/1/13		
S10-212	4/1/13	S34-121	4/1/13		

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

M00 - 101	4/15/13	M05 - 501	4/15/13	M34 - 501	4/15/13
M00 - 102	4/15/13	M05 - 502	4/15/13	M34 - 502	4/15/13
M00 - 201	4/15/13	M10 - 101	4/15/13	M34 - 503	4/15/13
M00 - 202	4/15/13	M11 - 101	4/15/13	M40 - 101	4/15/13
M00 - 203	4/15/13	M12 - 101	4/15/13	M40 - 501	4/15/13
M00 - 301	4/15/13	M12 - 501	4/15/13	M40 - 502	4/15/13
M00 - 302	4/15/13	M12 - 502	4/15/13	M41 - 101	4/15/13
M01 - 101	4/15/13	M30 - 101	4/15/13	M41 - 501	4/15/13
M01 - 102	4/15/13	M30 - 501	4/15/13	M41 - 502	4/15/13
M01 - 103	4/15/13	M30 - 502	4/15/13	M50 - 101	4/15/13
M01 - 501	4/15/13	M30 - 503	4/15/13	M52 - 101	4/15/13
M01 - 502	4/15/13	M31 - 100	4/15/13	M52 - 501	4/15/13
M01 - 503	4/15/13	M31 - 501	4/15/13	M52 - 502	4/15/13
M01 - 504	4/15/13	M31 - 502	4/15/13	P00 - 101	4/15/13
M02 - 101	4/15/13	M31 - 503	4/15/13	P00 - 102	4/15/13
M02 - 501	4/15/13	M32 - 101	4/15/13	P00 - 201	4/15/13
M02 - 502	4/15/13	M32 - 501	4/15/13	P00 - 202	4/15/13
M03 - 101	4/15/13	M32 - 502	4/15/13	P01 - 101	4/15/13
M03 - 501	4/15/13	M32 - 503	4/15/13	P01 - 102	4/15/13
M03 - 502	4/15/13	M33 - 101	4/15/13	P01 - 103	4/15/13
M04 - 101	4/15/13	M33 - 501	4/15/13	P01 - 121	4/15/13
M04 - 501	4/15/13	M33 - 502	4/15/13	P02 - 101	4/15/13
M04 - 502	4/15/13	M33 - 503	4/15/13	P03 - 101	4/15/13
M05 - 101	4/15/13	M34 - 101	4/15/13	P04 - 101	4/15/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

P05 - 101	4/15/13	E - 103	4/15/13	E10 - 111	4/15/13
P10 - 101	4/15/13	E - 104	4/15/13	E10 - 112	4/15/13
P10 - 102	4/15/13	E - 105	4/15/13	E11 - 101	4/15/13
P10 - 103	4/15/13	E - 106	4/15/13	E12 - 101	4/15/13
P12 - 101	4/15/13	E - 107	4/15/13	E13 - 101	4/15/13
P13 - 101	4/15/13	E - 108.1	4/15/13	E30 - 101	4/15/13
P30 - 101	4/15/13	E - 108.2	4/15/13	E30 - 111	4/15/13
P31 - 101	4/15/13	E - 109	4/15/13	E31 - 101	4/15/13
P31 - 102	4/15/13	E - 110	4/15/13	E31 - 102	4/15/13
P32 - 101	4/15/13	E - 111	4/15/13	E31 - 111	4/15/13
P32 - 102	4/15/13	E - 112	4/15/13	E31 - 112	4/15/13
P33 - 101	4/15/13	E - 114	4/15/13	E31 - 113	4/15/13
P33 - 102	4/15/13	E - 115	4/15/13	E32 - 101	4/15/13
P34 - 101	4/15/13	E - 116	4/15/13	E32 - 111	4/15/13
P34 - 102	4/15/13	E01 - 101	4/15/13	E33 - 101	4/15/13
P40 - 101	4/15/13	E01 - 102	4/15/13	E33 - 111	4/15/13
P41 - 101	4/15/13	E01 - 111	4/15/13	E34 - 101	4/15/13
P50 - 101	4/15/13	E01 - 121	4/15/13	E34 - 111	4/15/13
P52 - 101	4/15/13	E02 - 101	4/15/13	E40 - 101	4/15/13
P52 - 102	4/15/13	E03 - 101	4/15/13	E41 - 101	4/15/13
P100 - 101	4/18/13	E04 - 101	4/15/13	E50 - 101	4/15/13
DE - 110	4/15/13	E05 - 101	4/15/13	E52 - 101	4/15/13
E - 100	4/15/13	E10 - 101	4/15/13	E52 - 111	4/15/13
E - 102	4/15/13	E10 - 102	4/15/13	EX - 100	4/15/13

Exhibit A.1

FRESNO CHAFFEE ZOO AFRICA EXHIBIT
INCREMENTS 2 AND 3
LIST OF PLANS, SPECS AND ADDENDA

EX - 101	4/15/13	FS. 1	4/15/13
EX - 102	4/15/13	FS. 2	4/15/13
EX - 103	4/15/13	FS. 3	4/15/13
EX - 104	4/15/13	FS. 4	4/15/13
EX - 105	4/15/13	FS. 5	4/15/13
EX - 106	4/15/13	FS. 6	4/15/13
EX - 107	4/15/13	FS. 7	4/15/13
EX - 108	4/15/13	FS. 8	4/15/13
EX - 109	4/15/13	FS. 9	4/15/13
EX - 110	4/15/13	FS. 10	4/15/13
EX - 111	3/19/13	FV. 1	4/15/13
LS - 00	4/1/13	FV. 2	4/15/13
LS - 01	4/1/13	FV. 3	4/15/13
LS - 02	4/1/13	FV. 4	4/15/13
LS - 03	4/1/13	Addenda #3	5/03/2013
LS - 04	4/1/13	Addenda #4	5/10/2013
LS - 05	4/1/13	Addenda #5	5/16/2013
LS - 06	4/1/13	Specifications	04/15/2013
LS - 07	4/1/13	ALL PREPARED BY "THE PORTICO GROUP"	
LS - 08	4/1/13		
LS - 09	4/1/13		
LS - 10	4/1/13		
LS - 11	4/1/13		
FR. 1	4/15/13		

Clarifications, Assumptions and Exclusions

No.	Description
	Landscape, Rockery and Landscape is part of GMP as an Allowance
	Prefabricated Building deferred design upgrades
	Precast wall deferred design tilt up embeds
	Coordination between LSS and electrical
	Grade adjustment for ADA and Animal containment
	Removal/Abandon 12in Water main
	Excavation of Shotcrete Footings is not included due to deferred design
	Hand Crank Window Operators is not included
	Modified hardware groups to support card readers on doors A31-111A, A33-102B, and A34-114A.
	Float Valve for precast drinkers is not included
	Park Ticket office is not included
	Shotcrete access panels are not included
	Owner furnish and contractor installed items shown on drawings are not included
	City Backcheck comments/new conformed set is not included
	Any changes based on unanswered Request for Information is not included
	Tree Transplant Irrigation in existing park is not included
	Existing Historic Rock Wall dismantle and/or bracing is not included
	Unknown underground utilities is not included
	Permits & Fees is not included
	Audio Visual equipment not included
	Rule 16 PGE not included
	Security systems not included
	Data/Comm systems not included
	Video Surveillance not included
	Colored EMT not included
	Pond draining other than city sewer is not included
	Replacement of transplanted and existing trees when all procedures have been followed and verified is not included
	Kitchen equipment and animal food prep is not included
	LSS piping modification due to tree conflicts is not included
	Interpretive items and signage is not included
	Payment of early deposit costs for materials to manufacturers will be billed in the previous months billing.
	Dewatering is not included
	The owner has included allowances and contingencies separate from the GMP for scope, unforeseen, conditions and clarifications required.

Harris Construction Co., Inc.
Fresno Chaffee Zoo
Africa Exhibit

INCREMENT 3
Bid Summary

GMP
\$ 390,117 \$ 44,263,000

Section	Description	Subcontractor/ City	City / State or Country	County	Number of bids solicited	Number of bids received	Alternate
02 4100	Demolition	Cen Cal Demo	Fresno	Fresno	9	2	\$ 211,250
	Reinforcing Steel	Harris Rebar	Canada	Local office	8	2	\$ 878,229
03 3000	Building & Site Concrete	Harris Construction	Fresno	Fresno	12	2	\$ 3,980,540
03 4113	Pre-Cast Concrete	CTU PreCast	Shafter	Kern	7	3	\$ 710,030
03 3713	Shotcrete	COST Of Wisconsin	Wisconsin		1	1	\$ 5,955,800
04 2000	Masonry	Dorfmeir Masonry	Fresno	Fresno	6	2	\$ 754,496
05 1200	Structural Steel	Golden State Steel, Fowler	Fowler	Fresno	9	2	\$ 1,022,875
05 5000	Misc Iron Labor	Harris Construction	Fresno	Fresno			\$ 95,458
	Visitor Rails and Fencing	Valley Fence, Fresno	Clovis	Fresno	7	3	\$ 1,473,220
	Netting & Cable at Overlook Bridge	Nets Unlimited / Harris					\$ 40,330
06 1000	Rough Carpentry	Harris Construction	Fresno	Fresno	8	2	\$ 2,126,974
06 4100	Architectural Casework	Executive Interiors, Fresno	Fresno	Fresno	11	1	\$ 213,320
07 2100	Thermal Insulation	Sacramento Building Products	Sacramento	Local office	3	2	\$ 87,245
07 4646	Fiber Cement Siding	Harris Construction	Fresno	Fresno			\$ 5,000
07 5300	Elastomeric Membrane Roofing	Graham Prewitt Roofing	Fresno	Fresno	8	3	\$ 2,288,000
08 1113	HM Doors & Frames	Childs & Co., Fresno			9	3	\$ 67,700
08 1416	Wood Doors	Childs & Co., Fresno	Fresno	Fresno	9	2	\$ 33,690
	Door and Hardware Labor	Harris Construction	Fresno	Fresno	4	2	\$ 57,849
08 3100	Access Doors	Harris Construction	Fresno	Fresno			\$ 5,000
08 3323	Overhead Colling Doors	The Smith Co./ Roseville	Roseville		8	2	\$ 17,236
08 7100	Door Hardware	Childs & Co., Fresno	Fresno	Fresno	9	2	\$ 99,875
08 8000	Glazing	San Joaquin Glass, Fresno	Fresno	Fresno	9	1	\$ 767,121
09 2116	Metal Framing/ Drywall / Plaster	Karsyn Construction	Fresno	Fresno	7	2	\$ 1,211,850
09 9300	Tile	Allowance					\$ 25,344
09 5000	Acoustical Ceilings	Western Building Mat./ Fresno	Fresno	Fresno	4	1	\$ 73,300
09 5500	Carpet, Base & Stall Flooring	B.T. Mancini	Sacramento		8	2	\$ 53,229
09 9000	Painting	Nelson's Painting	Fresno	Fresno	5	4	\$ 173,000
09 9656	Epoxy Coating	Extreme Industrial Coatings, Fresno	Fresno	Fresno	11	4	\$ 89,800
10 2213.1	Toilet Partitions	Shelco, Fresno	Fresno	Fresno	11	1	\$ 27,259
10 4300	Emergency Aid Specialties	Harris Construction	Fresno	Fresno			\$ 5,000
10 4400	Fire Protection Specialties	Jorgensen Co, Fresno	Fresno	Fresno	4	1	\$ 1,004
10 5100	Lockers	Shelco, Fresno	Fresno	Fresno	4	1	\$ 4,300

Harris Construction Co., Inc.
Fresno Chaffee Zoo
Africa Exhibit

INCREMENT 3
Bid Summary

\$ 390,117 \$ 44,263,000
GMP

Section	Description	Subcontractor/ City	City / State or Country	County	Number of bids solicited	Number of bids received	Alternate	
	Fireplace Inserts	Harris Construction	Fresno	Fresno	4	1		\$ 25,000
11 2429	Facility Fall Protection	Harris Construction	Fresno	Fresno				\$ 2,500
11 9200	Animal Equipment	A Thru Z Consulting, Tucson AZ	Arizona		4	3		\$ 2,926,430
	Carved Graffiti Heads	Executive Interiors, Fresno	Fresno		3	1		\$ 38,000
13 3419	Prefabricated Building System	MD Barmaster, Corning	Corning		8	1		\$ 1,150,893
14 4213	Inclined Wheelchair Lift	Hankin Specialty, Sacto	Sacramento		5	1		\$ 28,200
	Bridge Crane	Precision Crane	Fresno				\$ 143,903	\$ -
21 2001	Fire Protection System	Jerico Fire protection, Fresno	Fresno	Fresno	8	2		\$ 99,900
22 0001	Plumbing	Fresno Plumbing, Fresno	Fresno	Fresno	5	4		\$ 997,242
22 5500	Life Support Systems	Strategic mechanical, Fresno	Fresno	Fresno	6	3		\$ 1,918,000
23 0001	HVAC	Strategic mechanical, Fresno	Fresno	Fresno	5	3		\$ 1,597,450
26 0500	Electrical (Increment 2)	Collins Electric, Stockton	Stockton	Local office	7	4		\$ 160,346
26 0500	Electrical (Increment 3)	AC Electric, Bakersfield	Bakersfield	Local office	7	4	\$ 2,575	\$ 3,685,860
31 1000	Earthwork & Paving	Valley Excavation	Fresno	Fresno	3	3		\$ 1,893,600
32 1413	Precast Unit Pavers	Earth Shelter Developers, Lodi	Lodi		4	4		\$ 71,441
32 1816.1	Playground Protective Surfacing	Harris Construction	Fresno	Fresno				\$ 4,500
32 9300	Landscaping & Rockery	Allowance	Fresno	Fresno	3	3		\$ 2,000,000
33 1000	Site Utilities (Increment 2)	Haydon Construction, Fresno	Fresno	Fresno	4	2		\$ 977,854
	Underground Locator	Bedrock Engineering	San Jose					\$ 7,600
	Survey (Increment 2)	Ingels & Braun	Fresno	Fresno	3	3		\$ 126,350
	Continuous Clean-up	Harris Construction	Fresno	Fresno				\$ 150,797
	Final Clean	Harris Construction	Fresno	Fresno				\$ 10,670
	Trash Hauling & Dump Fees	Harris Construction	Fresno	Fresno				\$ 12,800
	Dust Control	Harris Construction	Fresno	Fresno				\$ 14,400
	Safety Inspections/ Maintenance	Harris Construction	Fresno	Fresno				\$ 35,050
	Install Owner furnished Range Rover	Harris Construction	Fresno	Fresno				\$ 1,500
	SUBTOTAL				271	95	\$ 356,878	\$ 40,491,704
	Construction Services Costs	4.25%	Fresno	Fresno			\$ 15,167	\$ 1,720,897
	Overhead and Profit	3.50%	Fresno	Fresno			\$ 12,491	\$ 1,417,210
	Contractors Contingency	0.75%	Fresno	Fresno			\$ 2,677	\$ 303,688
		SUBTOTAL					\$ 387,213	\$ 43,933,499

INCREMENT 3

Bid Summary

20

Start Date Finish Date Data Date Run Date	01MAY13 22MAY13 01MAY13 01OCT13 10:56	SMP'S Legend: [] Early Bar [] Progress Bar [] Critical Activity	CHAFFEE ZOO AFRICAN ADVENTURE 01OCT13 REVISED CONSTRUCTION SCHEDULE SUMMARY BY AREA	Sheet 1 of 1 10	HARRIS CONSTRUCTION CO. INC. PRINTED: 01OCT13
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Contract General Conditions for Construction Manager at Risk

Africa Exhibit

Fresno Chaffee Zoo

August 24, 2011

**Contract General Conditions
Africa Exhibit
Fresno Chaffee Zoo**

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**Contract General Conditions
Africa Exhibit
Fresno Chaffee Zoo**

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Article 1.00 DEFINITIONS

Addendum - A document that modifies or supersedes portions of the Contract Documents, which is produced by the Architect, approved by the Owner, and issued to the Construction Manager at Risk, prior to the agreement on the Guaranteed Maximum Price.

Agreement - The Contract Documents which collectively represent the entire agreement between the Owner and the Construction Manager at Risk, including Guaranteed Maximum Price, and which supersede any prior negotiations, representations, or agreements, either written or oral. See Contract Documents.

Architect - The person or organization, including the authorized representatives thereof, commissioned by the Owner for the project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term "Architect" shall mean the design professional so commissioned for the project.

Bid Date - The date fixed for submission of technical and cost proposals.

Bidder - Any person or business entity acting directly or through an authorized representative who submits a technical and cost proposal for the work, in response to a Request for Proposal. See Proposer.

Change Order - A written agreement entered into after the award of the Contract that alters or amends the executed Contract.

Construction Manager at Risk (CM) - The Contractor who is selected to review and participate in the production of the construction documents and who agrees upon a Guaranteed Maximum Price to perform the work identified in the Contract Documents. See Contractor. The CM shall solicit trade bids from the trade contractors on a competitive basis and enter into contracts with these trade contractors to perform their trade work.

Construction Schedule - The CM's time use plan for completing the Work within the Contract Time.

Contract - The Contract Documents which collectively represent the entire agreement between the Owner and the Contractor, and which supersede any prior negotiations, representations, or agreements either written or oral.

Contract Documents - The Request for Proposals, technical and cost proposals, bonds, insurance certificates, Plans, Specifications, Addenda, Agreement, Contract General Conditions, Supplementary General Conditions, Special Conditions, and Change Orders.

Contractor - The person or business entity that has entered into this contract with the Owner. See Construction Manager at Risk.

Contract Time - The period of time, set out in calendar days, established in the Contract Documents within which the Work must be completed. The Contract Time may be adjusted by time extensions through Change Orders.

Field Instruction - A written communication to the CM from the Owner. The field instruction is issued by the Project Manager and may reject work, issue directives and/or coordination communications to the CM.

Guaranteed Maximum Price (GMAX) - The maximum price that the Owner and Construction Manager at Risk agree upon as payment for managing, supplying and installing all the work.

Plans - The drawings prepared by the Architect and approved by the Owner which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions or any of these, and which show the location, character, dimension, or details of the work.

Prevailing Wages - The general prevailing rate of wages identified by the Director of the Department of Industrial Relations of the State of California pursuant to section 1770 of the Labor Code.

Progress Schedule - The periodically updated Construction Schedule that reflects the actual progress of the work and impacts on the work thereby maintaining a current projected date of completion. Impacts on the work include, but are not limited to, anticipated delays, re-sequencing of tasks, and Change Orders.

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Project - The total work required by the Contract.

Project Manager - The on-site representative of the Owner.

Project Schedule - The time used to complete the entire project from date of Notice to Proceed of the Preconstruction Services phase through the date of final completion of construction. Major tasks included in the Project Schedule shall include but not be limited to consultant selection and award, design phases, code approvals, bid and award, construction, move-in, and closeout.

Proposer - Any person or business entity acting directly or through an authorized representative who submits a technical and cost proposal for the work, in response to a Request for Proposal. See Bidder.

Site - The area specified in the Contract for the project and the area made available for the CM's operation.

Specifications - The instructions and requirements prepared by the Architect which complement the plans and describe the manner of performing the work or the quantities, qualities and types of materials to be furnished.

Subcontractor - Any person or business entity that contracts with the CM to furnish either labor and materials or equipment, or labor only. See Trade Contractors.

Superintendent - The representative of the CM at the construction site, who is authorized to receive instructions from the Architect and the Project Manager, and who is authorized to direct the performance of the work on behalf of the CM.

Supplier or Vendor - Any person or business entity that contracts with the CM or trade contractor to provide materials or equipment.

Trade Contractors - Appropriately licensed specialty contractors hired by the CM to perform portions of the work.

Owner - The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a Project Manager who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

Work - That which is proposed to be constructed or done under the Contract, including the furnishing of all design services, labor, materials, and equipment.

Article 2.00 NEGOTIATION OF GUARANTEED MAXIMUM PRICE

2.01 Duty to Carefully Examine These Instructions

The Construction Manager at Risk (CM) and the trade contractors for this project shall carefully examine the instructions contained herein and be cognizant of the conditions that must be satisfied prior to submitting a proposal, and the conditions that affect the award of the Contract.

2.02 Competence of CM and Trade Contractors

- a) License. No contractor shall participate in any work for which it is not properly licensed. A contract shall not be awarded to a CM or a trade contractor who does not possess the appropriate contractor's license, which is that specified in the Request for Proposal. Joint venture bidders must individually possess a current license when submitting the bid and the joint venture must possess a joint venture license at the time of award.
- b) If two or more prospective firms desire to submit a proposal as a joint venture on a single project, they must file an affidavit of joint venture with the Owner at least five days prior to the date and time set for opening proposals. The affidavit of joint venture will be valid only for the specific project for which it is filed.

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2.03 Necessity for Careful Examination of Site, Plans, and Specifications

The CM and trade contractors shall carefully examine the Site, the plans, and specifications for the project, and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and subsurface materials or obstacles to be encountered, rights of way and easements at or near the Site, the work to be performed, and materials to be furnished and as to the requirements of the proposal, plans, and specifications for the project. See Article 4.09, Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc. Bidder certifies that Bidder has complied with the requirements of this provision by the submission of its bid.

Any failure by the CM and trade contractors to acquaint themselves with information that is available or with reasonable investigation may be available will not relieve them from responsibility to properly estimate the difficulty or cost to perform the work. Such examination does not require independent underground soil borings unless required elsewhere in the Contract Documents.

- a) Subsurface Investigations. Where the Owner has made investigations of subsurface conditions, and that information is made available to the CM, such information is limited in scope to that which has been actually encountered in the investigations, and is included only for the convenience of the CM. There is no guarantee or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen conditions or developments may not occur.
- b) Differing Site Condition. During the progress of the work, if the CM encounters a subsurface or latent condition at the Site that is substantially different from those indicated in the Contract Documents or made available for examination, a differing Site condition may exist. The CM shall immediately notify the Architect and the Project Manager in writing of the error, conflict, inconsistency, omission or any variance on the project as required herein and as required by laws, ordinances, codes, rules or regulations. The CM shall immediately report such condition to the Project Manager and the Architect in writing. The Architect shall investigate the assertion of a differing Site condition by collecting the facts and applying the facts as expressed by the Architect to the appropriate provisions of the Contract Documents. If the Architect in the exercise of reasonable discretion determines that a differing Site condition exists and that the differing site condition directly results in extra work, and if the Owner concur, the CM shall be entitled to a change order that shall compensate the CM for the extra work.

2.04 Clarification Prior to Guaranteeing the Maximum Price

The CM shall examine the plans and specifications in preparing the GMAX and shall report to the Architect any omissions, discrepancies, or apparent errors found in the plans and specifications. Before the date of agreeing to the GMAX, the CM shall submit a written request for clarification to the Architect who may give such clarification in the form of an addendum. Otherwise, in obtaining the cost of the project, the CM shall consider that any conflicts shall be governed by Article 5.01, Interpretation of Contract Requirements.

The CM is advised that the time period for submitting a proposed product as "an equal" is limited to the period prior to the date of agreeing to a GMAX. Refer to Article 5.04-c, Alternatives or Equals.

Only the Architect is authorized to answer questions or prepare addenda relative to the project. Information obtained verbally from any source has no contractual authority, may not be relied upon, and shall have no standing in any event that may occur.

2.05 Soliciting and Executing Trade Bid Packages

The CM shall develop the most logical, competitive, seamless and distinct trade contractor bid packages with all scopes of work included in the packages. Include bid alternatives (deductive or additive) in each trade contractor bid package to enable full utilization of the project budget. Include these General Conditions for Construction Manager at Risk in each trade contractor bid packages. The CM shall not cause the trade contractors to include any construction contingency or allowances in their bids unless authorized by the Owner. CM shall obtain the review and approval of the Owner's Representative of the proposed trade contractor bid documents and trade contractor agreements prior to bidding work. The Owner may require

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the CM to include language in the trade bid solicitation giving preferential treatment to Local Contractors, Disabled Veterans and/or Certified Small Businesses.

2.06 Assignment of Trade Contractors

The CM shall include in all trade contracts an assignment clause stating that the Owner has the right to require that the CM assign the trade contract(s) to the Owner. Upon direction from the Owner, the CM shall assign to the Owner for fully vesting in the Owner all rights and benefits of the CM under such trade contracts or purchase orders.

2.07 Listing of Trade Contractors

Upon receipt of bids from trade contractors for the GMAX, the CM shall submit to the Project Manager the List of Proposed Trade Contractors to be used on the project, identifying those trade contractors performing work in excess of one-half of one percent of the GMAX. The list of proposed trade contractors shall state the portion of work or labor or rendition of services that each such trade contractor will do and provide addresses, telephone numbers, and license numbers.

2.08 Substitution of Trade Contracts

The CM shall not substitute any trade contractor in place of a trade contractor identified and agreed upon at the time of agreeing to the Guaranteed Maximum Price except as authorized by the Owner

Article 3.00 AWARD AND EXECUTION OF CONTRUCTION CONTRACT

3.01 Award of Construction Contract

At the completion of the Preconstruction Phase the CM shall submit to the Owner their GMAX proposal. The GMAX proposal will include:

- a) A list of the Drawings and Specifications, including all Addenda thereto.
- b) A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal.
- c) A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- d) The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based.
- e) A date by which the Owner must accept the Guaranteed Maximum Price.
- f) A written statement warranting the construction documents are free of omissions, ambiguities and conflicts and that the trade contractor bid packages include all of the scope of work identified in the construction documents.

If the Owner and the CM agree to a Guaranteed Maximum Price, the Owner shall award a Contract to the CM to construct the project for the aggregate of direct cost of the work, as defined in Article 8.03, Direct Cost of the Work, plus the CM's fee for construction phase services, as defined in Article 8.04, Construction Phase Services, CM's contingency, and overhead and profit included in the response to the Request for Proposal. If there is no concurrence on the Guaranteed Maximum Price, the Owner shall not award a Contract to the CM and may procure the construction of the Project by other means.

3.02 Contract Bonds

The CM shall furnish in quadruplicate counterparts, two surety bonds. Each bond shall be in an amount equal to 100 percent of the awarded Contract price and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." One of the surety bonds shall guarantee faithful performance of the Contract by the CM and the other shall secure payment of laborers, mechanics, or materialmen employed on the project. Such bonds are subject to the approval of the Owner. Contract bonds shall remain in full force and effect during the term of the Contract including the one-year guarantee period.

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All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract, including determinations made under Article 7.01, Claims, shall be made without securing the consent of the surety or sureties on the Contract bonds.

Whenever the Owner has cause to believe that the surety has become insufficient, the Owner may demand in writing that the CM provide such further bonds or additional surety, not exceeding that originally required, as in the Owner's opinion is necessary, considering the extent of the work remaining to be done. Thereafter no payment shall be made to the CM or any assignee of the CM until the further bonds or additional surety has been furnished.

3.03 Execution of Contract

The Contract shall be signed by the successful CM in the requisite number of counterparts and returned to the Owner together with the Contract bonds and certificates evidencing the required insurance coverage (see Article 4.03, CM's Insurance) within ten days of receipt from the Owner, not including Saturdays, Sundays, or legal holidays. The CM and the Owner shall each sign two sets of plans, specifications, and addenda (usually at the preconstruction conference) one set for each party to be filed with the Contract. No contract shall be binding upon the Owner until it has been executed by the CM and the Owner and approved by the attorney appointed according to law and authorized to represent the Owner.

When the Contract has been fully executed, the Owner will issue a Notice to Proceed to the CM. The CM may not begin work before receiving the Owner's written Notice to Proceed. Any work performed by the CM before receipt of the Notice to Proceed shall be considered as having been done at the CM's own risk.

3.04 Failure or Refusal to Execute Contract

Failure or refusal by the CM to execute the Contract within the time set in Article 3.03, Execution of Contract, shall be cause for the rescission of the award. Failure or refusal to file acceptable bonds and insurance within the time set in Article 3.03, Execution of Contract, constitutes a failure or refusal to execute the Contract.

Article 4.00 CONDUCT OF THE WORK

4.01 Laws to be Observed - General

- a) The CM shall observe all state and federal laws that affect the work under this Contract. The CM shall hold harmless, defend and indemnify the Owner against any claim arising from the violation of any law, whether by itself or its agents, employees or trade contractors. If a conflict arises between the provisions of this Contract and a law, the CM shall immediately notify the Architect and the Project Manager in writing. "Law" as used in this paragraph includes statutes and regulations adopted pursuant to statute, as well as executive orders, authoritative interpretations, and other rules and directives issued by legally constituted authority.
- b) The CM's work under this Contract shall comply with all applicable building codes identified in the Contract Documents. The CM is responsible to have general knowledge (see California Business and Professional Code section 7068) of applicable building codes. Any fines or damages resulting from the violation of these codes will be sole responsibility of the CM.

4.02 Laws to be Observed - Regarding Labor

- a) Prevailing Wage. CM represents and warrants that the Contract Amount includes sufficient funds to allow CM and all trade contractors and subcontractors to comply with applicable laws and contractual agreements. CM shall defend, indemnify and hold the Owner, its officers, employees and agents harmless from and against any and all claims, demands, losses, liabilities, and damages arising out of or relating to the failure of CM or any trade contractor or any subcontractor to comply with any applicable law in this regard, including, but not limited to, Labor Code section 2810. CM agrees to pay any and all assessments, including wages, penalties and liquidated damages (those liquidated damages pursuant to Labor Code section 1742.1) made against the Owner in relation to such failure.

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- b) The Work under this Contract is a public works project (see definition of public works, Labor Code section 1720) and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8, California Code of Regulations, sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. The prevailing wage rates set forth are the minimum that must be paid by the CM on a public works contract. Nothing herein contained shall be construed as preventing the CM from paying more than the minimum rates set forth. No extra compensation whatsoever will be allowed by the Owner due to the inability of the CM to hire labor at minimum rates, nor for the necessity for payment by the CM of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the CM's own satisfaction in preparing the bid.
- c) Pursuant to Labor Code section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work for each craft needed in execution of the Contract as set forth in the Contract Documents. It shall be the CM's responsibility to obtain the most current rates as provided by the Department of Industrial Relations.
- d) The CM and any trade contractor under the CM shall comply with Labor Code section 1775. The CM shall include provisions in its contract with its trade contractors that will require compliance with Labor Code section 1775. As required by section 1775(b) the CM shall include a copy of the provisions of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the contract between the CM and the trade contractor. The CM shall monitor its trade contractors' compliance with the prevailing wage law as required by section 1775(b). In accordance with section 1775, the CM and any trade contractor under the CM shall forfeit as a penalty \$50 for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any public work done under the Contract by it or, except as provided in 1775(b), by any trade contractor under it. In addition to this penalty, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CM or trade contractor. If a worker employed by a trade contractor on a public works project is not paid the general prevailing per diem wages by the trade contractor, the CM is not liable for any penalties under 1775(a), unless the CM had knowledge of that failure of the trade contractor to pay the specified prevailing rate of wages to those workers, or unless the CM fails to comply with the requirements of 1775(b).
- e) In accordance with Labor Code section 1776, the CM and trade contractors shall keep an accurate payroll record, on forms provided by the Division of Labor Standards Enforcement (or shall contain the same information as the forms provided by the division). The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified herein. Each payroll record shall contain verification by written declaration under penalty of perjury that the information contained in the payroll record is true and correct and that the CM and trade contractors have complied with the requirements of Labor Code sections 1771, 1811 and 1815 for any work performed by its employees on the project. The CM's and trade contractor's payroll records shall be available for inspection at all reasonable hours, and a certified copy shall be made available upon request to the employee or his or her authorized representative, the Owner, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards. Upon receipt of written notice from the Owner, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, and within ten days of that receipt, the CM shall file with the requesting entity a certified copy of the payroll records. Should the CM or trade contractor fail to comply within the ten-day period, the CM or trade contractor shall forfeit \$25 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these

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penalties shall be withheld from progress payments then due. The CM is not subject to a penalty assessment due to the failure of a trade contractor to comply with this section.

4.03 Environmental Requirements

- a) A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (see also Article 4.05-c, Protection of Facilities).
 - 1. Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.
- b) Sound Control Requirements. The CM shall comply with all sound control and noise level rules, regulations and ordinances that apply to the work. In the absence of any such rules, regulations and ordinances, the CM shall conduct its work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the Owner's requests to reduce noise levels.
 - 1. Each internal combustion engine, used for any purpose on the project or related to the project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without a muffler. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.
- c) Archaeological Finds. If the CM discovers any artifacts during excavation and/or construction, the CM shall stop all affected work and notify the Owner, who will call in a qualified archaeologist designated by the California Archaeological Inventory to assess the discovery and suggest further mitigation, as necessary. If the CM discovers human remains, the CM shall notify the Owner who will be responsible for contacting the county coroner and a qualified archaeologist.

4.04 CM's Insurance

- a) The CM shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Owner.
 - 1) Policies and Coverage
 - i) The CM shall obtain and maintain for the term of the Contract the following policies and coverage:
 - 1. Comprehensive or Commercial Form General Liability Insurance on an occurrence basis, covering work done or to be done by or on behalf of the CM and providing insurance for bodily injury, personal injury, property damage and contractual liability. The aggregate limit shall apply separately to the work.
 - 2. Business Automobile Liability Insurance on an occurrence basis, covering owned, hired and non-owned automobiles used by or on behalf of the CM and providing insurance for bodily injury, property damage and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
 - 3. Workers' Compensation including Employer's Liability Insurance as required by law.
 - 2) Verification of Coverage. The CM shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Owner as evidence of the insurance coverage. The scope of coverage and endorsements shall provide for no cancellation or modification of coverage without thirty (30) days written notice to the Owner. Renewal certifications and endorsements shall be timely filed by the CM for all coverage until the work is accepted as completed pursuant to Article 8.01, Acceptance. The

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Owner reserve the right to require the CM to furnish the Owner complete, certified copies of all required insurance policies.

- 3) Insurance Provisions. Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 4.04. The insurance policies shall contain, or be endorsed to contain, the following provisions:
 - i) For the general and automobile liability policies the Owner their officers, employees, representatives, volunteers and agents are to be covered as additional insured.
 - ii) For any claims related to the work, the CM's insurance coverage shall be primary insurance as respects the Owner their officers, employees, representatives, volunteers and agents. Any insurance or self-insurance maintained by the Owner their officers, employees, representatives, volunteers and agents shall be in excess of the CM's insurance and shall not contribute with it.
 - iii) Each insurance policy required by this Article shall state that coverage shall not be canceled by either the CM or the insurance carrier, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Owner.
 - iv) The Owner their officers, employees, representatives, volunteers and agents shall not by reason of their inclusion as additional insured incur liability to the insurance carriers for payment of premiums for such insurance.
- 4) Amount of Insurance.
 - i) For all projects the insurance furnished by CM under this Article shall provide coverage in amounts not less than the following:
 1. Comprehensive or Commercial Form General Liability Insurance - Limits of Liability
 - a. \$5,000,000 General Aggregate
 - b. \$2,000,000 Each Occurrence - combined single limit for bodily injury and property damage
 2. Business Automobile Liability Insurance - Limits of Liability
 - a. \$1,000,000 Each Accident - combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage.
 3. Workers' Compensation limits as required by law.
- 5) Acceptability of Insurers. Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A:VII, or shall be a carrier otherwise acceptable to Owner.
- 6) Trade Contractor's Insurance. CM shall ensure that its trade contractors are covered by insurance of the types required by this Article, and that the amount of insurance for each trade contractor is appropriate for that trade contractor's work. CM shall not allow any trade contractor to commence work on its trade contract until the insurance has been obtained.
- 7) Miscellaneous.
 - i) Any deductible under any policy of insurance required in this Article, shall be the CM's liability.
 - ii) Acceptance of certificates of insurance by the Owner shall not limit the CM's liability under the Contract.
 - iii) In the event the CM does not comply with these insurance requirements, the Owner may, at its option, provide insurance coverage to protect the Owner. The cost of the insurance shall be paid by the CM and, if prompt payment is not received, may be deducted from Contract sums otherwise due to the CM.

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- iv) If the Owner are damaged by the failure of the CM to provide or maintain the required insurance, the CM shall pay the Owner for all such damages.
- v) The CM's obligations to obtain and maintain all required insurance are non-delegable duties under this Contract.
- b) The Owner shall insure or self-insure all work while in the course of construction, including materials incorporated in the work, against physical loss or damage resulting from the perils normally insured under a "Standard All Risk Course of Construction" policy, including, but not limited to theft, fire, flood, vandalism, or Acts of God. The Owner shall issue to the CM a "Summary of Coverage" upon request of the CM.

4.05 Indemnification

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in this Article.

- a) The CM shall hold harmless, defend, and indemnify the Owner, their officers, employees, representatives and agents of each of them, from and against all claims, damages and losses arising out of, resulting from, or relating to (1) the failure of the CM to perform its obligations under the Contract or the performance of its obligation in a willful or negligent manner; (2) the inaccuracy of any representation or warranty by the CM given in accordance with or contained in the Contract Documents; and (3) any claim of damage or loss by any trade contractor, or supplier, or laborer against the Owner arising out of any alleged act or omission of the CM or any other trade contractor, or anyone directly or indirectly employed by the CM or any trade contractor.
- b) The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable due to a non-delegable duty.
- c) The CM shall hold harmless, defend, and indemnify the Owner their officers, employees, representatives and agents of each of them from and against all claims, damages and losses resulting from any claim of damage made by any separate contractor of the Owner against the Owner arising out of any alleged acts or omissions of the CM, a trade contractor, anyone directly or indirectly employed by either the CM or trade contractor, or anyone for whose acts either the CM or trade contractor may be liable.
- d) The CM shall hold harmless, defend, and indemnify all separate contractors of the Owner their officers, employees, representatives and agents of each of them from and against all claims, damages and losses arising out of the negligent acts or omissions or willful misconduct of the CM, a trade contractor, anyone directly or indirectly employed by the CM or trade contractor, or anyone for whose acts the CM or trade contractor may be liable. The Owner shall cause a reciprocal indemnification provision in favor of the CM to be included in its contracts with separate contractors of the Owner. Liability for any negligent act or omission or willful misconduct shall be apportioned pursuant to the applicable law of the State of California.

4.06 CM's Responsibility for the Work

The CM shall be responsible for all work performed under this Contract, and no trade contractor will be recognized by the Owner as being responsible for the work. For purposes of assessing responsibility to the CM, all persons engaged in the work shall be considered employees of the CM. The CM shall give its personal attention to the fulfillment of the Contract and keep all phases of the work under its control.

The Owner will not arbitrate disputes among trade contractors nor between the CM and one or more trade contractors concerning responsibility for performing any part of the project.

- a) Quality Control. The CM shall be fully responsible for the quality of materials and workers' skill in the project. The CM shall not rely upon the inspection and testing provided by the Owner or jurisdictions having authority other than those special inspections and tests performed by the Owner's selected laboratories for which there are written reports.

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- b) **Burden for Damage.** From the issuance of the official Notice to Proceed until the formal acceptance of the Project by the Owner, the CM shall have the charge and care of and shall bear the risk of damage to the Project, and materials and equipment for the project.

The CM, at its own expense, shall promptly rebuild, repair, restore, and make good all such damage to any portion or to all of the Project and materials thereof before the acceptance of the Project by the Owner except for such damage as is proximately caused by acts of the federal government or public enemy. In case of suspension of work from any cause whatever, the CM shall be responsible for all materials, and shall properly store them, if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

If the CM damages any property belonging to the Owner, the Owner may, in addition to other remedies available to the Owner, retain from the money due to the CM an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

Neither the Owner their officers, employees, representatives, nor agents of each of them shall be responsible for any damage to the project and materials and equipment for the project.

- c) **Protection of Facilities.** From the issuance of the official Notice to Proceed until the formal acceptance of the project by the Owner, CM shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Work is not prosecuted, CM shall furnish such watchman's services as necessary to safeguard materials and equipment in storage on the Project site, including Work in place or in process of fabrication, against theft, acts of malicious mischief, vandalism and other losses or damages. The CM shall be liable for any loss or damage that result from its failure to protect the Site and the Work.

The CM shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of CM's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to Owner. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Air Quality Management District (AQMD) rules.

- d) **Safety.** The CM shall exercise precaution at all times for the protection of persons and their property. The CM shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project. The CM shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The CM shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless the CM designates other employees, its superintendent shall have the duty of prevention of accidents. The CM shall institute a safety program that includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashings, and pipe joints. The CM shall comply with all applicable laws addressing such exposure, including the Cal/OSHA Lead in Construction Standards (Title 8, California Code of Regulations, section 1532.1).

The Owner and the Architect may bring to the attention of the CM a possible hazardous situation in the field regarding the safety of personnel on the site. The CM shall be responsible for verifying the compliance with all local, state, and federal workplace safety guidelines. In no case shall this right to notify the CM absolve the CM of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the CM has assumed any responsibility for field safety operations.

Explosives shall not be used without first obtaining written permission from the Owner and then shall be used only with the utmost care and within the limitations set in the written permission and

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in accordance with prudence and safety standards required by law. Storage of explosives on the project site is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

In the event of an accident, the CM shall make available to the Owner copies of its accident report to its insurance carrier. The CM shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

e) Utilities

- 1) If the CM discovers utility facilities not identified in the Contract Documents, the CM shall immediately notify the Owner and the utility involved of such discovery. When the CM is required by the plans and specifications to locate, remove or relocate utility facilities not identified in the Contract Documents with reasonable accuracy, the CM shall be compensated for any reasonable actual added cost incurred. The CM shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the CM to exercise reasonable care. All such compensation to the CM shall be based on an actual cost plus CM and trade contractor mark-up, as identified in Article 6.01-b, Allowable Costs Upon Change Orders, subdivisions (4), (5) and (6), except that both the CM's and the trade contractor's shall not receive any mark-up when the damage results from the failure of the CM or trade contractor to exercise reasonable care. The Owner or the public utility, where it is the owner of the utility facilities, shall have the sole discretion to perform repairs or relocation work, or permit the CM to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project. The CM shall not be assessed liquidated damages for delay in the completion of the project which is caused by the failure of the Owner or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.
 - 2) With the exception of the identification of main or trunk line utility facilities in the Contract Documents, the provisions of subdivision (1) shall not apply to, and Owner shall have no obligation to indicate, the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.
 - 3) Except as expressly provided in subdivisions (1) and (2) above, the CM shall be responsible at its own cost for all work, expense, or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including, without limitation, repair of any damage that may result including any damage resulting from hand or exploratory excavation. The CM is cautioned that the utilities encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the CM at his own cost and shall include the following: all cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and appropriate warning signs, barricades, and safety devices shall be erected.
 - 4) The CM shall provide as-built drawings of all utilities encountered and constructed during the course of the work, indicating the size, horizontal location, and vertical location based on the project benchmark or a stable datum.
- f) The CM, by warranting the completeness of the Construction Documents, agrees that, if the CM uses design-build delivery on certain building elements such as fire protection systems, store front assemblies, etc., then the CM accepts responsibility for any impact which results from the design-build process such as deferred submittals, plan check approval and procurement.

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4.07 Occupancy by Owner Prior to Acceptance

The Owner reserve the right to occupy all or any part of the project before completion of the entire Contract, upon issuance of a Field Instruction. In such event, the CM shall be relieved of responsibility for any injury or damage to such occupied part as results from the Owner's occupancy and use. If the CM carries insurance against damage to such premises or against liability to third persons covering the premises so used and occupied by the Owner, and if such occupancy results in increased premiums for such insurance, the Owner may pay to the CM the added premium costs for such insurance during the period of occupancy.

The Owner's occupancy shall not constitute acceptance by the Owner (see Article 8.01, Acceptance) either of the project as completed or of any portion thereof, nor will it relieve the CM of full responsibility for correcting defective work or materials found at any time before the formal written acceptance of the project as completed by the Owner and during the full guarantee period after such acceptance, nor does it stop the assessment of liquidated damages. However, when the project includes several separate facilities, and one or more of such facilities is entirely occupied by the Owner, then upon written request of the CM, the guarantee period for the occupied facility may commence from the date of occupancy subject to written consent thereto by the Owner.

4.08 Payments by CM

In accordance with section 7108.5 of the Business and Professions Code, the CM agrees to promptly pay all trade contractors within ten (10) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed CM on account of the work performed by its trade contractors, to the extent of each such trade contractor's interest therein.

4.09 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.

With the exception of plan check and permit fees to the local jurisdiction the CM shall secure all permits and licenses required for any operations required under this Contract and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, the city, a public utility, telephone company, special district, or quasi-governmental entity. It is the CM's responsibility to ascertain the necessity of such permits and licenses in preparing its Guaranteed Maximum Price and include in its Guaranteed Maximum Price the cost thereof as well as adjustments for any delays that may be caused by securing permits and licenses.

4.10 Patented or Copyrighted Materials

The CM shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used on or incorporated in the project, and agrees to save harmless, defend, and indemnify the Owner their officers, agents and employees of each of them from all suits, actions, or claims for, or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes.

4.11 Property Rights in Materials and Equipment

Nothing in the Contract shall be construed as vesting in the CM any property right in the materials or equipment after they have been attached to or permanently placed in or upon the work or the soil or after payment has been made for fifty percent or more of the value of the materials or equipment delivered to the Site of the work whether or not they have been so attached or placed. All such materials or equipment shall become the property of Owner upon being so attached or placed or upon payment of fifty percent or more of the value of the materials or equipment delivered on the Site but not yet installed and the CM warrants that all such property shall pass to the Owner free and clear of all liens, claims, security interests, or encumbrances.

4.12 Taxes

The CM shall pay all taxes imposed by law which are levied or become payable as a result of the CM's performance under this Contract.

4.13 Contract Time

- a) Time of the Essence. All time limits specified in this Contract are of the essence of the Contract.
- b) Starting and Completion Date. The Owner shall designate in the Notice to Proceed the starting date of the Contract on which the CM shall immediately begin and thereafter diligently prosecute the work to

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completion. The CM agrees to complete the work on the date specified for completion of the CM's performance in the Contract unless such time is adjusted, in writing, by change order by the Owner. The CM may complete the work before the completion date if it will not interfere with the Owner or their other contractors engaged in related or adjacent work. The work shall be regarded as completed on the acceptance date noted on the Owner's Notice of Completion. This date shall be used as the date the guarantee period begins as defined in Article 8.12, Guarantee.

- c) Adjustment of Contract Time Due to Acts of God, etc. The CM shall not be assessed with liquidated damages, nor the cost of engineering and inspection during any delay in the completion of the Project caused by acts of God, the public enemy, fire, flood, epidemic, quarantine restriction, strike, freight embargo, discovery of archaeological or paleontological artifacts, and unusual action of the elements; provided that the CM shall notify the Architect and the Owner in writing of the causes of delay within 24 hours from the beginning of any such delay. The Architect, in conjunction with the Owner, shall determine the facts with regard to the delay and the reasonable period of time by which the date of completion should be extended by reason thereof, if any, and advise the Owner. The Owner's findings thereon shall be final and conclusive.

There shall be no compensation to the CM for costs associated with this kind of delay.

The term "unusual action of the elements" is limited to extraordinary, adverse weather conditions and conditions immediately resulting there from which cause a cessation in the progress of the work which will delay the time of completion of the Contract.

The CM shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions which are normal for the locality of the site. The time for completion of the Contract has been calculated with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the site.

- d) Adjustment of Contract Time Due to Acts of the Owner or the Architect. If the CM is delayed in completing the Contract by reason of any act of the Architect or the Owner not provided by the Contract, or by reason of changes made pursuant to Article 6.01, Change Orders, without reaching agreement as to any time adjustments, the time for completion of the Contract may be extended for a period commensurate with the delay. The CM shall notify the Architect and the Owner in writing of the causes of the delay within seven days from the beginning of the delay. The causes of delay shall be subject to the same determinations as stated in Article 4.13-c, Adjustment of Time Due to Acts of God, above.
- e) CM to Fully Prosecute Work. No extension of time will be granted for any of the causes for which extensions are granted unless the CM demonstrates to the satisfaction of the Owner that the CM has made every reasonable effort to fully prosecute the work and complete the work within the Contract Time.
- f) Owner's Adjustment of Contract Time. Even though the CM has no right to an extension of time for completion, the Owner may extend the time at the request of the CM if they determine it to be in the best interest of the State. If the time is extended, the Owner may, in lieu of assessing liquidated damages, charge the CM, its successors, heirs, assigns, or sureties, and deduct from the final payment for the work all or any part, as they may deem proper, of the value of the lost use of the completed project, and of the actual cost to the Owner of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension.
- g) Adjustment of Contract Time Due to Reasons Beyond Owner's Control. Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond their control, the CM shall not be entitled to make or assert any claim for damage by reason for said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate the CM for time lost by such delay. Any such determinations will be set forth in writing.

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- h) Liquidated Damages. Attention is directed to Article 7.02, Delay in Completion--Liquidated Damages.

4.14 Schedule

- a) Time is of the essence of this Contract, including the time of beginning, the rate of progress, and the time of completion of the work. The work shall be prosecuted at such time, in such manner, and on such part or parts of the Project as may be required to complete the Project as contemplated in the Contract Documents and the CM's Construction Schedule.
- b) The CM shall prepare and submit to the Owner, with copy to the Architect and the Project Manager, a detailed update to the Project Schedule, as utilized during the bid period, within thirty (30) calendar days after the starting date on the construction Notice to Proceed. The CM's updated Project Schedule shall include progress to date on preconstruction activities and be comprised of a Critical Path Method network. The portion of the Project Schedule from construction Notice to Proceed to final completion is the Construction Schedule. The CM shall input the critical path Construction Schedule electronically using Owner-approved software.

The CM's initial Construction Schedule shall show the dates on which each part or division of the work is expected to be started and completed. The initial Construction Schedule shall also show all submittals associated with each work activity, required by the Contract with activities for the submittal development, its review, and the fabrication/ procurement for each procurement, allowing 21 calendar days for the Architect's review of each submittal unless a longer period of time is specified. The work activities making up the Construction Schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the work and such that, in the sole judgment of the Owner, it provides an appropriate basis for monitoring and evaluating the progress of the work. The Construction Schedule shall show the interdependence of each activity and a critical path. The CM shall also submit a separate listing of all submittals required under the Contract and noting the anticipated date that each submittal will be submitted.

CM shall submit a monthly cash flow schedule with the initial Construction Schedule and shall revise the cash flow schedule with each Construction Schedule revision. The cash flow schedule is the CM's estimate of the dollar value of Contract Work completed and billable each month of the project.

- c) The CM's initial Construction Schedule shall show the sequence, duration in calendar or working days, and interdependence of activities required for the complete performance of all work. The Construction Schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM's activities. The CM's initial Construction Schedule shall begin with the effective date of the Notice to Proceed and conclude with the date of final completion. No more than twenty percent of the activities will have less than five workdays of float unless approved by the Owner. The Construction Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Service or other approved source. The Construction Schedule shall be developed using an appropriate work breakdown structure. The transmittal provided with the initial Construction Schedule shall state whether the durations are in work days or calendar days.
- d) The CM may submit an initial Construction Schedule that shows the work completed in less time than the specified Contract Time. However, the acceptance of such a Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time. Total float, slack time or contingency is the unused time within the Construction Schedule and the difference in time between the project's early completion date and the required Contract completion date. Total float is not for the exclusive use of either the Owner or the CM, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract completion date.

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- e) The CM shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, constraints, unnecessary milestones, leads or lags on logic ties, and hammock type activities. Since float within the Construction Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the Contract completion date. Since float within the Construction Schedule is jointly owned, it is acknowledged that Owner-caused delays on the project may be offset by Owner-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in a savings of time to the Contractor, etc.). In such an event, the CM shall not be entitled to receive a time extension or delay damages until all Owner-caused time savings are exceeded and the Contract completion date is also exceeded.
- f) Comments made by the Owner on the CM's initial Construction Schedule during review will not relieve the CM from compliance with the requirements of the Contract Documents. The review is only for general conformance with the scheduling requirements of the Contract Documents. Upon the Owner's request, the CM shall participate in the review of the CM's initial Construction Schedule submissions (including the original submittal, all update submittals, and any re-submittals). The Owner may request the participation of trade contractors in these reviews, as determined necessary by the Owner. All revisions shall be resubmitted within fifteen (15) calendar days after the Owner's review.
- g) The submittal of a fully revised and acceptable CM's initial Construction Schedule shall be a condition precedent to the processing of the second monthly payment application, unless the Owner grants a time extension due to unusual circumstances
- h) The CM's Construction Schedule shall provide a workable plan for monitoring the progress of all the elements of the work, establish and clearly display the critical elements of the work, forecast completion of the construction, and match the Contract duration in time. Exclusive of those activities for submittal review and material fabrication and delivery, activity duration shall not be less than one (1) nor more than thirty (30) calendar days, unless otherwise approved by the Owner. In addition to the detailed network diagram, the Contractor shall submit the following reports with the original submittal and all updates and revisions:
 - 1) Predecessor/Successor Report or a list showing the predecessor activities and successor activities for each activity in the Construction Schedule.
 - 2) Activity Report sorted by early start or a list showing each activity in the Construction Schedule, arranged by early start dates.

Electronic data files shall be provided.

- i) The CM shall submit an updated Construction Schedule to the Project Manager with a copy to the Architect five (5) days prior to the submittal of the CM's monthly payment request in both an electronic and printed (11"x17" minimum size) format. The submittal of the Progress Schedule that satisfies the requirements of this Article, accurately reflects the status of the work, revises the cash flow schedule, and incorporates all changes into the Construction Schedule, shall be a condition precedent to the processing of the monthly payment application. Progress Schedules shall also be submitted at such other times as the Owner may direct.

The CM's monthly Progress Schedule update shall include a report containing a narrative that includes the following:

- CM's transmittal letter
- Description of problem tasks, referenced to Field Instructions, Requests for Information (RFIs), change orders or claim numbers, as appropriate.
- Current and anticipated delays not resolved by approved change order, including:
 - Cause of the delay
 - Corrective action and schedule adjustments to correct the delay

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- Known or potential impact of the delay on other activities, milestones, and project completion date
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
 - Pending change orders
 - Time extension requests
 - Other items
- Contract completion date status:
 - If ahead of Construction Schedule, the number of calendar days ahead
 - If behind Construction Schedule, the number of calendar days behind
- Other project or scheduling concerns
- Updated network diagram with target bars shown.
- Tabular report as specified in subdivision (h) above, including a listing of completed activities and activities in progress.
- Diskette or compact disc with the latest data files as specified in subdivision (h) above.

The CM shall not make unilateral revisions to the monthly updates. Should the CM desire to revise the schedule logic or durations, it shall first submit the monthly update based upon the previous monthly update with just actual start dates, actual finish dates, and/or percentages of completion. The CM shall not make any additional changes other than actual status data. Following this updating and submittal task, the CM can then submit a copy of this update with its proposed changes. The CM shall clearly identify this proposed revised update as a proposed revision in the Title, Number/Version and File Name, and CM shall submit a narrative with the proposed revision.

The CM shall set the schedule calculation setting for the monthly updates to retained logic, and may only utilize the progress override setting to identify the differential in the calculated finish date due to out of sequence progress. Should the differential in the project completion exceed ten days utilizing the retained logic setting vs. the progress override setting, the CM shall revise the successor logic of the out of sequence activities to eliminate the differential.

- j) If completion of any part of the work, delivery of equipment or materials, or submission of the CM submittals is behind the approved Construction Schedule and will impact the end date of the work past the Contract completion date (create negative float), the CM shall submit in writing, a revised Construction Schedule acceptable to the Owner for completing the work on or before the current Contract completion date. The revised Construction Schedule shall take some or all of the following actions:
- 1) Increase construction manpower in such quantities and crafts as shall substantially eliminate the backlog of work and meet the current Contract completion date.
 - 2) Increase the number of working hours per shift, the number of shifts per day, the number of work days per week, or the amount of construction equipment, or any combination of the foregoing sufficient to substantially eliminate the backlog of work.
 - 3) Reschedule work items to achieve concurrent accomplishment of work activities.

Under no circumstances will adding equipment or construction forces, increasing the working hours, or employing any other method, manner, or procedure to return to the contractually required completion date be justification for a change order or justification for a compensable acceleration, unless prior written approval is received from the Owner.

- k) Adjustment of Contract Times for Completion. In addition to the provisions in the Contract General Conditions, the Contract Time for completion of the work will be adjusted in accordance with these procedures.
- 1) Time Impact Analysis. Whenever the CM submits a request for an adjustment of the Contract Time for completion for changes or alleged delays, the CM shall also submit a complete Time Impact Analysis (TIA). The CM shall submit the TIA for review within seven (7) calendar

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days after the request. The Owner will not grant time extensions unless substantiated by the TIA, and then not until the project float becomes zero. If the CM fails to submit a TIA within the time specified, then the CM shall be deemed by the Owner to have agreed that there is no time impact and that the CM has irrevocably waived its rights to any additional Contract Time.

The CM shall ensure that each TIA provides information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. Each TIA shall be in the form and content acceptable to the Project Manager, and shall include, but not be limited to, the following:

- i) A fragmentary critical path method type network (Fragnet) illustrating how the CM proposed to incorporate the change or alleged delay into the current Monthly Baseline Schedule.
- ii) Identification of activities in the current Monthly Baseline Schedule which are proposed to be amended due to the change or alleged delay, together with estimates and other appropriate data justifying the proposal.

The CM shall determine the TIA based on the date or dates when the change or changes were issued or the date or dates when the alleged delay or delays began. The status of the construction project and TIA shall include event time computations for all affected activities including, but not limited to, work around sequencing or recovery options to maintain the original Contract completion date.

The Project Manager may require that the TIA be provided in order to demonstrate the time impact upon the overall project and the time for completion, at no additional cost to the Owner.

If the Project Manager finds, after review of the TIA, that the CM is entitled to any extension of time for completion, the Contract Time for completion will be adjusted accordingly by the Project Manager, and the CM shall then revise the Monthly Baseline Schedule accordingly.

- 2) No time extensions shall be granted nor indirect costs paid unless the CM can clearly demonstrate the delay on the basis of the Progress Schedule current as of the month the change is issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other means. The CM shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract Time extension or delay damages.
 - l) Once each week, or as approved in writing by the Owner, the CM shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, be completed or be in progress for the succeeding three (3) weeks. This schedule shall cover all work activities listed on the Progress Schedule for the reporting period.
 - m) As a condition precedent to the release of retained funds, the CM shall, after completion of the work has been achieved, submit a final CM's Progress Schedule which accurately reflects the manner in which the project was constructed and includes actual start and completion dates for all work activities.

4.15 Labor Force and Superintendent

At all times the CM shall provide sufficient labor to properly prosecute the work and to ensure completion of each part in accordance with the schedule and within the Contract time. The CM shall employ competent workers who are skilled in the type of work required and whose workmanship is of the best, regardless of the quality of material. If, in the judgment of the Owner, any person is incompetent or disorderly, the CM shall promptly remove the person from the project and shall not re-employ such person thereon.

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The CM shall retain the staffing in accordance with their Statement of Qualifications submitted in response to the Request for Qualifications. This project staffing shall include a competent, full-time, on-site superintendent to represent the CM and to direct the project at all times while any work under this Contract is underway. The CM shall not replace a Superintendent without advanced written approval from the Owner. If, in the judgment of the Owner, the Superintendent is incompetent, unqualified, poorly performing or disorderly, the CM shall promptly remove such person from the project and shall not re-employ such person thereon. In this event the Owner shall approve the replacement Superintendent.

The Superintendent shall prepare a daily report that includes worker count, work in progress, etc., and shall provide it to the Project Manager weekly. If the CM does not supply the staffing in accordance with their Request for Proposal, the Owner shall either demand that the prescribed staffing be supplied and/or credit back the value of the staffing not supplied.

The CM shall make certain that all subcontractors employed are properly licensed and are in good standing with the California Department of Industrial Relations.

4.16 Limitation of Construction Operations

The CM shall limit the area and nature of the construction operations to that which is authorized in the plans and specifications or approved by the Owner.

4.17 Coordination with Other Work

The Owner reserve the right to do other work in connection with the Project or adjacent thereto by contract or otherwise, and the CM shall at all times conduct the work so as to impose no hardship on the Owner or others engaged in the Owner's work nor to cause any unreasonable delay or hindrance thereto. Where two or more contractors are employed on related or adjacent work, each shall conduct its operation in such a manner as not to cause delay or additional expense to the other.

The CM shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property, and for loss caused by failure to complete the work within the specified time for completion. The CM shall coordinate its work with the work of others so that no discrepancies shall result in the project.

4.18 Drawings Reflecting Actual Construction

During the course of construction, the CM shall maintain drawings daily to show the Project as it is actually constructed. Every sheet of the plans and specifications that differs from the actual construction shall be marked, and sheets so changed shall be noted on the title sheets of the plans and specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. The CM shall review the "as-built" drawings with the Architect and the Project Manager at least once a month to demonstrate that the CM is fully and accurately recording all changes that have occurred. The altered Contract drawings shall be sufficiently detailed so that future work on the Project or in adjacent areas may be conducted with a minimum of difficulty. Before the completion of the project, and before release of the final retention payments, the "as-built" drawings and specifications shall be transmitted to the Architect for further handling, with a copy of the transmittal to the Owner.

4.19 Access for Inspection

The CM shall be responsible for obtaining all approvals and inspection for the local jurisdiction having authority for such inspections. Work requiring testing, inspection or verification shall not be covered up without such test, inspection, or approval.

The CM shall at all times permit the Owner, the Architect, and the Project Manager to visit and inspect the work both at the site and at the shops where work is in preparation and shall maintain proper facilities and provide safe access for such inspection.

The CM shall notify the Project Manager at least 24 hours in advance when special inspections or material testing is required of the Owner's testing and inspection laboratories.

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Additional Inspections. If a fabricator or manufacturer of a material or equipment requiring inspection is inefficiently performing or performing at multiple locations, then the Owner may charge the Contractor for the extraordinary costs incurred.

4.20 Cleanup of Project and Site

The CM shall clean up its work at frequent intervals and at other times when directed by the Architect, the Inspector, or the Owner. At all times while finish work is being done, floors shall be kept broom clean. Upon completion of the work, the CM shall promptly remove from the premises construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

When two or more contractors are engaged in work at or near the site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed.

In the event the CM does not maintain the Project or the Site clear of debris and rubbish in a manner acceptable to the Architect, the Owner may, at their option, cause the Project or Site to be properly cleaned and may withhold the expense incurred therefore from payments due the CM.

4.21 Project Sign, Advertising

The CM shall furnish and install a Project sign designed by the Architect required as part of the work under the Contract. As a minimum, the sign shall be four feet by eight feet, made from three-quarter inch plywood. The sign shall identify the Project name, the Owner, the Architect, and the CM. No advertising is permitted on the Project or Site without written permission from the Owner.

Article 5.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

5.01 Interpretation of Contract Requirements

- a) Correlation. Contract Documents shall be interpreted as being complementary, requiring a complete project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.
- b) Conflicts. In the event of conflict in the Contract Documents, the priorities stated below shall govern:
 - 1) Addenda shall govern over all other Contract Documents, and subsequent Addenda shall govern over prior Addenda only to the extent modified.
 - 2) Contract General Conditions shall govern over all sections of the specifications and any notation on the Plans. No other section of the specifications shall modify the Contract General Conditions.
 - 3) In case of conflict between Plans and Specifications, the Specifications shall govern.
 - 4) Conflicts within the Plans:
 - i) Material and equipment schedules, when identified as such, shall govern over all other portions of the plans.
 - ii) Specific notes shall govern over all other notes and all other portions of the Plans except the material and equipment schedules described in paragraph (i) above.
 - iii) Larger scale drawings shall govern over smaller scale drawings.
 - iv) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
 - 5) In the event that provisions of codes, safety orders, Contract Documents, referenced manufacturers' specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.
- c) Omissions. In the event of omissions in the Contract Documents, the following shall apply:
 - 1) If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or

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equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.

- 2) The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.

- d) Quality. The quality of the work by the CM shall be equal to or better than that required in the specifications, and if it is found that the work is of lesser quality, the specifications shall prevail.

5.02 Issuance of Interpretations, Clarifications, Additional Instructions

By reaching agreement on the Guaranteed Maximum Price, the CM agrees that it has reviewed the Construction Documents and verified their adequacy and completeness for constructing the project. CM agrees to supply and install all of the Work as identified or inferred in the Construction Documents necessary to provide a complete and operating facility. Some detailing, clarification, and coordination may be required, and this work is included in the Guaranteed Maximum Price.

Should the CM discover design errors or design deficiencies in the Construction Documents or have any question concerning interpretation or clarification of the Construction Documents, the CM shall request in writing an interpretation, clarification, or additional detailed instructions, before proceeding with the work affected. The written request shall be given to the Architect with copies to the Project Manager/Project Manager and the Owner.

The Architect, with review as required by the Owner, shall, within seven calendar days, issue in writing the interpretation, clarification, or additional detailed instructions requested.

Should the CM proceed with the work affected before receipt of the interpretation, clarification, or instructions from the Architect, the CM shall replace or adjust any work not acceptable to the Architect and Owner, and shall be responsible for any resultant damage or added cost.

Should the CM consider that it has been given direction to perform Work that it considers is significantly different from the work shown on the approved Construction Documents, the CM must submit written notice thereof to the Architect within seven calendar days following receipt of such direction, and in any event prior to commencement of work thereon. The CM shall send copies of such correspondence to the Project Manager within this same seven calendar days. Within seven calendar days after the CM issues its written notice, the CM shall submit an explanation of how this direction constitutes work significantly beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts.

The Architect shall consider such notice and make a recommendation to the Owner. If, in the judgment of the Owner, the notice is justified, the direction shall be revised or the extra work authorized by Contract change order or by field instruction with a change order to follow. If the Owner decide that the claim is not justified, the Owner shall give the CM a written order that the claim is not justified and direct the CM to perform such work.

The CM must proceed with the work upon receipt from the Owner of a written order to do so, in accordance with the Architect's interpretation of the Contract requirements. If the CM objects to the order, the CM must notify the Architect and the Owner, in writing of its objection and the reasons therefore within seven days of receipt of the order. The CM shall have the right to have this claim later determined by a Claims Review Board pursuant to this Contract (see Article 7.01, Claims). When performing disputed work, the CM shall prepare time and materials records for each day, and the Project Manager shall verify these records at the conclusion of each day. The CM shall have no claim for additional compensation because of such direction, unless it gives written notices required to the Architect within seven calendar days as specified above.

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5.03 Product and Reference Standards

- a) Product Designation. When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the Contract, such designations shall be considered as being those found in industry publications of current issue at the date specified in the Request for Proposal.
- b) Reference Standards. When standards of the federal government, trade societies, or trade associations are referenced in the Contract by specific date of issue, these shall be considered a part of this Contract. When such references do not bear a date of issue, the current and most recently published edition at the date specified in the Request for Proposal shall be considered a part of this Contract.

5.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions

- a) Submittal Procedure. The CM shall review and approve all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, material and equipment schedules, performance charts, brochures and catalogs and other data prepared by the CM or any trade contractor, manufacturer, supplier or distributor, and which illustrate some portion of the work. The CM shall promptly review and mark the shop drawing approved and submit to the Architect, so as to cause no delay in the work, together with samples as required by the Contract and shall also submit any offers of alternatives or substitutions. At least six copies of shop drawings shall be submitted as well as additional copies as required by Architect. All such submittals shall be sent to the Architect at the address given in the instructions to the CM at the job start meeting. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the Contract. Failure by the CM to identify all deviations may render any action taken by the Architect on the materials submitted to be void. Whether to void such action shall be in the discretion of the Architect. By submitting the approved shop drawings and samples, the CM represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract.

- b) Samples. Samples are physical examples furnished by the CM to illustrate materials, equipment, color, texture, or workmanship, and to establish standards by which the work will be judged.

The work shall be in accordance with the samples, submitted as required by the contract and reviewed by Architect. Samples shall be removed by the CM from the Site when directed by the Owner. Samples not removed by the CM, at the Owner's option, will become the property of the Owner or will be removed or disposed of by the Owner at the CM's expense.

- c) Alternatives or Equals. For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the CM complies with the following requirements:

- 1) The CM shall submit its proposal to the Architect for an alternative as "an equal" in writing prior to the date of agreeing to a GMAX. In exceptional cases where the best interests of the Owner so require, the Project Manager may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The CM is responsible for timely submittal of its proposed "or equal."
- 2) No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Architect or the Owner.
- 3) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the CM. Where the material is specified by capacity or performance, the burden of proof shall be on the CM to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The CM shall

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furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met.

The Architect shall be the judge of such matters. If the Architect rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, Articles, or equipment, or because of deviations from Contract Documents, such changes or delays shall be made at the CM's expense without recourse for reimbursement from the Owner.

- d) Substitutions. If the CM proposes a product that is of lesser or greater quality or performance than the specified material or equipment, it must comply with the provisions of Article 5.04, but, in addition, the CM must submit any cost impact, and must pay the Architect's fees associated with the review of this substitution. By submitting a substitute, the CM waives any rights to claim a delay due to the processing of this substitution. The time for submittal of a substitution of an unequal product shall be restricted to the period prior to the issuance of the construction Contract. The Owner is not obligated to review or accept substitutions.

5.05 Quality of Materials, Articles and Equipment

Materials, Articles and equipment furnished by the CM for incorporation into the work shall be new. When the Contract requires that materials, Articles or equipment be furnished, but the quality or kind thereof is not specified, the CM shall furnish materials, Articles or equipment at least equal to the kind or quality or both of specified materials, Articles or equipment.

5.06 Testing Materials, Articles, Equipment and Work

- a) Materials, Articles, equipment or other work requiring tests are specified in the Contract. Materials, Articles and equipment requiring tests shall be delivered to the Site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The CM shall be solely responsible for notifying the Project Manager where and when materials, Articles, equipment and Work are ready for testing. Should any such materials, Articles, equipment or work be covered without testing and approval, if required, they shall be uncovered at the CM's expense. The Owner has the right to order the testing of any other materials, Articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, all samples for testing shall be taken by the Owner from materials, Articles or equipment to be used on the project or from Work performed. All tests will be under the supervision of, and at locations convenient to, the Owner. The Owner shall select the laboratories for all tests. Decisions regarding the adequacy of materials, Articles, equipment or Work shall be issued to the Owner in writing.
- b) All costs of the initial required tests shall be borne by the Owner. The Owner may decide to take further samples and tests, and if the results show that the Work was not defective, the Owner shall bear the costs of such samples and tests.
- c) In the event the results of such additional samples and tests show that the Work was defective, the CM shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of the CM. All retesting costs may be back-charged to the CM by the Owner.

5.07 Rejection

Should any portion of the work done or any materials, Articles or equipment delivered fail to comply with the requirements of the Contract, such work, materials, Articles or equipment shall be rejected in writing and shall immediately be made satisfactory to the Architect and the Owner, by the CM, at no additional expense to the Owner. Any materials, Articles or equipment which are rejected shall immediately be removed from the premises at the CM's expense. The Owner may retain 1.25% of the cost of the rejected materials, Articles, equipment, and work from any payments due the CM until it is made acceptable to the Architect and the Owner. The Owner may back charge the CM for design costs incurred in the correction of CM's rejected work.

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5.08 Off-Site Testing

The Owner shall bear the cost of off-site testing up to a distance of fifty (50) miles from the project site and up to one fabrication yard or manufacturing plant per manufactured item, for example, structural steel. The increased cost of testing due to the fabrication yard or manufacturing plant being beyond this fifty-mile radius shall be borne by the CM. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall be borne by the CM.

5.09 Responsibility of Quality

The testing and inspection provided by the Owner shall not relieve the CM of its responsibility for the quality of materials and workmanship provided by the CM, and the CM shall make good all defective work discovered during or after completion of the project.

Article 6.00 CHANGES IN THE WORK

6.01 Change Orders

The Owner reserves the right to issue written change orders directing changes in the Contract at any time prior to the acceptance of the Project without voiding the Contract, and CM shall promptly comply with such order. By signing the construction Contract for the Guaranteed Maximum Price, the CM agrees that it has reviewed and accepted the Construction Documents as complete and that it has no right for change orders or extra work due to conflicts, ambiguities or omissions. The Owner further agrees that unforeseen site conditions may be a basis for the issuance of a change order. The CM may request changes in the work, but shall not act on the changes until approved in writing by the Owner. Any change made without the Owner's written authorization shall be the responsibility of the CM. The Owner will not increase compensation or extend time for a change involving greater expense to the CM, and the Owner may reject changes involving greater or lesser expense, but with the consequent responsibility on the CM to replace at its own expense the changed work with that originally specified.

On the basis set forth herein, the Guaranteed Maximum Price shall be adjusted for any change order requiring a different quantity or quality of labor, materials or equipment from that originally required, and the partial payments to the CM, set forth in Article 8.02, Partial Payments, shall be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the Owner in writing, the CM shall take all necessary steps to halt such other work in the area of the change that might be affected by the ultimate change. Changed work shall be performed in accordance with the original Contract requirements except as modified by the change order. Except as herein provided, the CM shall have no claim for any other compensation due to changes in the work.

- a) Proposed Change Orders. The Owner shall issue a Cost Request Bulletin (CRB) via the Architect to the CM, or a Field Instruction via the Project Manager for a proposed change order describing the intended change, and shall require the CM to respond with a proposed amount to be added to or subtracted from the Contract price due to the change supported by a detailed estimate of cost (hereinafter called a change order request). Upon request by the Owner, the CM shall permit inspection of the original Contract estimate, trade contract agreements, or purchase orders relating to the change. Any request for adjustment in time of final completion of the Project that is directly attributable to the changed work shall also be included, with substantiating detailed explanation, by the CM in its response to the cost request bulletin. Failure to request adjustment of time on the change order request shall waive any right to subsequently claim an adjustment of the time for final completion based on the changed work. The CM shall submit the change order request with detailed estimates and any time extension request thereon to the Architect, the Project Manager, and the Owner within fifteen calendar days after issuance of the cost request bulletin. If the change order request is not submitted within the required fifteen calendar days, and the CM has not obtained the Architect's and the Owner's permission for a delay in submission, the Owner may order the CM, in writing, to begin the work immediately, in accordance with Article 6.01(d), Allowable Time Extensions, or Article 6.02, Emergency Changes, and the Contract price shall be adjusted in

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accordance with the Owner's estimate of cost, unless the CM, within fifteen days following completion of the changed work, presents proof convincing to the Owner that the Owner's estimate was in error. The CM must keep and submit time and materials records verified daily by the Project Manager to substantiate its costs and to furnish such proof.

When the Owner and the CM agree, in writing, on the amount to be added to or deducted from the Contract price and the time to be added to or deducted from the completion date the CM shall proceed with the changed work immediately. When the Owner and the CM agree to the adjustment in the CM's compensation for the performance of changed work, but fail to agree to the time adjustment for such work, the CM shall proceed with the work at the agreed price, reserving the right to further pursue its claim for a time adjustment. Any costs incurred to acquire information relative to a proposed change order shall not be borne by the Owner.

- b) Allowable Costs Upon Change Orders. The only estimated or actual costs which will be allowed because of changed work, and the manner in which such costs shall be computed, shall be in accordance with the following eight provisions. In submitting a change order request, the CM affirms that the cost is submitted in good faith, that the cost is accurate and is in accordance with the provisions of the Contract requirements. Direct cost is defined as the actual cost of work before the application of any mark-ups for overhead and profit. In addition to items identified in the following provisions, direct cost items may include: hoisting, clean-up (both periodic and final), trash removal, traffic control, and dust control.

- 1) Labor. Costs are allowed for the actual payroll cost to the CM for labor, field supervision of changed work, (but not field office supervision nor indirect supervision) and engineering or technical services directly required for the performance of the changed work, (but not site management such as field office estimating, clerical, purchasing, as-builts, change order coordination, or warranty). Costs include payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, liability insurance premium on labor only, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act.

No labor cost will be recognized at a rate in excess of the prevailing wages that are being paid by the CM for similar work on the Project at the time the work is performed, nor will the use of a classification that would increase the labor cost be permitted unless the CM established to the satisfaction of the Owner the necessity for use of such higher classifications of workers. The CM and trade contractors shall submit a fully detailed breakdown of the cost of every labor classification to be utilized on a proposed change. The Owner may verify wage and burden by requesting certified payroll documents prepared in accordance with section 1776 of the California Labor Code. The unit cost of labor shall be an accurate accounting of actual costs being paid in accordance with the allowances herein, and it shall be submitted under penalty of perjury.

- 2) Materials. CM's costs are allowed for the cost of the materials directly required for the performance of the changed work. Such cost of materials may include the costs of transportation, sales tax, and delivery if necessarily incurred. If a trade discount by the actual supplier is available to the CM, it shall be credited to the Owner. If the materials are obtained from a supply or source owned wholly or in part by the CM, payment therefore will not exceed the current wholesale price for such materials. Cost for consumed materials may be charged on a reasonably estimated basis, but may not be a percentage of labor.

If, in the opinion of the Owner, the cost of materials is excessive, or if the CM fails to furnish satisfactory evidence of the cost from the actual suppliers thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The Owner

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reserve the right to furnish such materials as they deem advisable, and the CM shall have no claim for costs or profits on material furnished by the Owner.

- 3) Equipment. CM's costs are allowed for the actual cost of the use of equipment directly required in the performance of the changed work except that no payment will be made for time while equipment is inoperative due to breakdowns or for non-working days. The rental time shall include the time required to move the equipment to the project site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the project in any other way than upon the changed work. Individual pieces of equipment having a replacement value of \$200.00 or less shall be considered to be small tools or small equipment, and no payment therefore will be made unless it has been rented specifically for the changed work. Consumed equipment or tools, such as paint brushes, rollers, drill bits, etc. may be charged on an actual or reasonably estimated cost basis and are not to be charged as a percentage.

For equipment owned, furnished, or rented by the CM, no cost therefore shall be recognized in excess of the rental rates established by distributors or equipment rental agencies in the locality where the work is performed.

The amount to be paid to the CM including mark-up for the use of equipment as set forth above shall constitute full compensation to the CM for the cost of fuel (unless the CM has demonstrated that mark-up does not cover consumed fuel cost), power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and any and all costs to the CM incidental to the use of such equipment. Equipment operators shall be paid for as provided in Article 6.01(b) (1), above.

- 4) Mark-ups on Change Orders. The mark-ups allowed on the direct cost of changed work include all incidental overhead support costs and profit. Such incidental overhead support costs include: estimating and purchasing; indirect supervision and project management; home office overhead; site overhead including facilities and utilities; change order coordination; as-built drawings; warranties; bonds; liability insurance (however, per Article 6.01-b(1), cost of liability insurance premium for labor only is allowed as a cost for labor); and small tools. Any incidental overhead support cost not expressly identified herein shall be included in the CM's mark-up. No mark-up on mark-up is permitted. If the trade contractor is owned, partially owned, or has a shared profits arrangement with the CM, any mark-up otherwise applicable to a change shall be reduced in proportion with the shared profits.
- 5) Work by Trade Contractors and Vendors. For any portion of the changed work which is to be performed by a subcontractor (any tier), the CM shall furnish to the Owner a detailed estimate prepared and signed by trade contractor of the cost to trade contractor for performing the changed work. At the option of the Owner, a lump sum estimate of such cost to trade contractor may be accepted in lieu of the detailed estimate. The combined costs for trade contractor's overhead, profit, taxes, indirect supervision, insurance, bonds, warranty and any other costs not specifically allowed by Article 6.01-b (1), (2) and (3), shall not exceed fifteen (15) percent on the first \$50,000 of the direct cost; thereafter, ten (10) percent on the balance beyond \$50,000. The maximum allowable mark-up of trade contractor on any subcontractor tiers shall be seven (7) percent. The aggregate mark-ups allowed by trade contractors and multiple-tiered subcontractors shall not exceed twenty-six (26) percent of the direct cost on the first \$50,000, thereafter, twenty-one (21) percent on the balance beyond \$50,000. Estimates of the amount to be deleted from trade contractor's portion of the work shall be gross value of the deducted work plus at least six percent for overhead, bonds, insurance, and related savings added to the direct value of the deleted

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work. For changed work to be furnished by a vendor, the CM shall furnish upon demand of the Owner, a lump sum estimate of the cost of the items including taxes and cartage to the CM prepared by the vendor. No vendor mark-up for overhead, profit, layout, supervision or bonds will be allowed for changed work furnished by a vendor.

- 6) CM Mark-up for Added Work. When changed/added work is performed by a trade contractor, the CM may add no more than ten (10) percent mark-up to the trade contractor's total direct cost estimate (excluding the trade contractor's mark-up) for such work on the first \$50,000; thereafter the mark-up is seven (7) percent on the balance beyond \$50,000. The CM's ten percent mark-up in this case is for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs not specifically allowed by Article 6.01(b) (1), (2) and (3). Also refer to Article 4.06(e), Utilities, for special mark-up on repair of utilities. The CM may add up to fifteen (15) percent to its direct cost when self-performing the changed work on the first \$50,000 and ten (10) percent thereafter on the balance beyond \$50,000.
- 7) Credit for Deleted Work. Where an entire item or section of work is deleted from the Contract, the entire trade contract or subcontract value or bid value shall be considered the appropriate deduction less the value of work performed, and shall have at least six percent mark-up added thereto for the CM's saved overhead, bonds and insurance. If the subcontract value or bid value is not identifiable, then the amount to be deducted from the Contract amount shall be the estimated value of the deducted work plus at least six percent for saved overhead, bonds and insurance. The value submitted on the schedule of values shall be used to calculate the credit amount, and may not be further marked up if it includes the value for general conditions (overhead, bonds, insurance, etc.).

For proposed change orders that involve both added and omitted work, the CM shall separately calculate its total added costs and its total deducted costs, and then shall sum its total added and deducted costs, resulting in the CM's net cost for the change order. The CM shall then apply the mark-up to this net cost. Similarly, the CM shall separately calculate each trade contractor's total added costs and total deducted costs, and shall then sum each trade contractor's total added and deducted costs, resulting in each trade contractor's net cost for the change order. If the resulting net costs for each trade contractor will increase the Contract price, then the CM shall apply separate mark-ups for added work as specified in Article 6.01-b (6). If the resulting net costs for each trade subcontractor will decrease the Contract price, then the CM shall apply separate mark-ups for deleted work as specified in Article 6.01-b (7).

For example:

CM - net cost is \$30,000, CM's mark-up is 15%, or \$4,500.

Trade Contractor A - net cost is \$20,000, CM's mark-up is 10%, or \$2,000.

Trade Contractor B - net cost is <\$10,000>, CM's mark-up is six percent, or <\$600>.

The CM's total mark-up for this example change order is \$5,900.

- 8) Market Values. Cost for added work shall be no more than market values prevailing at the time of the change, unless the CM can establish to the satisfaction of the Owner that it investigated all possible means of obtaining work at prevailing market values and that the excess cost could not be avoided.

When a change order deletes work from the Contract, the computation of the amount thereof shall be the values which prevailed at the time bids for the work were opened, if the work is contained in a subcontract agreement or purchase order executed at or near the time bids were opened.

c) Failure to Agree as to Cost

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- 1) For Added Work. Notwithstanding the failure of the Owner and the CM to agree as to the cost of the proposed change order, the CM, upon written order from the Owner, shall proceed immediately with the changed work. A Field Instruction or letter signed by the Owner shall be used for this written order. At the start of each day's work on the change, the CM shall notify the Owner in writing as to the size of the labor force to be used for the changed work and its location. Failure to so notify may result in the non-acceptance of the costs for that day. At the completion of each day's work, the CM shall furnish to the Project Manager a detailed summary of all labor, materials, and equipment employed in the changed work. The Project Manager will compare his/her records with CM's daily summary and may make any necessary adjustments to the summary. After the Project Manager and the CM agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed work. The Owner, however, may make subsequent adjustments, based on later audits. When changed work is performed at locations away from the job site, the CM shall furnish in lieu of the daily summary, a summary submitted at the completion of the work containing a detailed statement of labor, material, and equipment used in the work. This latter summary shall be signed by the CM who shall certify thereon under penalty of perjury that the information is true, and the costs are as allowed in Article 6.01-b (1), (2) and (3). If changed work is to be paid based on time and materials, a credit for deleted Contract work shall be included. Mark-up shall be as provided in Article 6.01-b (4), (5), (6) and (7).

The CM shall maintain and furnish on demand of the Owner itemized statements of cost from all vendors and trade contractors who perform changed work or furnish materials and equipment for such work. All statements must be signed by the vendors and the trade contractors.

- 2) For Deleted Work. When a proposed change order contains a deletion of any work, and the Owner and the CM are unable to agree upon the value thereof, the Owner's estimate may be deducted from the Contract price and may be withheld from any payment due the CM until the CM presents proof convincing to the Owner that the Owner's estimate was in error. The amount to be deducted, other than deletion of an entire item as addressed in Article 6.01-b (7), shall be the costs to the CM for labor, materials, and equipment which would have been used on the deleted work together with the credit mark-up. The provisions of Article 6.01-b shall be followed in computing the amounts involved for changes other than deletion of an entire item.
- d) Allowable Time Extensions. For any change in the work, the CM shall be entitled only to such adjustments in time by which completion of the entire work is delayed due solely to performance of the changed work. However, no extension of time shall be granted for a change in the work unless the CM demonstrates to the satisfaction of the Owner that the work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the CM is making, or has made, every reasonable effort to guarantee completion of the additional work called for by the change within the time originally allotted in the Contract.

Adjustment in Contract time shall be on a calendar day basis, except that if the new Contract completion date falls on a Saturday, Sunday, or legal holiday, it shall be extended through the next full working day. Such adjustment is applicable only once in the course of a Contract, and should occur only at the end of the Contract. Attention is directed to Article 4.13, Contract Time, and Article 4.14, Schedule.

- e) Use of CM's Contingency
- 1) If there is an omission or correction in the Construction Documents that should have been identified through a reasonable constructability check and coordination review of the Construction Documents by the CM, then the CM shall purchase and install the omitted

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equipment or material utilizing the CM's contingency. The CM shall obtain the Owner's approval of the use of any of the CM's contingency, and this approval shall not be unreasonably withheld.

- 2) The CM shall not include mark-up for overhead and profit on changes necessitated by omissions or corrections to the Construction Documents that should have been identified by a reasonable constructability check and coordination review.
- 3) With each monthly payment request, the CM shall submit an accounting of the CM's use of their contingency, along with a documentation of the Owner's approval. This accounting shall be presented to the Owner as a draw against the CM's contingency.

f) **Use of Allowances**

The Owner discourages the use of allowances, however, the Owner shall approve the use of any allowance, on a case by case basis. If the Owner so approves, allowances may only be used for work items that are indeterminate at the time of producing the GMAX. The CM shall maintain a detailed cost accounting, including allowances, and submit it with the monthly payment application for the Owner's approval. Overhead and profit mark-up on allowance items shall be in accordance with Article 6 for trade contractors work, but for the CM, shall be in accordance with the CM's Overhead and Profit fees as submitted in the CM's Fee Proposal.

6.02 Emergency Changes

Changes in the work agreed by the Owner to be necessary due to unforeseen Site conditions, discovery of errors in plans or specifications requiring immediate clarification in order to avoid a serious work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the Owner are kinds of emergency changes which may be authorized by the Owner in writing to the CM. The CM shall commence performance of the emergency change immediately upon receipt of written direction from the Owner.

If agreement is reached as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 6.01 relating to ordinary changes. If agreement is not reached as to compensation and/or time adjustment at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 6.01-d, that is, time and materials records and summaries shall be witnessed and maintained until either a lump sum payment and/or a time extension, as appropriate, are agreed upon, or the changed work is completed.

Article 7.00 CLAIMS AND DAMAGES

7.01 Claims

a) **CM's Claim(s) – Notice of Claim**

In accordance with Article 5.02 (Issuance of Interpretations, Clarifications, Additional Instructions), should the CM disagree with the determination of the Owner on a matter that substantially affects the CM's costs, compensation or extent of work, the CM shall file a preliminary claim with the Owner and request a review of the decision. The CM must proceed with the work upon receipt from the Owner of a written order to do so. However, within seven days of receipt of the written order, the CM must notify the Architect and the Owner, by letter, that it protests the decision.

b) **CM Submission of Unresolved Claims to Claims Review Board**

All unresolved claims arising from this Contract, for which the CM seeks resolution by a Claims Review Board, shall be submitted in writing to the Owner no later than 30 calendar days after the County Recorder's recordation date on the Owner's Notice of Completion. The CM's failure to submit its claims to the Owner within this 30-day period shall constitute a waiver by the CM of such claims. Once the claims have been submitted, and the 30 calendar days after the County Recorder's recordation date on the Notice of Completion have expired, CM may not submit any additional claims.

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The CM shall have 30 additional calendar days in which to submit six copies of a total and detailed claims package. Failure to submit the full detailed package within this second 30-day period shall constitute a waiver by the CM of such claims.

Before the CM files a claim with the Owner, the CM shall make a reasonable effort to analyze the claim to determine the truth of the information comprising the claim. The CM shall not present a trade contractor claim without making a reasonable effort to determine the truth of the facts comprising the claim. Only claims reasonably determined by the CM to be true may be filed with the Owner. By submitting a claim, CM affirms that its claim is submitted in good faith, that the facts supporting the claim are true and accurate, and that the claim, in the reasonable opinion of the CM, constitutes a basis under the Contract for additional compensation.

c) **Owner's Claim(s) Submittal**

The Owner shall submit a rebuttal to the CM's claim, along with any Owner's claims to the Claims Review Board within 30 calendar days after the submission by the CM of a total and detailed claims package.

d) **CM Rebuttal to Owner's Claims**

Upon submission of any Owner claims, the CM shall have an additional 30 day period to submit to the Claims Review Board the CM's rebuttal to the Owner's claims.

e) **Claims Review Board**

The Owner will convene a Claims Review Board to hear the submitted claims at the completion of the project. Each Claims Review Board shall continue to function until all pertinent facts are reviewed, and it arrives at a recommendation. The Claims Review Board process shall be administered by the a designee of the Owner. These administrative responsibilities include, but are not limited to, selection of the Claims Review Board members, determination of the time and location of the hearing, and application of the Review Board procedures. The Claims Review Board is a lay board; attorneys and third party claims specialists may not participate in the hearings, with the exception of scheduling consultants. The Board's recommendation will be made as soon as possible after the conclusion of the hearing. The decision of the Claims Review Board exhausts the CM's contractual and administrative remedies with the Owner.

7.02 Delay in Completion--Liquidated Damages

If the work is not completed within the time required, damage will be sustained by the Owner. It is, and will be, impractical and extremely difficult to determine the actual damage that the Owner will sustain by reason of the delay. It is therefore agreed that the CM will pay to the Owner the sum of money stipulated per day in the Contract for each day's delay in completing the work beyond the time prescribed. If the CM fails to pay such liquidated damages, the Owner may deduct the amount thereof from any money due or that may become due the CM under the Contract. If the Owner occupies all or the majority of the Project and can use it for its intended purpose, including operation of fire and life safety systems, the Owner may reduce the amount of assessment of liquidated damages, if it is determined to be in the best interest of the Owner. The Owner's assessment of liquidated damages shall not commence on a Saturday, Sunday or legal holiday.

7.03 Termination for Cause

If the Owner deems that CM has failed to supply an adequate working force or material of proper quality, or the CM has failed in any other respect to prosecute the work with the diligence and force as required by the Contract, the Owner will give written notice to the CM and to the CM's sureties, that if the defaults are not remedied within 5 calendar days the contractor's control over the work will be terminated.

Upon such termination, the Owner may take possession of and use all or any part of the CM's materials, tools, equipment, and appliances upon the premises to complete the work. Thereupon, the Owner may take assignment of the trade contractors and purchase orders under Article 2.06, and complete the contract work themselves or may allow the surety to complete the contract work.

The CM's failure to complete a punch list with diligence is an example of a failure to prosecute the work with the diligence and force required by the Contract.

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If the costs of finishing the work exceed the unpaid balance of the Contract sum, the CM shall pay the difference to the Owner.

If it is subsequently determined that grounds for termination under this Article do not exist, then the CM shall be deemed to have been properly terminated for convenience under Article 7.04, Termination for Convenience.

7.04 Termination for Convenience

The Owner may terminate this Contract or any part thereof, for its sole convenience and without cause. Unless the Owner directs otherwise, upon written notice from the Owner of such termination, the CM shall:

- a) Stop all work under the Contract except that specifically directed to be completed before suspension of the work.
- b) Perform work the Owner deem necessary to secure the project for termination.
- c) Remove equipment and plant from the Site of the work.
- d) Take such action as is necessary to protect materials from damage.
- e) Notify all trade contractors, subcontractors and suppliers that the Contract has been terminated, and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Owner.
- f) Provide the Owner with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including their storage locations, and such other information as the Owner may request.
- g) Handle materials not yet used in the work as directed by the Owner. The CM shall provide the Owner with good title to all materials purchased hereunder, including materials for which partial payment has been made.
- h) Subject to prior written approval of the Owner, settle all outstanding liabilities and all claims arising out of trade contracts, subcontracts or orders for materials terminated hereunder. To the extent directed by the Owner, the CM shall assign to the Owner all the right, title and interest of the CM under trade contracts or orders for materials terminated hereunder.
- i) Furnish the Owner with the documentation required to be furnished by the CM under the provisions of the Contract.
- j) Take such other actions pertinent to terminating the Contract as the Owner may direct.
- k) Remain liable for any defective construction completed before termination.

The CM shall be paid in accordance with the provisions of Article 8.02, Partial Payments, with the following exception. The amount due the CM shall be based upon the Owner's final estimate of the actual work completed, or acceptable materials furnished but not used, to the date of suspension of the work, less any amounts required to be withheld pursuant to Article 8, Payment and Completion, and less any prior payment(s) made to, or on account of the CM.

7.05 Assignment of Trade Contracts

Should the CM's control over the work be terminated under Article 7.03, Termination for Cause, or Article 7.04, Termination for Convenience, the Owner may elect to take legal assignment of trade contracts and purchase orders. In such an event, the CM shall, as a condition of receiving the payments referred to in these Articles, execute and deliver all papers and take all steps, including the legal assignment to the Owner of trade contracts, purchase orders and other contractual rights of the CM, as the Owner may require for the purpose of fully vesting in the Owner all rights and benefits of the CM under such trade contracts, purchase orders, or other contractual rights in order that the Owner may proceed to finish the project.

7.06 Third-Party Claims

The Owner has full authority to compromise or otherwise settle any claim relating to a Contract at any time. However, the Owner shall notify CM of the receipt of any third-party claim relating to the Contract.

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Article 8.00 PAYMENT AND COMPLETION

8.01 Acceptance

When the Project has been completed in all respects in accordance with the plans and specifications, to the full satisfaction of the Owner, the Owner will file a Notice of Completion with the County Recorder in the county in which the Project is located. Projects bid with a segregation of costs for separate, independent portions may, at the Owner's discretion, have each of the separate portions accepted individually. The date of acceptance of the Project as stated on the Notice of Completion shall be the official completion date relating to liquidated damages. The County Recorder's date of recording on the Notice of Completion, if filed timely (within ten days of acceptance), shall be the official completion date relating to stop notices. All stop notices must be filed with the Owner within 30 calendar days after the County Recorder's recordation date on the Owner's timely filed Notice of Completion. All claims arising from this Contract shall be submitted in writing to the Owner no later than 30 calendar days after the recordation date on the Owner's Notice of Completion. See Article 7.01, Claims.

8.02 Partial Payments

To assist in computing partial payments, the CM shall submit to the Architect and the Project Manager a "Schedule of Values" of the CM's actual and estimated costs for each item of work. The cost breakdowns shall be in sufficient detail for use in estimating the work to be completed each month and shall be submitted within 21 calendar days after the date of commencement of work given in the Notice to Proceed.

Once each month during the progress of the work, the CM shall submit to the Project Manager and the Architect a partial payment request. The CM shall base the partial payment request on the approved schedule of values for the cost of the work completed plus, where applicable, a maximum of 90% of the verified supplier-invoiced amount and CM-purchased acceptable materials delivered to the Site or stored subject to the control of the CM but identified as the property of the Owner and not yet installed. The CM must make any materials stored offsite accessible to the Owner to verify invoiced value and shall deliver these materials to the Owner upon request.

The partial payment request shall be submitted on the monthly anniversary of the day selected by the CM in the job start meeting. The amount requested shall be based on the Schedule of Values multiplied by the percentage of work completed including the CM's Fee, prorated based on the percentage of work completed. If requested by the Owner, the CM shall submit a detailed cost report including additional substantiation such as trade contractor payments, material invoices, payrolls for all labor, and other such data supporting the CM's right to payment. The detailed cost report shall be forwarded to the Project Manager no later than seven (7) calendar days following receipt of the request.

The Architect and Project Manager shall review and certify as to the validity of the request, which, if the request includes an invoice for materials, then it shall include an inspection by the Project Manager of materials invoiced. No partial payment shall be made without the certification of the Architect, unless the partial payment is strictly administrative, and is processed after the completion of the work (e.g. release of stop notice claims). Partial payment requests shall be processed with a minimum of ten percent retention. The Owner will hold this retention in part as security for the fulfillment of the Contract by CM, and in part, as retainage for liquidated damages, stop notices, Labor Code wage and penalty assessments, and Owner's back-charges such as for retesting and re-inspection. If the Owner deem that ten percent retention is inadequate, the Owner may increase the amount of retention.

Partial payments shall not be construed as acceptance of any work that is not in accordance with the requirements of the Contract. Once the Architect and the Project Manager have certified the partial payment request, it shall be submitted to the Owner approval and processing. The partial payment will then be processed and payment made within 30 calendar days, from the date of receipt by the Owner, prior to assessment of late payment interest.

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8.03 Direct Cost of the Work

The term "direct cost of the work" shall mean costs necessarily incurred by the CM in the proper performance of the work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The "direct cost of the work" shall include only the following items set forth in this Article.

- a) Labor Costs
 - 1) Wages of construction workers directly employed by the CM to perform the construction of the work at the Site or, with the Owner's agreement, at off-site workshops.
 - 2) Actual costs paid or incurred by the CM for taxes, insurance, contributions, assessments and benefits, associated with the construction workers directly employed by the CM, and as required by law.
- b) Trade Contractor Cost. Payments made by the CM to trade contractors in accordance with the requirements of the subcontracts.
- c) Cost of Materials and Equipment Incorporated in the Completed Construction
 - 1) Actual costs, including transportation of materials and equipment incorporated or to be incorporated in the completed construction.
 - 2) Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the work or, at the Owner's option, shall be sold by the CM. Amounts realized, if any, from such sales shall be credited to the Owner as deduction from the cost of the work.
- d) Cost of Other Materials and Equipment and Related Items
 - 1) Actual costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM at the Site and fully consumed in the performance of the work. Cost for items previously used by the CM shall mean fair market value. The Owner reserves the right to dispose of all temporary structures and small tools that have been purchased but no longer required for the work.
 - 2) Costs of removal of debris from the site.
- e) Miscellaneous Costs
 - 1) Sales, use or similar taxes imposed by a governmental authority which are related to the work and for which the CM or Owner is liable.
 - 2) Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming work for which reimbursement is excluded by Article 5.06, Testing Materials, Articles, Equipment and Work, or other provisions of the Contract Documents.
 - 3) Deposits lost for causes other than the CM's fault or negligence.
 - 4) Cost of surveys if required for the work.
 - 5) Costs of obtaining and using all utility services required for the work, if not paid directly by the Owner.
- f) Other Costs.
 - 1) This category includes other costs incurred in the performance of the work if and to the extent approved in advance in writing by the Owner.
- g) Costs for Emergencies; Repairs to Damaged, Defective or Nonconforming Work
 - 1) Costs in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
 - 2) Costs in repairing or correcting work damaged or improperly executed by construction workers in the employment of the CM, provided such damage or improper execution did not result from the fault or negligence of the CM or the CM's employees, foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the CM.

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- 3) Costs in repairing damaged work other than that described in Article 8.03-g (2), provided such damage did not result from the fault or negligence of the CM or the CM's personnel, and only to the extent that the cost of such repairs is not recoverable by the CM from others and the CM is not compensated therefore by insurance or otherwise.
- 4) Costs in correcting defective or nonconforming work performed or supplied by a trade contractor or material supplier and not corrected by them, provided such defective or nonconforming work did not result from the fault or neglect of the CM or the CM's personnel to adequately supervise and direct the work of the trade contractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming work is not recoverable by the CM from the trade contractor or material supplier.

8.04 Construction Phase Services

The term "construction phase services" shall mean those costs incurred by the CM in the field management, supervision, and administration of the work. The CM's fee percentage for construction phase services, as included in the cost proposal, shall include the following items:

- a) Labor Costs
 - 1) Wages or salaries of the CM's supervisory and administrative personnel when stationed at the Site with the Owner's agreement.
 - 2) Wages and salaries of the CM's supervisory or administrative personnel engaged at factories, workshops (not including CM's principal or branch offices) or on the road expediting the production or transportation of materials or equipment required for the work, but only for that portion of their time required for the work.
 - 3) Wages or salaries of the CM's project manager, whether stationed at the Site or in the CM's principal office or branch offices, but only for that portion of his/her time required for the work.
- b) Materials and Equipment and Temporary Facilities and Accommodations
 - 1) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM at the site, whether rented from the CM or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
 - 2) Costs of long-distance telephone calls, project specific cell phone calls, postage and parcel delivery charges, telephone service at the site, and reasonable petty cash expenses at the Site office.
 - 3) That portion of the reasonable travel and subsistence expenses of the CM's personnel incurred while traveling in discharge of duties connected with the work.
- c) Miscellaneous Costs
 - 1) That portion of premiums for insurance and bonds directly attributable to the Contract.
 - 2) Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM is required by the Contract Documents to pay.

8.05 Costs Not Included in Construction Phase Services

The cost of the work shall not include:

- a) Any costs incurred by the CM in providing pre-construction services paid under a separate service agreement executed between the CM and the Owner.
- b) Salaries and other compensation of the CM's personnel stationed at the CM's principal office or offices other than the Site office, except as specifically provided in Articles 8.03 and 8.04.
- c) Payments to CM's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.).
- d) Expenses of the CM's principal office and offices other than the Site office.
- e) Overhead and general expenses, except as may be expressly included in Articles 8.03 and 8.04.
- f) The CM's capital expenses, including interest on the CM's capital employed for the work.
- g) Rental costs of machinery and equipment, except as specifically provided in Article 8.03-d.

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- h) Except as provided in Article 8.03, costs due to the fault or negligence of the CM, trade contractors, anyone directly or indirectly employed by the CM or trade contractors, or for whose acts the CM or trade contractors may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the work.
- i) Electronic processing and personnel cost incurred by the CM in preparing the Project schedule and schedule updates, payroll, project cost reports or project status reports and any other reports necessary to the progress of the work.
- j) Any costs based on percentages, rather than actual costs paid by the CM, unless specific percentages are documented and approved by the Owner.
- k) Any fees paid to Contractor/CM organizations. (AGC, ABC, AIA etc.)
- l) Contractor's business license.
- m) Any cost not specifically and expressly described in Articles 8.03 and 8.04.
- n) Costs that would cause the Guaranteed Maximum Price to be exceeded.

8.06 Discounts, Rebates and Refunds

- a) Cash discounts obtained on payments made by the CM shall accrue to the Owner if (1) before making the payment, the CM included them in a payment request and received payment therefore from the Owner, or (2) the Owner has deposited funds with the CM with which to make payments; otherwise, cash discounts shall accrue to the CM. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CM shall make provisions so that they can be secured. If a trade discount by the actual supplier is available to the CM, it shall be credited to the Owner.
- b) Amounts, which accrue to the Owner in accordance with the provisions of Article 8.06-a, shall be credited to the Owner as a deduction from the cost of the work.

8.07 Escrow in Lieu of Retention

The CM has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner. When the CM deposits securities as a substitute for retained earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Agreement. Securities shall be held in the name of Owner, and shall designate the Contractor as the beneficial owner.

The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

Alternatively, on written request of the CM, the Owner shall make payments of the retention earnings directly to the Escrow Agent.

When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

8.08 Stop Notices

The Owner shall retain out of any money due or that may become due the CM, sums sufficient (125 percent of the claim) to cover claims filed pursuant to the stop notice provisions of the law (Civil Code, section 3082 *et seq.*).

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Preliminary notices and stop notices should be addressed to the Project Manager and sent to the Owner at the address identified in the letter transmitting the Contract and at the preconstruction conference. CM shall be responsible to communicate this information to all trade contractors.

8.09 Guaranteed Maximum Price and Cost Savings Split

The Contract amount for the Project is guaranteed by the CM not to exceed the GMAX, as set forth in the Agreement. The GMAX is supported by a line item cost breakdown for each trade contractor, including contingency on overall cost of the work, and based on multiple trade contractor bids for each trade contract obtained as provided in these General Conditions. The GMAX shall be subject to additions and deductions by change order as provided in Article 6, Change Orders.

If the cost of the work, together with the CM's fee, exceeds the GMAX, adjusted from time to time by change order, the CM shall pay the overrun without reimbursement by the Owner. If the actual cost of the work, plus the CM's fee, is less than the GMAX, adjusted from time to time by change order, then the CM shall pay the Owner the percentage of such cost savings as identified in the SOQ proposal, with the Owner benefitting by the remaining percentage thereof. CM agrees to use all reasonable efforts to maximize the cost savings for the mutual benefit of the parties.

8.10 Final Payment

After acceptance of the Project as complete, the CM shall submit to the Project Manager a payment request indicating the total due under the Contract less retention. This payment request shall be substantiated by a detailed cost report. At the option of the Owner, additional substantiation may be requested such as trade contractor payments, material invoices, payrolls for all labor, and other such data supporting the CM's right to payment. The detailed cost report shall be forwarded to the Project Manager no later than seven (7) calendar days following the submission of the final payment request. This payment request will be processed in the same manner as the partial payment requests. Refer to Article 8.02, Partial Payments.

The Owner shall notify the CM of the date of recordation of the Notice of Completion. The CM shall then submit a request for payment of the retention to the Project Manager, who will process the retention payment 30 calendar days after the date of recordation by the County Recorder.

The Owner shall continue to retain funds to cover liquidated damages, stop notices, state labor commissioner claims, back charges from the Owner, unexecuted credit change orders, and other such claims that may be received up to the end of the 30 days period following recordation. If any stop notice has been filed, payment shall be withheld in an amount of at least 125 percent of the total claims filed until either the rights under the stop notice have been settled or the CM has posted sufficient bond in an amount of at least 125 percent of the total claims filed to secure payment of such claims.

The amount of such final payment shall be calculated as follows:

- a) Take the sum of the cost of the work for the entire project substantiated by the CM's final accounting and the CM's fee calculated previously, subject to a Owner audit if so requested.
- b) Add any cost savings on the completion of the project to which the CM is entitled pursuant to Article 8.09, Guaranteed Maximum Price and Cost Savings Split.
- c) Subtract amounts, if any, which the Owner are entitled to withhold to cover liquidated damages, stop notices, construction defects or non-conforming work or other withholds authorized by the Contract Documents.
- d) Subtract the aggregate of previous payments made by the Owner to the CM hereunder.

8.11 Auditing Rights of the Owner

The CM shall be subject to examination and audit by the Owner (or designee) at any time during construction and for a period of three (3) years after final payment of the Contract. Such examination and audit shall include access to the CM and the trade contractor records as delineated in the following:

- a) The CM's records which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; trade contractor files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original

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estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to this Contract (all foregoing hereinafter referred to as "records") and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) the CM's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the CM or any of his payees. The CM is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total project costs by cost codes; and a trade contractor history report including each subcontract amount and change orders issued thereto.

- b) Inspection and copying from time to time and at reasonable times and places any and all information, materials and data of every kind and character, including but not limited to records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Contract.
- c) The Owner shall be allowed to interview any of the CM's employees, pursuant to the provisions of this Article throughout the term of this Contract and for a period of three years after final payment or longer if required by law.
- d) The CM shall require all trade contractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the CM and payee. Such requirements will also apply to trade contractors and subcontractors, etc. The CM will cooperate fully and will cause all related parties and all of the CM's trade contractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.
- e) The Owner shall have access to the CM's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article.
- f) If an audit inspection or examination in accordance with this Article, discloses overcharges (of any nature) by the CM to the Owner in excess of one-half of one percent (.5%) of the total Contract billings, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the CM. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CM's invoices and/or records shall be made within a reasonable amount of time (not to exceed 30 calendar days) from presentation of the Owner findings to CM.
- g) If an audit discloses overcharges on change orders, where a CM has submitted costs and has received payment of costs for a trade contractor's work, but has not passed on such payment to the trade contractor (including mark-up charged), and the CM's records do not reflect offsetting back charges, the CM shall reimburse the Owner for such overcharges upon receipt of a request from the Owner.

8.12 Guarantee

The CM hereby unconditionally guarantees the work under this Contract to be in conformance with the Contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the project pursuant to Article 4.13-b, Starting and Completion Date,

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unless a longer guarantee period is stipulated in the Contract Documents. By this guarantee the CM agrees, within the guarantee period, to repair or replace any work, together with any adjacent work which may be displaced in so doing which is not in accordance with the requirements of the Contract or which is defective in its workmanship or material, all without any expense whatsoever to the Owner. Special guarantees that are required by the Contract shall be signed by the CM who is responsible for the entire work and countersigned by the trade contractor that performs the work.

Contract bonds shall remain in full force and effect during the one-year guarantee period, unless a longer bond period is stipulated in the Contract Documents.

The CM further agrees that within 5 days notice by the Owner of any work not in accordance with the requirements of the Contract or of any defects in the work, CM shall commence and prosecute with due diligence all work necessary to fulfill the terms of this guarantee and to complete the work in accordance with the requirements of the Contract within a reasonable period of time. The CM, in the event of failure to so comply, does hereby authorize the Owner to proceed to have the work done at the CM's expense, and it agrees to pay the cost thereof upon demand. The Owner shall be entitled to all costs necessarily incurred upon the CM's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Owner's employees, property, or licenses, the Owner may undertake at the CM's expense, without prior notice, all work necessary to correct such hazardous conditions caused by the work of the CM that is not in accordance with the requirements of this Contract.

-End of Contract General Conditions for
Construction Manager at Risk with Guaranteed Maximum Price Projects-



United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
333 Bush Street, Suite 500
San Francisco, California 94104-2828



IN REPLY REFER TO:

L34(PWR-PR)

November 5, 2013

Ms. Jean Lacher, Chief
Office of Grants and Local Services
California Department of Parks and Recreation
PO Box 942896
Sacramento, California 94296

Re: Roeding Park – Chaffee Zoo Expansion; Public Facility and Significant Change of Use
Proposals; LWCF Grant Nos: 06-00868; 06-01205; 06-01241; 06-01327; 06-01398; 06-01543

Dear Ms. Lacher:

This letter is in response to the City of Fresno's request for review of projects under consideration at Roeding Park. These two projects are the City's proposals (1) to construct an African Safari Lodge and (2) to expand the Chaffee Zoo. Your office forwarded the City's request to us. As discussed further below, neither of these proposals requires NPS approval. The proposed African Safari Lodge is a public support facility. Under the applicable Land and Water Conservation Fund Act regulations and manual, the proposed zoo expansion does not significantly contravene the overall purpose of the Park.

Background

Roeding Park is owned and administered by the City of Fresno, California. The park is approximately 150 acres. As presented by the City in its proposal, the park includes "tennis courts, picnic areas, playgrounds, lakes, other activity station and amenities, all within a landscaped urban forest setting"; the 18-acre Chaffee Zoo; Storyland (3.35 acres); Playland (3.65 acres); and a maintenance yard (5 acres). The zoo has existed in the park since 1929. From its inception, the park has included, and has been managed for, a wide variety of outdoor recreation opportunities.

Roeding Park has benefitted from six Land and Water Conservation Fund grants, the first in 1980 and the most recent grant in 2004. By accepting these grants, the City of Fresno agreed to the requirement in §6(f)(3) of the Land and Water Conservation Fund Act (16 U.S.C. § 4601-8(f)(3)) that Roeding Park will remain dedicated to public outdoor recreation purposes in perpetuity, unless approval is received from the Department of the Interior, delegated to the National Park Service, for a conversion in accordance with the Act and post-completion compliance regulations at 36 CFR § 59. The National Park Service's role in this case derives from its responsibilities under the Land and Water Conservation Fund Act (LWCF).

African Safari Lodge Proposal

The City proposes to construct an approximately 10,000sf African Safari-type Lodge. As described by the City, "[t]he uses of the Lodge would include: (1) a restaurant with seating overlooking the Africa Savanna area; (2) restrooms; (3) a classroom; and (4) a 'great hall' linking the above uses." According to



the proposal, "[z]oo visitors who wish to eat at the restaurant would purchase and receive their food at the servery or the café;" and "[t]he seating area would be a covered, open-air outdoor space."

As presented, the purpose of the proposed lodge is to support directly public outdoor recreation, and thus the proposed lodge would be a public outdoor recreation support facility consistent with Section 6(f) purposes. The proposed Lodge facility will be an open-air structure providing shaded seating and eating areas with interpretive displays and observation areas, the primary purpose of which is to enhance the outdoor recreation use of the park. Such a structure is similar to other facilities needed for the use and enjoyment of outdoor recreation areas, such as covered picnic facilities, concession facilities, exhibit facilities, spectator facilities, and restrooms. Due to the hot summer temperatures experienced in Fresno, shaded visitor use areas are especially helpful in extending the visitor use of the area. Food service operations and concession stands with outdoor dining including pavilions and protected patios are allowable outdoor recreation support facilities.

In contrast to park support facilities, public facilities requiring a public facility exception under LWCF are those facilities that serve a primarily non-outdoor recreation purpose, which would otherwise be a conversion of use, but that can be justified on the basis of providing a net gain in the outdoor recreation benefits or that enhance the outdoor recreation use of the entire park. Examples of such facilities include community centers and indoor pools. Such facilities are eligible for approval, if among other things, the uses of such non-outdoor recreation facilities are compatible with and significantly supportive of the outdoor recreation resources and opportunities of the Section 6(f) area. The Lodge as it has been proposed does not require a public facility exception.

Zoo Expansion Proposal

The City also proposes to expand the zoo from the current 18 acres to 39 acres. Zoos are an allowable outdoor recreation use of LWCF §6(f) areas, and some zoo facilities are eligible for LWCF financial assistance. Two LWCF grants made to Roeding Park assisted in development of zoo facilities: an animal exhibit and a pathway lighting project. Zoos are consistent with recreation needs identified in California's Statewide Comprehensive Outdoor Recreation Plan (the "California Outdoor Recreation Plan"). Therefore, the proposal is to enlarge an existing Section 6(f) allowable use by replacing other LWCF allowable uses within the multiple-use park.

The expansion would occur on the northwest side of the current zoo into approximately three acres now used as a City park maintenance facility. The remaining 18-acre expansion area would be into the southeastern side of Roeding Park. Currently, these 18 acres include several groves of trees, roadways, parking spaces, paved walking paths, grasslands, a picnic grove, a horseshoe pit, and water features. The public uses of these areas include walking for fitness or pleasure, picnicking, unprogrammed sports, and viewing the natural scenery.

With the zoo expansion, those 18 acres would be used primarily for an African Savanna Exhibit, Safari Trail Area, and the Lodge (considered above). The Lodge would be located where the zoo administrative offices are now. The area would continue to be largely an open space grass area. The umbrella grove will be preserved. Most of the healthy trees will be preserved, and new trees will be planted. Visitors will continue to be able to enjoy the scenery of the area, although it will change somewhat to resemble an African savanna. Visitors will continue to be able to eat and picnic in the expansion area, as well as to walk for pleasure. The area would not be used for unprogrammed sports, but other areas of Roeding Park will continue to be available for such use. Support structures such as holding yards and holding barns are to be developed on the eastern periphery of the expansion area. Access to the zoo area including the expansion area will require payment of the existing zoo visitor fee. The Roeding Park admission fee for

cars will remain unchanged. Pedestrians will continue to be able to access the park, except for the zoo, free of charge.

The applicable regulation and policies regarding the proposed expansion of the zoo can be found in the second portion of 36 CFR §59.3(d) and in Section 8.L of the LWCF State Assistance Program Manual. As described in the Manual, "NPS approval must be obtained prior to any change from one eligible use to another when the proposed use would significantly contravene the original plans or intent for the area as described in the original LWCF project(s)." The Manual goes on to state that NPS approval is not required for every change in use. As stated in the Manual, "[u]ses within a Section 6(f)(3) protected area should be viewed in the context of overall use and should be monitored in this context." The regulation also provides: "To assure that facility changes do not significantly contravene the original project agreement, NPS shall be notified by the State of *all* proposed changes in advance of their occurrence." The State has notified the NPS of the proposed change in accordance with this regulation.

The entire park is included when looking at the overall use of the LWCF section 6(f) area. To assist in looking at the original plans or intent for the overall park, we have reviewed the six Roeding Park projects that have received LWCF assistance and the materials submitted in support of the LWCF grant agreements. Two of the grants directly supported the construction of zoo facilities. Two others were applied to construction and renovation of tennis courts in the northern section of the park. The remaining two projects supported the installation of picnic facilities – one primarily in the northern section of the park, and the other for facilities throughout the park. While there are several references to the fact that Roeding Park offers a wide variety of recreational opportunities, and serves as both a regional and as a neighborhood park, none of the project files contain documentation addressing the specific intent for the southeastern portion of the park. Based on our review of the official records, none of the federal grants was conditioned upon the preservation of the southeastern portion of the park for particular forms of recreation, or in a particular historically significant configuration. In sum, based on our review of the LWCF grants, we believe the overall purpose and intent under LWCF for Roeding Park is as a multi-use park in an urban setting, incorporating a variety of uses, including the zoo.

Once the zoo has accomplished its 21-acre expansion, Roeding Park will consist of approximately 97 acres of free-access public park area including tennis courts, picnic areas, paved walking paths, water features, open grass areas, roadways and parking; the 39-acre Chaffee Zoo, the existing Storyland and Playland areas, and a maintenance facility reduced to encompass approximately 1.5 acres. This configuration continues the multi-use character of Roeding Park consistent with the six LWCF project agreements. Because the zoo expansion will not contravene the multi-use purpose of the Park, NPS approval under LWCF Section 6(f) is not required. The change of use in the southern part of the park from one type of outdoor recreation to another type of outdoor recreation, while maintaining the variety of recreational opportunities in the park overall, is a local park management decision.

Character of Park

Because the two proposals submitted by the City do not require NPS approval, these proposals do not trigger federal compliance requirements under such statutes as the National Environmental Policy Act and §106 of the National Historic Preservation Act. We would like to note, however, that we are aware that the Historic American Landscape Survey finds that the Roeding Park Historic District is eligible for listing in the National Register of Historic Places. In addition, we understand that comments received on the California Environmental Quality Act Draft Environmental Impact Report from the State Historic Preservation Officer, the National Trust for Historic Preservation, and the California Preservation Foundation, all indicated that the proposed mitigation measures were insufficient to address the loss of integrity of the historic district. As noted by the State in its letter, we are also aware that some community opposition exists to the zoo expansion and that opponents include the Friends of Roeding

Park and the Roeding Family. We encourage the City to take the steps necessary to mitigate any adverse effects to historic park resources and to maintain the multi-use character of the Park.

Conclusion

This letter responds only to the specific request made by the City through the State of California regarding the construction of a covered open-air lodge, and the expansion of the zoo from 18 to 39 acres. With this letter we do not render an opinion nor make any conclusions or approvals regarding other areas potentially affected by the zoo expansion or other aspects of the Roeding Park Master Plan. Any future zoo expansion, construction of new facilities, or changes of existing facilities would need to be evaluated under the same criteria considered here.

We appreciate the assistance we received from the Office of Grants and Local Services in researching project documentation for all of the Roeding Park Land and Water Conservation Fund grants. We also appreciate the documentation provided by the City of Fresno regarding the proposed zoo expansion. Although no federal action is invoked by the proposed changes in the park, we would not have been able to understand the proposed projects without the detailed documentation provided.

Please feel free to contact me if you have any questions or would like further information.

Sincerely,



David Siegenthaler

Program Officer

Land and Water Conservation Fund, State and Local Assistance Program



DEPARTMENT OF PARKS AND RECREATION
P.O. Box 942896 • Sacramento, CA 94296-0001
(916) 653-7423

Major General Anthony L. Jackson, USMC (Ret), Director

November 7, 2013

Bruce Rudd
Assistant City Manager
City of Fresno, PARCS Department
2600 Fresno Street
Fresno, CA 96721

Re: Chaffee Zoo Expansion and Roeding Park Facility Relocation Proposal
Federal Land and Water Conservation Fund 06-00868, 06-01205, 06-01241, 06-01327,
06-01398, 06-01543 and 2000 Parks Bond Act - Per Capita 00-10-007 and 2002
Resources Bond Act - Per Capita 02-10-030

Dear Bruce Rudd:

The Office of Grants and Local Services (OGALS) provides this letter to the City of Fresno (City) as guidance about the proposed expansion of Chaffee Zoo within Roeding Park (Park). This letter explains the outcome of the National Park Service (NPS) and OGALS review, and provides the next steps.

NPS Determination

NPS determined that the City's current proposal to construct the open-air African Safari Lodge and to expand Chaffee Zoo from 18 to 39 acres does not significantly contravene the overall purpose of the park, and therefore NPS approval under Land and Water Conservation Fund §6(f) is not required. As NPS approval under §6(f) is not required, NPS determined that the African Safari Lodge and Chaffee Zoo expansion does not trigger federal compliance requirements under such statutes as the National Environmental Policy Act and §106 of the National Historic Preservation Act.

However, NPS notes the following and encourages the City to take the steps necessary to mitigate any adverse effects to historic park resources and to maintain the multi-use character of the Park.

- NPS is aware that the Historic American Landscape Survey finds that the Roeding Park Historic District is eligible for listing in the National Register of Historic Places.
- Comments received on the California Environmental Quality Act (CEQA) Draft Environmental Impact Report from the State Historic Preservation Officer, the National Trust for Historic Preservation, and the California Preservation Foundation, all indicated that the proposed mitigation measures were insufficient to address the loss of integrity of the historic district.

- NPS is also aware that some community opposition exists to the zoo expansion proposal, and that opponents include the Friends of Roeding Park and the Roeding Family.

Next Steps Based on the NPS Determination Described Above

To complete OGALS records, please provide a response to NPS' encouragement for the City to mitigate any adverse effects to historic park resources and to maintain the multi-use character of the Park. NPS will not review the City's response. Additionally, OGALS recognizes that the City is the lead agency under CEQA.

OGALS Determination

On October 8, 2013, the City requested to relocate two projects funded under the 2000 Parks Bond Act - Per Capita and 2002 Resources Bond Act - Per Capita program, respectively:

- 1) Project 00-10-007, Dog park drinking fountain; and,
- 2) Project 02-10-030, Installation of modular restrooms at Roeding Park

The City's relocation of the dog park drinking fountain within Roeding Park and the relocation of a modular building would have been eligible under the broad block grant Per Capita program intent. Since the drinking fountain will still be used at Roeding Park, and the modular restroom will be used at Holmes Park, the City's request is approved.

Next Steps Based on the OGALS Determination Described Above

Please provide status updates every six months to monitor these relocation projects until they are completed. OGALS will conduct a site inspection when they are completed.

Feel free to contact me at (916) 651-8597 or Jean.Lacher@parks.ca.gov if you have any questions or need further information.

Sincerely,



Jean Lacher, Chief
Office of Grants and Local Services

Enclosure

cc: Irma Yopez-Perez, City of Fresno, PARCS Department
Viktor Patiño, Manager, Office of Grants and Local Services
Jana Clarke, Supervisor, Office of Grants and Local Services
Bill Meyer, Project Officer, Office of Grants and Local Services

Resolution No. 2013-02

BEFORE THE FRESNO COUNTY ZOO AUTHORITY
STATE OF CALIFORNIA

RESOLUTION ADOPTING
CEQA FINDINGS AND
STATEMENT OF OVERRIDING
CONSIDERATIONS FOR THE
FRESNO CHAFFEE ZOO
EXPANSION (SCH No.
2008031002)

IN THE MATTER OF THE
MEASURE Z FUNDING
REQUEST FOR FRESNO
CHAFFEE ZOO'S AFRICA EXHIBIT

WHEREAS, on July 13, 2004, the Fresno County Board of Supervisors created the Fresno County Zoo Authority pursuant to Revenue and Taxation Code section 7286.43, and

WHEREAS, at the November 4, 2004 general election, Fresno County voters approved "Save Our Zoo" Measure Z by 73.4% of the vote, and

WHEREAS, Measure Z is a one-tenth of one percent sales tax for ten years with all net proceeds dedicated exclusively to the Fresno Chaffee Zoo, and

WHEREAS, the stated purpose of Measure Z is to help ensure the survival of the Fresno Chaffee Zoo by providing necessary funding to repair and restore the zoo, bring back large animal exhibits, further revitalize the zoo, and preserve the zoo's Species Survival Plan and ongoing Education Program, and

WHEREAS, the Zoo Authority duties include the general administration of Measure Z funds and implementation of Measure Z, and

WHEREAS, Fresno Chaffee Zoo submitted a request for \$51,699,682 for construction of the Africa Exhibit to provide space for many African species including lion, giraffe, elephant, rhinoceros, cheetah and meerkat, and a request for \$290,000 for additional utility infrastructure work to support the Africa Exhibit

and other Fresno Chaffee Zoo facilities (hereinafter collectively referred to as the “Africa Exhibit”); and

WHEREAS, the Zoo Authority may approve the request for capital project funds pursuant to Measure Z, the Agreement Regarding Procedures for Distribution of Tax Revenue to the Chaffee Zoo dated December 21, 2005, and the Zoo Authority Procedures for Approving and Administering Measure Z Funds, and

WHEREAS, the City of Fresno certified an Environmental Impact Report (EIR), State Clearinghouse No. 2008031002, for the Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plans on June 30, 2011 (See Exhibit A, Fresno City Council Resolution 2011-145) and an Addendum to the Master Plan EIR on November 7, 2013 (See Exhibit B, Fresno City Council Resolution 2013-189) (hereinafter collectively referred to as the “EIR and Addendum”), and

WHEREAS, the City of Fresno approved Conditional Use Permit Application No. C-08-186, authorizing the Implementation of the Fresno Chaffee Zoo Facility Master Plan on July 20, 2011, and

WHEREAS, the Fresno Chaffee Zoo Facility Master Plan includes the construction of the Africa Exhibit, and

WHEREAS, the Zoo Authority is listed as a Responsible Agency in the EIR for purposes of the California Environmental Quality Act (CEQA), and

WHEREAS, the EIR is adequate for use by the Zoo Authority, as such term is used by CEQA Guideline section 15096(e).

NOW, THEREFORE BE IT RESOLVED that:

- a) The Zoo Authority has considered the environmental effects of the Master Plans Project, including the Africa Exhibit, as shown in the EIR and Addendum.
- b) Based on its consideration of the EIR and Addendum, the Zoo Authority finds that there are no feasible alternatives or feasible mitigation measures within its powers that would substantially lessen or avoid any significant

effect the construction of the Africa Exhibit would have on the environment.

- c) The Zoo Authority adopts the Findings of Fact and Statement of Overriding Considerations attached hereto as Exhibit C.
- d) Neither a Subsequent EIR nor Supplemental EIR is warranted under CEQA Guidelines sections 15162 or 15163 before approval of the Africa Exhibit.

THE FOREGOING was PASSED and ADOPTED by the following vote of the Fresno County Zoo Authority this 6th day of December, 2013, to-wit:

AYES:
NOES:
ABSENT:

Chairman, Fresno County Zoo Authority



RESOLUTION NO. 2011-145

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRESNO, MAKING FINDINGS AND CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE ROEDING REGIONAL PARK AND FRESNO CHAFFEE ZOO FACILITY MASTER PLANS (SCH NO. 2008031002), AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, the Fresno Chaffee Zoo Corporation, the City of Fresno Parks, After School, Recreation and Community Services Department ("PARCS"), and Roeding Park Playland and Fresno Storyland (collectively, "Project Proponents") have proposed to redevelop the 148-acre Roeding Regional Park ("Project Site"), including expansion of the Fresno Chaffee Zoo from 18 to 39 acres, expansion of Playland and Storyland, and improvement of existing facilities and circulation throughout Roeding Regional Park, as further set forth in the applications and proposed approvals for the Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plans ("Master Plans Project" or "Project"); and

WHEREAS, the Project Proponents seek approval of two conditional use permits and potential subsequent approvals, including improvement plans, grading permits, building permits, and landscapes plans, in order to implement the Master Plans Project; and

WHEREAS, in accordance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq. ("CEQA")) the City of Fresno ("City") determined that an Environmental Impact Report ("EIR") was required to evaluate the impacts of the proposed Master Plans Project; and

WHEREAS, the City issued a Notice of Preparation on February 25, 2008, and subsequently issued a revised, second Notice of Preparation on July 1, 2009; prior to circulating a draft environmental impact report and issuing a final environmental impact report, on January 21, 2011 which included written responses to all comments received on the draft environmental impact report; and

WHEREAS, rather than certify the January 21, 2011 final environmental impact report, the City elected to revise the original draft environmental impact report, and circulate a revised report ("Recirculated Draft EIR" or RDEIR); and

WHEREAS, the City issued a revised Notice of Preparation ("Revised NOP") on March 4, 2011, and circulated the RDEIR for a 45-day public/agency review beginning on April 22, 2011; and

Adopted _____
Approved _____
Effective 10 _____

2011-145



WHEREAS, the City prepared written responses to comments received on the RDEIR and prepared a Final EIR, which consists of the RDEIR (incorporated by reference), all comments received on the RDEIR, written responses to comments received on the RDEIR, and revisions to the RDEIR (collectively, "EIR"); and

WHEREAS, the City Council reviewed and carefully considered the information in the Record, as defined in Section III of the CEQA Findings, attached as Exhibit A, including the EIR, at a duly noticed public hearing held on June 23, 2011, and, by this Resolution, based on the CEQA Findings contained in Exhibit A, certifies the EIR attached as Exhibit B, as an objective and accurate document that reflects the independent judgment of the City Council in the identification, discussion and mitigation of the Project's environmental impacts, as well as adopts the Statement of Overriding Considerations for those impacts that cannot be mitigated to less-than-significant levels and the Mitigation Monitoring and Reporting Program, attached as Exhibit C.

NOW THEREFORE BE IT RESOLVED, that based on the entirety of the Record before it, as defined in Section III of Exhibit A to this Resolution, the City Council of the City of Fresno does hereby find as follows:

1. The foregoing Recitals are true and correct and made a part of this Resolution.
2. The exhibits and attachments, including the CEQA Findings and Statement of Overriding Consideration (attached as Exhibit A), the Environmental Impact Report including the RDEIR and Final EIR (attached as Exhibit B), and the Mitigation Monitoring and Reporting Program (attached as Exhibit C), the Minor Modifications (attached as Exhibit D), are each incorporated by reference and made a part of this Resolution, as if set forth fully herein.
3. The documents and other material constituting the record for these proceedings are located at the Development and Resource Management Department for the City of Fresno, 2600 Fresno Street—Third Floor, Fresno, CA 93721, and in the custody of Planning Manager, Kevin Fabino.
4. Based on the City Council's independent judgment and analysis, the City Council makes the findings regarding the Master Plans Project's significant and unavoidable impacts, potentially significant impacts, and less than significant impacts; makes the findings regarding the proposed mitigation measures, and the Project alternatives; and adopts the Statement of Overriding Considerations, finding that the benefits of the Project outweigh the Project's significant and unavoidable environmental impacts, for the reasons, and as further set forth in Exhibit A ("CEQA Findings"), attached hereto and incorporated by reference.

BE IT FURTHER RESOLVED, that based on the entirety of the Record, the City Council does hereby make the CEQA Findings included in Exhibit A, including adopting the Statement of Overriding Considerations as set forth in Section X of the CEQA Findings; certify the Final Environmental Impact Report for the Redding Regional Park

and Fresno Chaffee Zoo Facility Master Plans (SCH No. 2008031002) including the Minor Modifications (attached as Exhibit D), attached as Exhibit B; and adopt the Mitigation Monitoring and Reporting Program, attached as Exhibit C.



BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon its passage and adoption.

City Council Resolution No. 2011-145
Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plans EIR



CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the forgoing Resolution was adopted by the Planning Commission of the City of Fresno, at a regular meeting held on the 30th day of June, 2011.

AYES : Baines, Borgeas, Quintero, Westerland, Olivier
NOES : None
ABSENT : Xiong, Brand
ABSTAIN : None

REBECCA E. KLISCH
City Clerk

By: Rebecca E. Klisch

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: [Signature]
1645287-1



RESOLUTION NO. 2013-189

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRESNO, APPROVING ADDENDUM TO FINAL ENVIRONMENTAL IMPACT REPORT (FEIR), SCH NO. 2008031002, FOR THE ROEDING REGIONAL PARK AND FRESNO CHAFFEE ZOO FACILITY MASTER PLANS, PURSUANT TO CEQA GUIDELINES, SECTIONS 15162 AND 15164 AND APPROVING AMENDMENTS TO ROEDING REGIONAL PARK FACILITY MASTER PLAN

WHEREAS, the City of Fresno's Roeding Regional Park is located generally between State Route 99 and Golden State Boulevard in the southwest portion of the City of Fresno, Fresno County, California. The 148-acre park is bounded by West Olive Avenue on the north; West Belmont Avenue on the south; Golden State Boulevard and Union Pacific Rail line on the east; and State Route 99 on the west; and

WHEREAS, the Roeding Regional Park and the Fresno Chaffee Zoo Facility Master Plans ("the Master Plans" hereby incorporated by reference) set forth objectives, concepts, diagrams, circulation patterns and proposed capital projects which provide a comprehensive roadmap for future development of these facilities over the next 10-20 years; and

WHEREAS, the Master Plans were adopted by the Fresno City Council on June 30, 2011; and

WHEREAS, the Fresno City Council certified the Final Environmental Impact Report for the Master Plans (SCH No. 2008031002) and adopted related findings and mitigation measures on June 30, 2011.

WHEREAS, the California High-Speed Rail Authority (Authority) and the Federal Railroad Administration (FRA) published and approved the *California High-Speed Train (HST) Project, Merced to Fresno Section Project Environmental Impact Report/*

Date Adopted: 11/7/2013
Date Approved: 11/7/2013
Effective Date: 11/7/2013

Resolution No. 2013-189



Environmental Impact Statement (EIR/EIS) (HST EIR/EIS; Authority and FRA 2012a) in 2012; and

WHEREAS, construction of the high-speed train (HST) alignment would prevent the creation of the new main entrance to Roeding Regional Park on N. Golden State Boulevard as proposed in the Roeding Regional Park Facility Master Plan and would result in minor revisions to the plan as depicted on Exhibit A; and

WHEREAS, the City of Fresno Historic Preservation Commission, at its regularly scheduled meeting of July 22, 2013, reviewed and supported the proposed amendment relevant to historical resources; and

WHEREAS, an environmental assessment of the proposed amendment has been conducted, resulting in an Addendum which concludes that none of the conditions described in California Environmental Quality Act (CEQA) Guidelines Section 15162 have occurred and that the proposed amendments fall within the scope of FEIR SCH. No. 2008031002, certified by the City of Fresno in 2011. The Addendum supports that analysis with substantial evidence in the form of additional factual information, new technical studies and expert opinion supported by the referenced facts and technical studies; and

WHEREAS, on November 7, 2013 the Fresno City Council considered said Addendum and the related FEIR adopted for the Master Plans in 2011 and the proposed amendment to the Roeding Regional Park Facility Master Plan.



NOW THEREFORE BE IT RESOLVED as follows:

1. Based upon the entirety of the record before it, including the Addendum to the FEIR (SCH No. 2008031002, dated October 25, 2013, the City Council finds and determines, pursuant to CEQA Guidelines, section 15164, that the proposed amendments to the Master Plans do not result in any of the conditions described in California Environmental Quality Act (CEQA) Guidelines Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred, that the proposed amendments fall within the scope of FEIR SCH. No. 2008031002, certified by the City of Fresno in 2011, and that preparation of an addendum to FEIR SCH No. 2008031002 is in compliance with CEQA Guidelines, section 15164.
2. The City Council hereby adopts the Addendum to the FEIR certified for the Master Plans in 2011 (SCH No. 2008031002) dated October 25, 2013. Based on the City Council's independent judgment and analysis of the Record, the City Council hereby adopts the amendment to the Roeding Regional Park Facility Master Plan, dated October 25, 2013 (attached as Exhibit A).

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon its passage and adoption.



* * * * *

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 7th day of November, 2013, by the following vote:

AYES: Baines, Brand, Caprioglio, Quintero, Xiong
NOES: None
ABSENT: Brandau, Olivier
ABSTAIN: None

YVONNE SPENCE, CMC
City Clerk

By *Yvonne Spence*

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By *John W. Fox* 11/14/2013
John W. Fox Date

Outside Counsel of ALESHIRE & WYNDELL, LLP



City of Fresno
Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plan Amendment

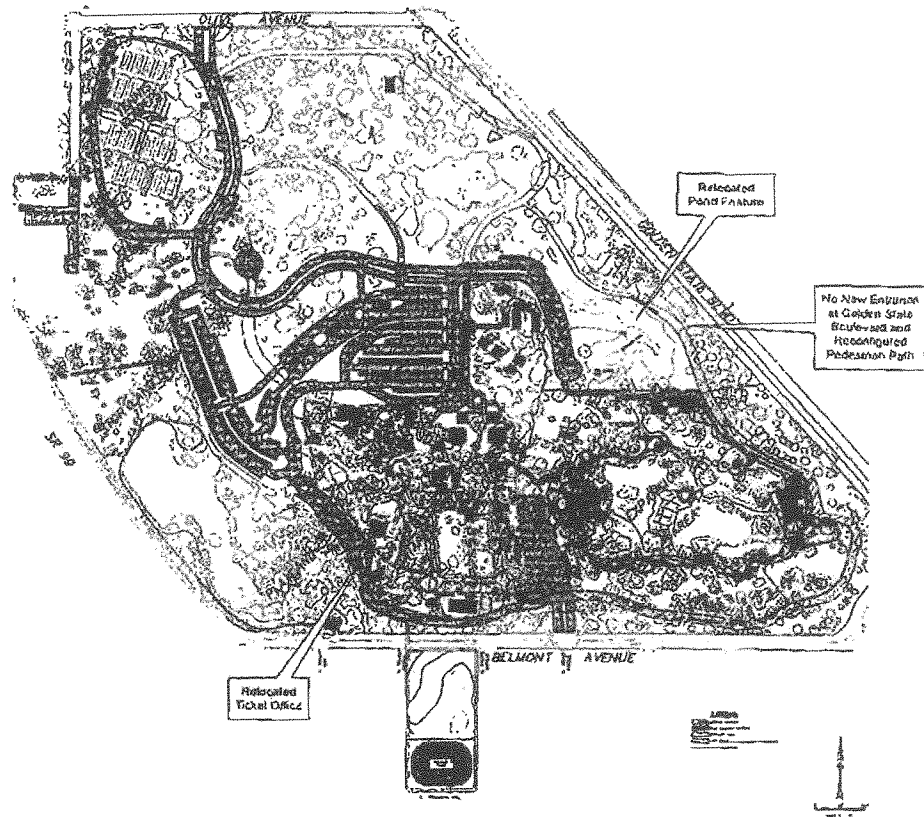


Exhibit A

Findings and Statement of Overriding Considerations

I. Introduction

An Environmental Impact Report (“EIR”) (State Clearinghouse No. 2008031002) for the Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plans (the “Master Plans Project”) was certified by the City of Fresno on June 30, 2011. The Fresno County Zoo Authority (the “Zoo Authority”) is listed as a responsible agency in the EIR. On November 7, 2013, the City of Fresno approved an Addendum to the EIR prepared for revisions to the Master Plans Project to accommodate the High Speed Train Alignment along Golden State Boulevard adjacent to the Roeding Regional Park. Hereinafter, the EIR and the Addendum will cumulatively be referred to as the “EIR”. The Zoo Authority has considered the environmental effects of the project as shown in the EIR, and makes the following findings:

II. Project

The Fresno Chaffee Zoo (“Zoo”) is located in the South-Central portion of the City of Fresno’s Roeding Regional Park (“Roeding Park”). The Zoo is operated by the private nonprofit Fresno Chaffee Zoo Corporation. Zoo lands are owned by the City of Fresno, and leased for use by the Zoo. The Master Plans Project involves the expansion of the Zoo from 18 acres to 39 acres. The expansion area is within Roeding Park, and is presently developed for park use by the City of Fresno. The expansion area currently provides recreational opportunities for the Public. The Master Plans Project also involves improvements within the existing 18-acre footprint of the Zoo. One such improvement is the construction of the Africa Exhibit, which is both inside the current footprint of the Zoo as well as the expansion area. The Africa Exhibit includes space for many African species including lion, giraffe, elephant, rhinoceros, cheetah, and meerkat. There will also be a new café, visitor pathways, access roads, off-exhibit areas, a food preparation area and related utilities (hereinafter, the “Africa Exhibit”).

III. Discretionary Action

In order to construct the Africa Exhibit, the Zoo will need to request Measure Z tax revenues from the Zoo Authority. The Zoo Authority appropriates Measure Z tax

revenue to the Zoo pursuant to Measure Z, the Agreement Regarding Procedures for Distribution of Tax Revenue to the Chaffee Zoo dated December 21, 2005, and the Zoo Authority Procedures for Approving and Administering Measure Z Funds.

Determinations by the Zoo Authority of specific funding requests are discretionary actions of the Zoo Authority. It is anticipated that, in addition to the Africa Exhibit, future requests for Measure Z funding for individual capital improvement projects will be submitted by the Zoo to the Zoo Authority. The EIR evaluated the environmental effects of the entire expansion approved by the Master Plans Project approved by the City of Fresno. As individual requests for Measure Z funds are submitted by the Zoo to the Zoo Authority for projects approved by the Master Plans Project, the Zoo Authority will rely on the EIR for its approval, subject to CEQA Guideline sections 15162 and 15163.

IV. Significant Effects

The EIR found that the Master Plans Project, which includes the Africa Exhibit, has potentially significant impacts in the following areas:

- a. Cultural Resources
- b. Aesthetics
- c. Biological Resources
- d. Land Use and Public Land Use Policy
- e. Transportation and Traffic
- f. Air Quality
- g. Noise
- h. Hydrology and Water Quality
- i. Hazards and Hazardous Materials
- j. Land Use and Planning

V. Findings Regarding Significant Effects

The Zoo Authority finds that changes or alterations to the project which avoid or substantially lessen the potentially significant effects listed in Section IV(a) through (j), above, are within the responsibility and jurisdiction of the City of Fresno and not the Zoo Authority. Pursuant to the City of Fresno's adoption of Resolutions 2011-145 and 2013-

189, the Zoo Authority finds that such changes or alterations have been adopted by the City of Fresno.

VI. Significant and Unavoidable Impacts

The EIR found that significant environmental impacts that cannot be mitigated to a less-than-significant level exist in the following areas:

- a. Transportation and traffic impacts to intersections in 2030.
- b. Cumulative transportation and traffic impacts.
- c. Cultural resources.

VII. Statement of Overriding Considerations

Pursuant to Public Resources Code section 21080 and CEQA Guidelines section 15093, the Zoo Authority has balanced the economic, legal, social, technological and other benefits of the Africa Project against the significant and unavoidable impacts of the project. The Zoo Authority finds that the City of Fresno adopted all feasible mitigation measures. The Zoo Authority hereby adopts and makes the following Statement of Overriding Considerations.

a. Benefits of the Project

i. Realization of Measure Z

The Project effectuates the mandate expressed by the voters of Fresno County in approving Measure Z on November 4, 2004. Measure Z passed with 73.4% of the voters, and stated:

To help ensure the survival of the Fresno Chaffee Zoo by providing necessary funding to repair and restore the zoo, bring back large animal exhibits, further revitalize the zoo, and preserve the zoo's Species Survival Plan and ongoing Education Program, shall Fresno County voters approve a one-tenth of one percent sales tax for ten years with all net proceeds dedicated exclusively to the Fresno Chaffee Zoo.

One-third of Measure Z funding may be used for Zoo Maintenance and Operations, and the remaining two-thirds are dedicated to capital projects. The Africa Exhibit provides the opportunity for construction of one such envisioned capital project.

ii. Expansion of the Zoo

The Africa Exhibit is a component of the Master Plans Project. The Master Plans Project, among other things, allows for the renovation and improvement of the Zoo, and the expansion of the Zoo to include features and exhibits that could not otherwise be achieved. This includes: remodel and expansion of the education building by approximately 8,000 square feet and the development of an outside garden and lawn area of approximately 30,000 square feet at the Main Event Hub; the Grassland Waterhole panorama and Waterhole Café and Event Center, which will provide approximately 28,000 square feet of waterhole habitat and 65,340 square feet of the grassland habitat, as well as 10,000 square feet café, an approximately 1,500 square foot classroom, and will provide indoor seating for 250-300 people; the Sea Lion Cove Project; approximately 100,000 square feet of flexible habitat for large, modern and naturalistic exhibits to display the types of large animals referred to in Measure Z; a Children's Zone to allow younger children to play and interact with animals; an education center approximately 14,000 square feet in size; Asian Panorama Exhibit and Asian Archipelago Expansion, resulting in an expansion of the habitat areas for the types of animals referred to in Measure Z; and Rainforest Aviaries.

b. Determination and Adoption of Statement of Overriding

Considerations

The Zoo Authority has weighed the economic, legal, social, technological and other benefits of the Africa Exhibit, as described in Section VII(a), above, against the significant and unavoidable impacts of the project discussed in the EIR and described in section VI(a) through (c), above.

The Zoo Authority hereby determines that those benefits outweigh the risks and adverse environmental impacts of the Africa Exhibit, and further determines that the Africa Exhibit's significant and unavoidable impacts are acceptable. Accordingly, the Zoo Authority adopts the Statement of Overriding Considerations, recognizing that significant unavoidable impacts will result from the Africa Exhibit.



Fresno Chaffee Zoo • 894 West Belmont Avenue • Fresno, California 93728
Phone (559) 498-5910 • Fax (559) 264-9226

DATE: December 6, 2013
TO: Fresno County Zoo Authority Board
FROM: Scott Barton, Chief Executive Officer
Fresno's Chaffee Zoo Corporation

SUBJECT:

Request 2013 Measure Z Capital funds of \$290,000 for additional utility infrastructure work.

RECOMMENDED ACTION

Approve Fresno Chaffee Zoo Corporation request of Measure Z Capital funds of \$290,000.

FISCAL IMPACT

The request will increase the 2013 Measure Z Capital budget of \$53,354,806.98 by \$290,000 to \$53,644,806.98.

DISCUSSION

1. The Zoo Authority approved \$50,000 at the July 27, 2011 meeting for capital utilities.
2. The Zoo Authority approved \$80,000 at the January 30, 2013 meeting for capital utilities.
3. The Zoo Authority approved \$1,109,600 at the May 29, 2013 meeting for capital utilities.
4. Funds are being requested to provide raceways, vaults, pull boxes, conductors and fiber optic cabling for the 12kv and 480v power and communication systems. The systems included in this request are shown in the accompanying attachments.

Raceways, Vaults and Cabling for Power Systems (\$160,000)

The raceway system for power distribution will commence at the raceway system currently being constructed in Park Drive East and continue from there to the location of the a proposed 12kv power hub adjacent to the Life Support Building at Sea Lion Cove. The system consists of

Agenda Item 7

buried conduits and associated vaults to allow for the future install of 12kv conductors. 480v conductors, transformer and panels will be installed at this time to provide needed power in and around the Dining Garden, Dino Dig and for future projects in this area. These funds will also be used to repair existing landscaping damaged during the installation of the conduit systems. See Attachment B for routing of the power systems.

Raceways, Pull Boxes, Cabling and Fiber Optic cabling and Equipment (\$105,000)

Raceways, pull boxes, cabling and required hardware for the upgraded network communication system will also commence at the system currently being constructed in Park Drive East and connect to existing raceways adjacent to Sea Lion Cove. In addition to the raceway system, copper telephone cables will be run from the AT&T main point of entry to the Education Building and to Sea Lion Cove where they will tie into new copper cables installed in conjunction with the Sea Lion Cove project. This portion of the project also includes fiber optic cabling that originates at a main distribution frame in the Administration building and runs to the Education Building, Sea Lion Cove, the Assistant Curator's office, the Reptile Building, the Gift Shop and the Ticket Office. See Attachment C for routing communication cabling.

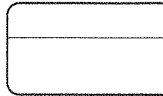
City Fees, Project Management and Contingency

City plan check fees, Project Management and Contingency for the work listed above is \$25,000.

REFERENCE MATERIAL

- Attachment A – Overall project location
- Attachment B – Power system routing
- Attachment C – Communication cable routing

DATE	BY	REVISION



ELECTRICAL UTILITY SITE PLAN
FRESNO CHAFFEE ZOO
PROJECT NO. 10000
SHEET NO. E-1

DATE	BY	REVISION

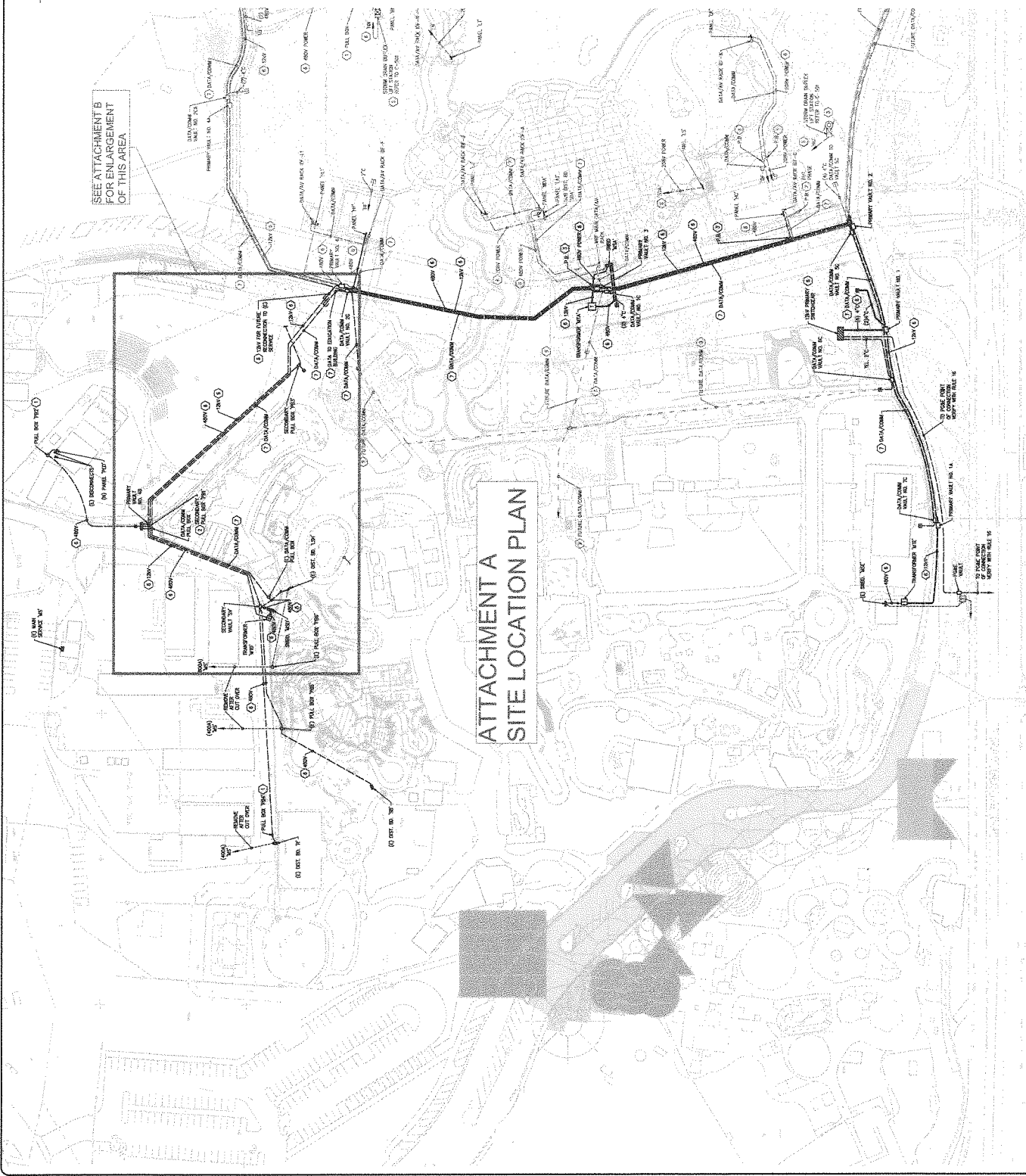
- DRAWING KEY NOTES (1)**
1. PROVIDE 1/2" RATED PULL BOX TO EACH GRADE, 5' MIN. DEPTH.
 2. PROVIDE 1/2" RATED PULL BOX TO EACH GRADE, 5' MIN. DEPTH.
 3. PROVIDE 1/2" RATED PULL BOX TO EACH GRADE, 5' MIN. DEPTH.
 4. PROVIDE 1/2" RATED PULL BOX TO EACH GRADE, 5' MIN. DEPTH.
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 8. PROVIDE 1/2" RATED PULL BOX TO EACH GRADE, 5' MIN. DEPTH.
 9. PROVIDE 1/2" RATED PULL BOX TO EACH GRADE, 5' MIN. DEPTH.

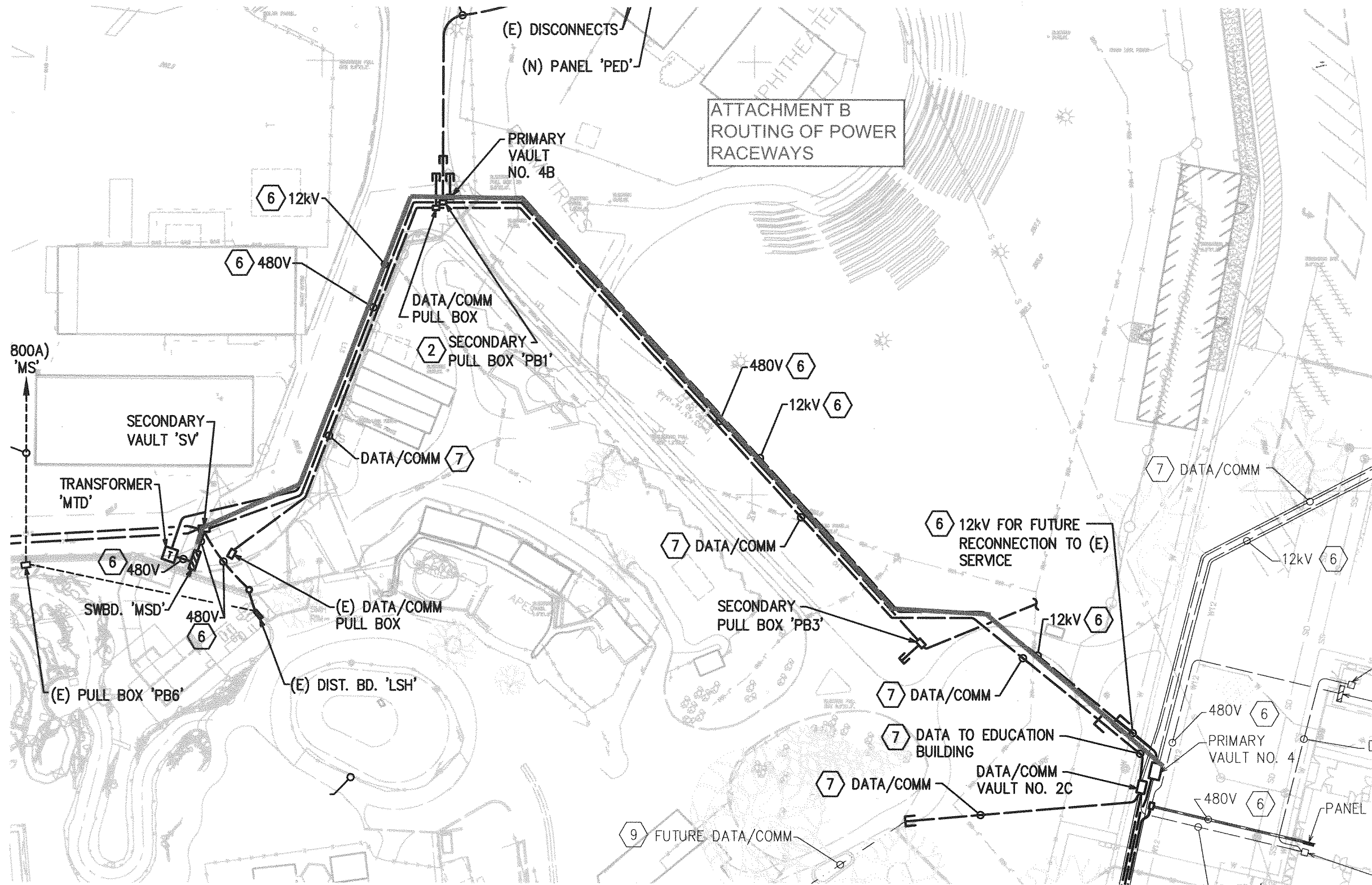
SEE ATTACHMENT B
FOR ENLARGEMENT
OF THIS AREA

ATTACHMENT A SITE LOCATION PLAN

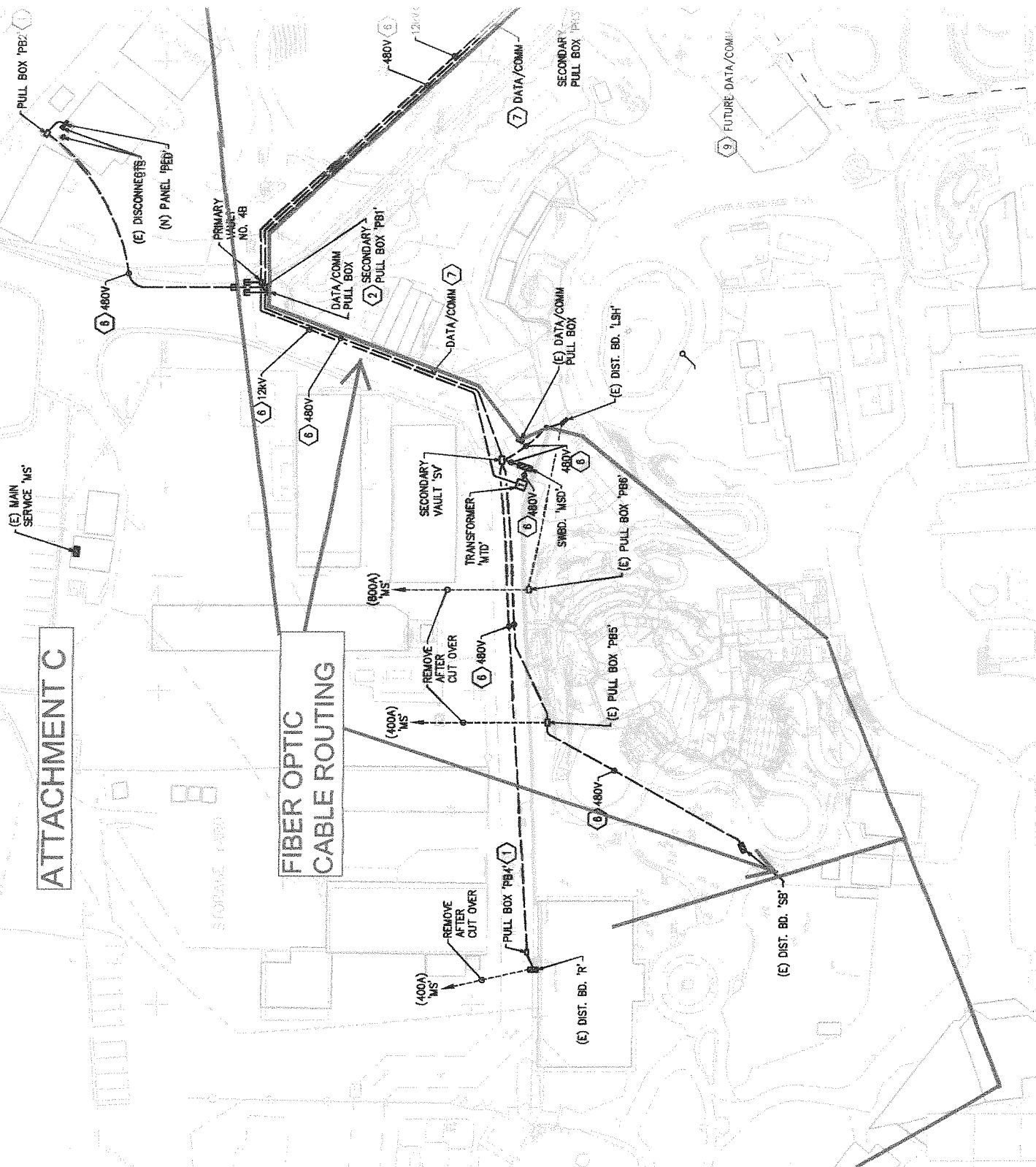


ELECTRICAL UTILITY SITE PLAN
SCALE: 1" = 20' ±





FIBER OPTIC CABLE ROUTING



Chaffee Zoo is a Valley treasure

Published: October 28, 2013

What a wonderful asset to Fresno and surrounding communities is the Fresno Chaffee Zoo! We had the opportunity to attend "Zoo Boo" on Friday with our granddaughter and daughter. The zoo was decorated for Halloween, local businesses passed out treats, volunteers and zoo employees answered our questions and games and a maze were available for the kids. Kids and adults were dressed in Halloween costumes.

The zoo was crowded, but everyone had a great time. We heard no rude language and people were considerate of each other. Our thanks to the zoo employees, volunteers and local businesses for making the event possible. So, grab a child, grandchild, parent or friend and visit our local zoo.

Nancy and Stan Hawkins

Visalia

Baby giraffe makes entrance at Fresno Chaffee Zoo

Fresno Bee

Published: November 2, 2013

The latest addition to the Fresno Chaffee Zoo is a newborn reticulated giraffe. Mother Baba gave birth to the baby boy giraffe about 7 p.m. Wednesday. He has yet to be named. Baba, who is 19, is not a first-time mom: She has given birth at Chaffee to five other calves, including a girl, Sena, who was born in April 2012.

Fresno Chaffee Zoo to get African savanna exhibit



A new baby male giraffe was born at the Chaffee Zoo at 7:00 pm on October 30. The reticulated giraffe's mother, Baba hovers overhead. The baby has yet to receive a name.

MARK CROSSE — THE FRESNO BEE Photo

By Marc Benjamin
The Fresno Bee November 12, 2013 Updated 3 hours ago

The last barrier to creating a 13-acre African savanna project at the Fresno Chaffee Zoo was lifted after the National Park Service said the project can move forward, officials said Tuesday. Zoo director Scott Barton said the Park Service decision came Friday in a letter to the city. Lawyers evaluated the letter over the weekend before officials announced Tuesday that the project is can proceed.

Zoo director Scott Barton said the Park Service decision came Friday in a letter to the city.

Lawyers evaluated the letter over the weekend before officials announced Tuesday that the project is can proceed. Construction could begin within a month on the African Adventure project, which will be home to lions, elephants, cheetahs, rhinos and meerkats.

"We are not waiting for anything now, we are ready to go," said John Valentino, Fresno Chaffee Zoo Corp. chairman. "We already have the project laid out and ready to go, and this was the only thing keeping us from moving forward."

The approval took longer than expected because planners needed to prepare a more detailed environmental report, and then a handful of Fresno residents filed a lawsuit that was eventually dismissed.

It took more than a year to gain state and federal approval on expanding the zoo into Roeding Park, which was necessary because the city had received federal grants for Roeding that were administered through the state. Since 1980, Fresno received \$483,544 in six grants for upgrades to the park and zoo. The grants give state and federal officials an opportunity to determine whether any new projects would adversely affect improvements paid for by the grants.

Lawyer Richard Harriman, who filed the lawsuit opposing the environmental documents and who first raised issues about needing federal oversight because of the grants, said Tuesday that he had not seen the Park Service letter.

After submitting designs for the Africa project last year, city and zoo officials could not proceed without a go-ahead from the National Park Service. The long-awaited letter said the zoo's expansion from 18 to 39 acres does not violate Roeding Park's "outdoor recreation use" and does not require approval by the National Parks Service.

"This was really an obstacle that we had to address before we could proceed," Valentino said. "It's resolved in a way that's exactly how we hoped and allows us to develop."

The Park Service also weighed in on plans for a 10,000-square-foot African Safari Lodge, which will sell food and serve as a rest area for visitors. Harriman had argued that the lodge would replace outdoor recreation. But David Siegenthaler, a Park Service program officer, said the lodge is viewed as a boon to zoo visitors. "Due to the hot summer temperatures ... shaded visitor use areas are especially helpful in extending the visitor use of the area," he wrote in the letter to the city.

Now the project goes before the Fresno Planning Commission next week for discussion of a minor issue related to park entrances. The city had proposed adding a Golden State Boulevard entrance, but high-speed rail plans eliminated that idea. So city officials are recommending continuing to use the entrances at Belmont and Olive avenues. The Fresno City Council supported the plan last week.

"I have a lot of pride that it's happening in my district," said Fresno City Council Member Oliver Baines. "It gives us an opportunity to have a premier zoo in the western United States, get some more jobs and gives us pride in the amenity we have in the zoo."

The Africa project will use money from Measure Z, a one-tenth-of-a-cent addition to Fresno County's sales tax to pay for zoo improvements. It also paid for Sea Lion Cove, Stingray Bay and a new otter exhibit.

On Dec. 6, the Fresno County Zoo Authority, which releases Measure Z money for zoo projects, will be asked to approve up to \$55 million for the African Adventure project. If approved, construction will begin in December and should take about 18 months.

Previously, zoo officials estimated the project would cost about \$40 million. Barton said those estimates were established three to four years ago at the height of the economic downturn.

"To accomplish what we wanted requires more resources," he said. "We had the money and so the question was whether to commit more Measure Z money to do this. There is never going to be a less expensive time."

Voters will decide next year whether to extend the tax another 10 years. The zoo has additional plans to build another 8- to 9-acre addition if voters agree to extend Measure Z.

If that happens, the zoo will add crocodiles, bring back hippos and expand existing areas, adding to South American, Asian and Australian species, Barton said.

The reporter can be reached at (559) 441-6166, mbenjamin@fresnobee.com or @beebenjamin on Twitter.

Read more here: <http://www.fresnobee.com/2013/11/12/3605690/fresno-chaffee-zoo-to-get-african.html#storylink=cpy>

EDITORIAL: It's time for the Chaffee Zoo to boldly move ahead on plans

The Fresno Bee November 14, 2013

San Joaquin Valley residents received welcome news this week when the National Park Service allowed Fresno's Chaffee Zoo to proceed with a project that will create a 13-acre African savanna.

The African Adventure will be home to lions, elephants, cheetahs, rhinos and meerkats. Construction on this important phase in the zoo's development could begin within a month.

The Africa project will be paid for out of Measure Z, the voter-approved one-tenth-of-a-cent sales tax in Fresno County. The zoo has already paid for Sea Lion Cove, Stingray Bay and a new otter exhibit.

On Dec. 6, the Fresno County Zoo Authority, which releases Measure Z money for zoo projects, will be asked to approve up to \$55 million for the African Adventure project. If approved, construction will begin in December and should take about 18 months.

The latest project had been delayed because a more detailed environmental impact report was needed, and then a handful of residents filed a lawsuit, which was eventually dismissed. It also took more than a year to get state and federal approval on expanding the zoo into Roeding Park, which was necessary because the city had received federal grants for Roeding that were administered through the state.

The National Park Service's letter said the zoo's expansion from 18 to 39 acres does not violate Roeding Park's "outdoor recreation use" and does not require approval by the National Park Service. "This was really an obstacle that we had to address before we could proceed," said John Valentino, who chairs the Chaffee Zoo corporation. "It's resolved in a way that's exactly how we hoped and allows us to develop."

Measure Z has kept its promise to voters of developing a first-class zoo, although a few naysayers filed suit and threw up other roadblocks that delayed projects and drove up their costs. There is still much work to do on this Valley treasure.

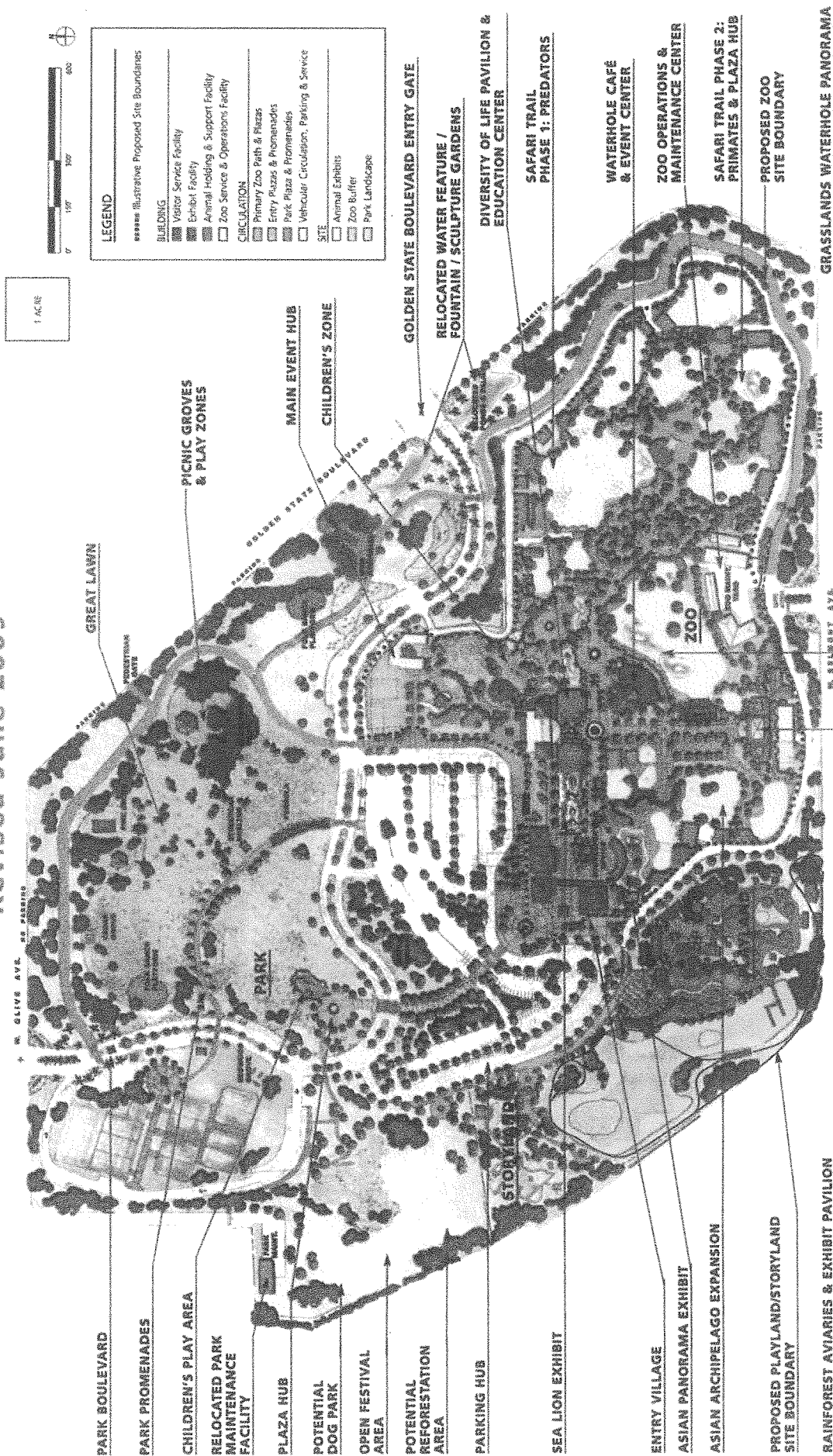
But the spirit of Measure Z remains alive, and that should be helpful when zoo officials go back to the voters next year for approval to extend the zoo sales tax. That would allow the zoo to build an 8- to 9-acre addition, and add crocodiles, bring back hippos and expand existing areas, adding to South American, Asian and Australian species, said Zoo Director Scott Barton.

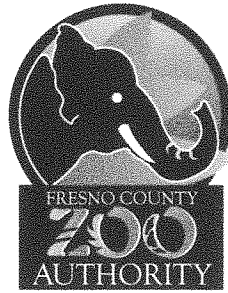
The zoo has prospered under Measure Z and its best days are ahead as the facility expands in just the way voters intended.

City of Fresno
Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plan Amendments



Revised June 2009





Handouts from December 6, 2013 Meeting Not Included in Agenda Packet

1. For Item 6 Africa Project funding request
 - a. Zoo Authority Treasurer's report on Measure Z cash flow
 - b. Fresno Chaffee Zoo Corporation PowerPoint presentation on Capital Expenditure Plan
 - c. Fresno Chaffee Zoo Corporation PowerPoint presentation: budget request
 - d. Faxed letter from Roeding Counsel Richard Harriman
2. For Item 8 Measure Z Renewal discussion
 - Proposed meeting calendar with Board of Supervisors dates and ballot submittal deadline

Cash Balance as of 12/3/13	\$	48,534,245.81
ADDITIONS:		
*Estimated Revenues Through December 2014	\$	8,672,906.99

Future Cash Flows - December 2013 - December 2014

For July-Dec 2014, used actuals/projections from July-Dec 2013

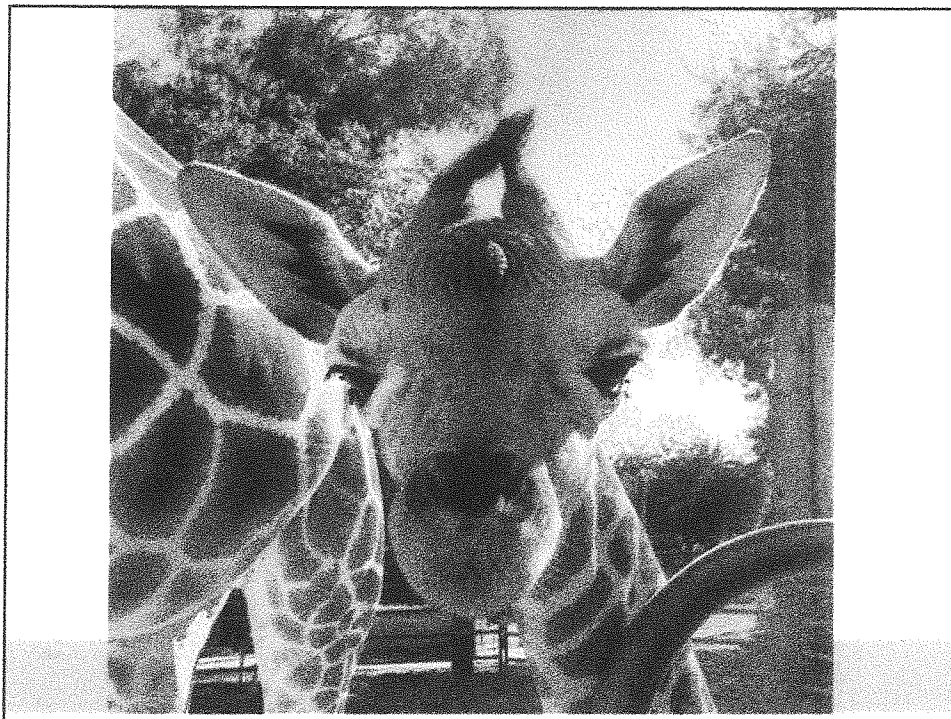
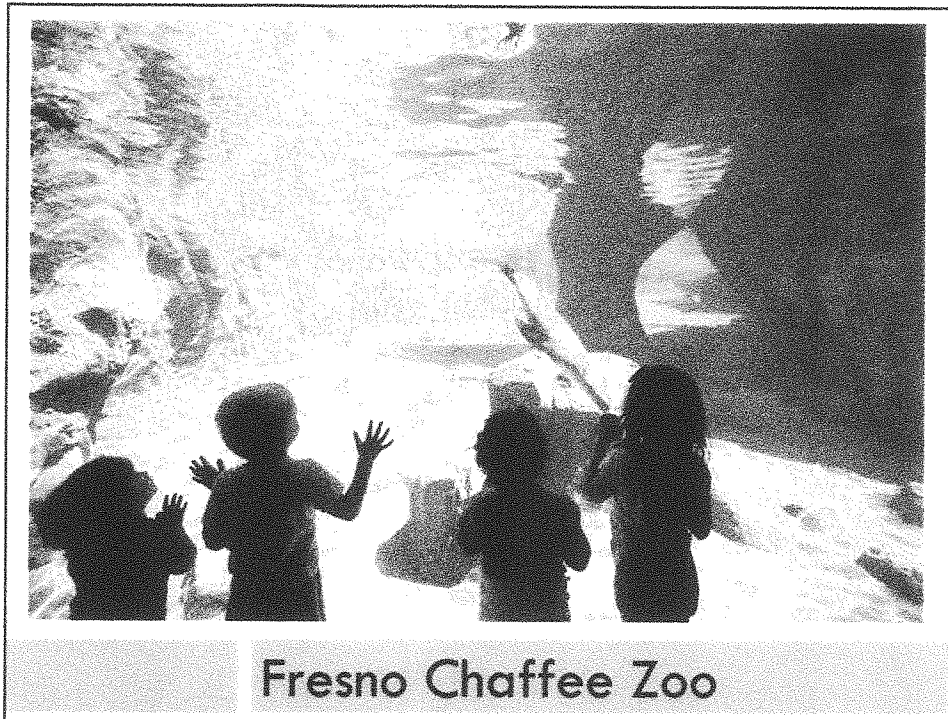
DEDUCTIONS (earmarked projects, paid through claim 2013-6C):		Claim 7C	Claim 8C	Remaining	
Graphics	\$	33,598.70		\$	33,598.70
Reptile Plaza	\$	50,000.00		\$	50,000.00
Entrance/Vault	\$	85,000.00		\$	85,000.00
Cobra Exhibit	\$	6,276.09	\$ (1,530.50)	\$	4,745.59
Utility Design	\$	1,353,118.37	\$ (197,289.86)	\$ (16,738.10)	\$ 1,139,090.41
Water Play Area	\$	100,000.00		\$ (2,125.00)	\$ 97,875.00
Animal Acquisition	\$	20,000.00		\$	20,000.00
Reptile House	\$	102,012.26		\$	102,012.26
Sea Lion Construction***	\$	-		\$	98,475.64
Africa Design	\$	629,541.68	\$ (69,319.32)	\$ (9,006.00)	\$ 551,216.36
Exploration Station	\$	100,000.00		\$	100,000.00
Tropical Treasures	\$	76,648.52	\$ (9,832.00)	\$	66,816.52
Additional Infrastructure Request (12/6)	\$	290,000.00			
African Project Request (12/6)	\$	51,699,682.00			
Water Play Area - addition (1st qtr 2014)	\$	1,500,000.00			
Komodo Dragon (2nd qtr 2014)	\$	1,200,000.00			
Total Deductions:	\$	(57,245,877.62)			
TOTAL:	**	\$	(38,724.82)		

*Note: estimated revenues based on projections provided during budget process through June 2014

**Conservatively, in December 2014 cash flows will slightly lag total earmarked projects; however, this assumes that all amounts within each project are spent, and that all projects will be completed and paid for at this point. Revenue will continue under current measure through April 2015

*** Per Brian Goldman, ZC finished billing for SLC on claim 2013-4C

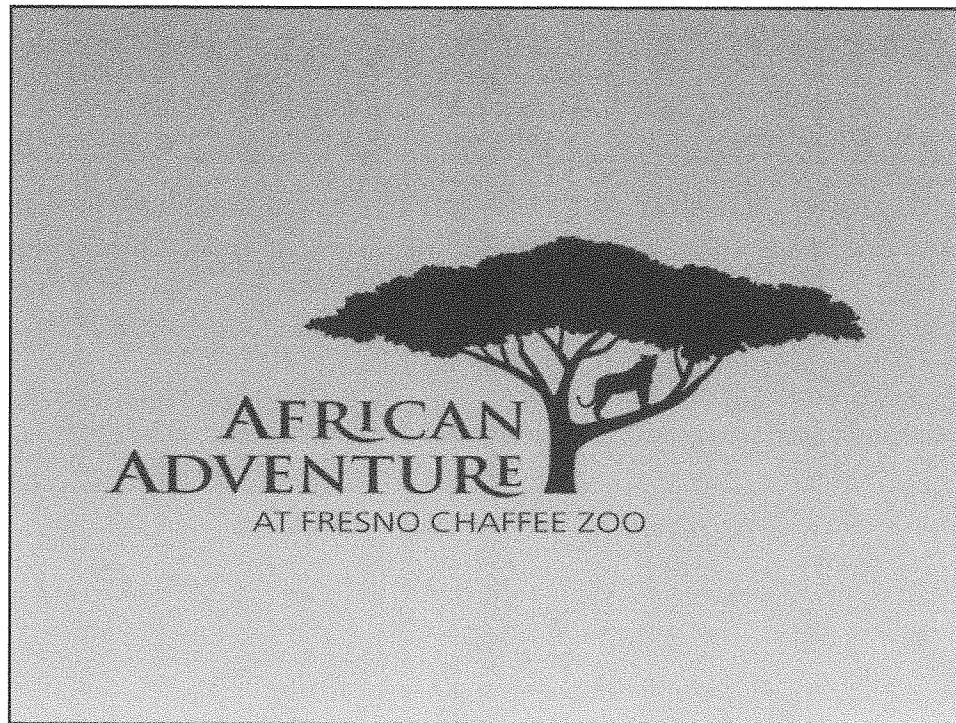
12/17/2013





Attendance 2009	417,000
Attendance 2013	650,000 (+ 56%)
Annual memberships 2009	8,500
Annual memberships 2013	14,000 (+64%)
Support for Measure Z 2004	73%
Support for Measure Z 2013	84%

Fresno Chaffee Zoo



Indoor exhibit \$ 63 million

Bronx Zoo's Madagascar



10 acres \$ 54 million

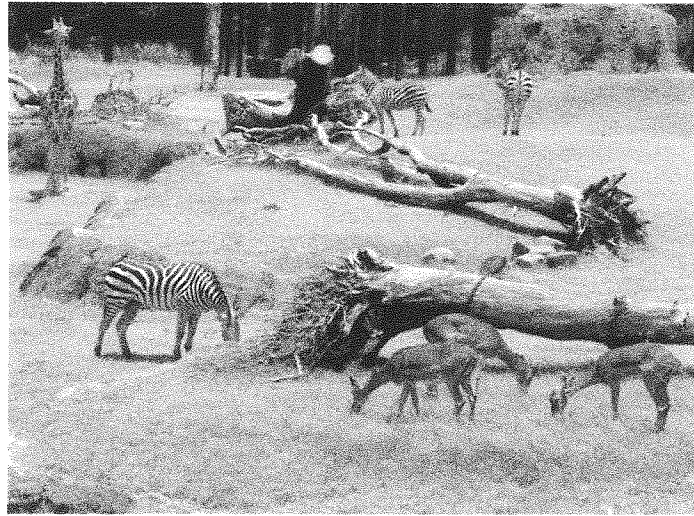
Denver Zoo's Elephant Passage



9 acres \$ 55 million

San Diego Zoo's Elephant Odyssey

11 acres
\$ 35 Million



Dallas Zoo's Giants of the Savannah



2014 Measure Z Funds Available	
Measure Z Capital Fund Balance	\$ 49.36
2014 Tax Proceeds allotted for capital projects	\$ 7.92
<u>2014 Interest</u>	<u>\$ 0.37</u>
Total Capital Funds available	\$ 57.64
2014 Measure Z Expenditures	
Africa Construction	\$39.13
Children's Water Play Area Construction	\$ 1.50
Komodo Dragon	\$ 1.20
Utilities	\$ 1.45
<u>Miscellaneous Zoo Projects (already approved)</u>	<u>\$ 0.43</u>
Total Capital Fund expenses 2014	\$ 43.71
2014 Measure Z Capital Plan	

2015 Measure Z Funds Available	
Measure Z Capital Fund Balance	\$ 13.93
2015 Tax Proceeds allotted for capital projects	\$ 3.22
<u>Interest</u>	<u>\$ 0.06</u>
Total Capital Funds available	\$ 17.21
2015 Measure Z Expenditures	
Africa Construction	\$ 13.20
Animal Nutrition Center Design and Construction	\$ 1.50
Zoo Parking	\$ 1.50
<u>Education Animal Facility</u>	<u>\$ 1.00</u>
Total Capital Fund Expenses 2015	\$ 17.20
2015 Measure Z Capital Plan	

Fresno's Chaffee Zoo Corporation

Africa Adventure Budget Request

December 6, 2013

Funding Request For Africa Adventure

- Fresno Chaffee Zoo requests Measure Z capital funds of \$51,699,682 for the Africa Adventure Project.

\$ 150,000 approved in July 2011

\$ 4,081,091 approved in March 2012

\$51,699,682 request made in December 2013

\$55,930,773 total project

Funding Request For Africa Adventure

- Budget Breakdown:

Fixed Design Costs	\$ 4,491,060
Fixed Construction, PM, Inspection Costs	\$44,789,713
Estimated Construction Costs	\$ 2,550,000
Estimated Indirect Costs	\$ 1,250,000
Builder's Risk Insurance	\$ 125,000
Estimated Fees	\$ 500,000
Owner's Contingency	<u>\$ 2,225,000</u>
Total Project	\$55,930,773
Previous Requests	<u>\$(4,231,091)</u>

December 6, 2013 Request

\$51,699,682

Budget Detail for Africa Adventure

- **Fixed Design Costs**

- Architect fees \$4,381,385
- Survey of Site \$22,900
- Soil Investigation and Analysis \$8,700
- Storm Water Pollution Prevention Plan \$38,075
- Preconstruction Project Management \$20,000
- Construction Manager Preconstruction services \$20,000

- **Subtotal \$4,491,060**

These costs represent an increase over the previous design cost estimate of \$409,969. This increase was due to added requirements from the EIR Mitigation Measures as well as costs not in the Portico Group's original scope of work.

- **Fixed Construction, Project Management and Inspection Costs**

- Guaranteed Maximum Construction Costs \$44,263,000
- Special Testing and Inspection \$296,713
- Project management \$230,000

- **Subtotal \$44,789,713**

Budget Detail continued

- **Estimated Construction Costs**

- Interpretative Displays \$1,000,000
- Audio Visual and Camera Systems \$350,000
- Fixtures Furniture and Equipment \$1,200,000

- **Subtotal \$2,550,000**

- **Estimated Indirect Construction Costs**

- Relocate Police Cameras and Microwave Transceiver \$150,000
- Relocation of existing ponds \$600,000
- Relocation of existing animal breeding and holding enclosures \$75,000
- Main Point of Entry for Phone System \$50,000
- Relocate Water Service for Offsite Park Irrigation \$75,000
- Relocate Zoo Administration Building \$200,000
- Relocate Roeding Park Entrance (This cost represents one half of the shared costs between the City of Fresno and the Fresno Chaffee Zoo) \$100,000

- **Subtotal \$1,250,000**

- **Estimated Insurance Costs**

- Builder's Risk Insurance **\$125,000**

Budget Detail continued

- **Estimated Fees**

- Traffic Mitigation Fees \$200,000
- Transportation Mitigation Fees \$200,000
- Plan Review Fees \$100,000

- **Subtotal \$500,000**

- **Owner's Contingency**

- An Owner's contingency is required due to unforeseen problems that may arise during the course of construction and design changes that only become apparent after the start of construction. The industry standard for an Owner's contingency is 5% of the "hard" construction costs. The contingency requested is 4.64%.

- **Subtotal \$2,225,000**

- **Total Project Cost \$55,930,773**

**Africa Adventure Request
Quarterly Assessment of Measure Z Funds**

Measure Z capital funds available @ 12/3/13	\$ 48,534,245
December 2014 projected receipt	\$ 753,758
Projected expenditures for previously approved projects	\$ (47,354)
Projected interest	<u>\$ 121,336</u>
Available funds @ 12/31/13	\$ 49,361,985

First quarter 2014 activity

Projected capital tax proceeds 1st quarter 2014	\$ 2,024,056
Africa projected expenditures	\$ (7,150,000)
Utilities projected expenditures	\$ (364,280)
Projected expenditures for previously approved projects	\$ (142,061)
Water Play area request	\$ (1,500,000)
Projected interest	<u>\$ 123,405</u>
Available funds @ 3/31/14	\$ 42,353,106

Second quarter 2014 activity

Projected capital tax proceeds 2nd quarter 2014	\$ 1,804,179
Africa projected expenditures	\$ (10,650,000)
Utilities projected expenditures	\$ (364,280)
Projected expenditures for previously approved projects	\$ (94,707)
Komodo Dragon request	\$ (1,200,000)
Projected interest	<u>\$ 105,883</u>
Available funds @ 6/30/14	\$ 31,954,181

Quarterly Assessment of Measure Z Funds continued

Third quarter 2014 activity

Projected capital tax proceeds 3rd quarter 2014	\$ 2,029,985
Africa projected expenditures	\$ (10,650,000)
Utilities projected expenditures	\$ (364,280)
Projected expenditures for previously approved projects	\$ (94,707)
Projected interest	\$ 79,885

Available funds @ 9/30/14 \$ 22,955,064

Forth quarter 2014 activity

Projected capital tax proceeds 4th quarter 2014	\$ 2,060,824
Africa projected expenditures	\$ (10,679,541)
Utilities projected expenditures	\$ (364,280)
Projected expenditures for previously approved projects	\$ (94,707)
Projected interest	\$ 57,388

Available funds @ 12/31/14 \$ 13,934,748

2015 activity

Projected capital tax proceeds for 2015	\$ 3,220,707
Africa projected expenditures	\$ (13,199,683)
Animal Nutrition Center request	\$ (1,500,000)
Parking request	\$ (1,500,000)
Education Animal Facility request	\$ (1,000,000)
Projected interest	\$ 59,837

Available funds @ 12/31/15 \$ 15,609

FACSIMILE COVER SHEET

The Inkwell
323A North Tehama
Willows CA 95988
(530)934-7592 phone
(530)934-7673 FAX

Date: 12/5/13

Faxed to: FCZA Board of Directors

c/o Catherine Crosby

Attention: Janelle E. Kelley, Esq.

From: Richard L. Horner

Number of pages (including this cover sheet): 27

Comment(s):

Please copy and provide to Board
of Directors and include in the record
of proceedings for the public hearing on
December 6, 2013 at 9:00 a.m.

Richard L. Horner

**Law Offices of
Richard L. Harriman
1078 Via Verona Drive
Chico, California 95973-1031
Telephone: (530) 343-1386
Facsimile: (530) 343-1155
Email: harrimanlaw1@sbcglobal.net**

December 5, 2013

FACSIMILE TRANSMISSION

Board of Directors
Fresno County Zoo Authority
2200 Tulare Street, Sixth Floor
Fresno, CA 93721

Fax No. (559) 600-4552

Janelle E. Kelley, Esq.
Deputy County Counsel
2200 Tulare Street
Fresno, CA 93721

Fax No. (559) 600-3480

Re: Friends of Roeding Park, Lisa Flores, et al. v.
Fresno County Zoo Authority Board
Objections to Adoption of Findings of Legal Adequacy of Addendum to
Final Environmental Impact Report (EIR) [SCH No. 2008031002]
Agenda Item No.6.A. CEQA Findings [Exhibit C]
Hearing Date: December 6, 2013

Honorable Members of the Fresno County Zoo Authority Board:

As the record reflects, this office continues to represent the legal interests of the Friends of Roeding Park, a California unincorporated association, having its principal place of business located in Fresno, Lisa Flores, individually, and other residents of the City of Fresno who use the existing Roeding Park open space for family gatherings and other recreational purposes, such as walking their dogs, including, without limitation 318 persons in the groups known as the "Central Valley Chihuahua Club," "Tiny Paws," and the "Roeding Small Dog Play Group," who include 318 persons, of whom 25-30% are members of ethnic minorities.

The purpose of this letter is to put your Board on notice of the objections of my clients and the general public to the proposed adoption of findings of legal adequacy of the Addendum to the Final Environmental Impact Report (FEIR), which was certified by the City Council on November 7, 2013 for the amendment of the Roeding Park and Chaffee Zoo Master Plans, which was relied upon by the City Planning Commission for the approval of Conditional Use Permit

Application No. 13-018 at their November 20, 2013 meeting, which is referred to in the Proposed Resolution attached as "Exhibit C" to your Staff Report, dated December 6, 2013.

Although your Staff has attached the Resolutions adopted by the City Council certifying the Final EIR and the Addendum, your staff has not provided copies of the written objections that were lodged with the City Council and the City Planning Commission. Therefore, attached hereto is a copy of my clients' Appeal of the Planning Commission's decision and action made and taken on November 20, 2013, which includes copies of my clients' letters of November 6, 2013 and November 20, 2013 for the record before your Board. This Appeal was timely filed with the City today; so, the Planning Commission's action approving Conditional Use Permit Application No. 13-018 is not final, and should not be relied upon by your Board in adopting the CEQA findings proposed by Staff or in approving the additional funding requested by the Zoo Corporation.

As stated in our previous letter to your Board, dated May 28, 2013, the significance of the lead agency's failure to proceed in the manner required by law is that there was no disclosure, analysis, or consideration of the mitigation measures and other infrastructure improvements required to be constructed *outside the Zoo's footprint and within the Park open space which had received federal grant contract funding*, including without limitation the 7-9 acres of new public parking and overflow parking from Sea Lion Cove Exhibit and African Safari events resulting from the construction of these "World Class" exhibits which are touted by Scott Barton as bringing hundreds of thousands of visitors to the Zoo. [See the Minutes of your meeting of October 30, 2013, included in your Agenda, at Item 5, "Chaffee Zoo Director's Report"; copy attached hereto and incorporated herein.] Without the new parking within the Park, the use of the N. Golden State parking (which has been eliminated due to the HST Project), and the open space for overflow parking, the Zoo lacks adequate parking within its existing footprint to accommodate the increased peak hourly crowds at the Zoo generated by the Sea Lion Cove Exhibit and the proposed African Safari Exhibit, which is the subject of the proposed construction contract. Further, there is no analysis of the adverse traffic impacts on the internal circulation within the Park. [See analysis from traffic engineer attached hereto and incorporated herein by reference.]

In addition, nowhere in the EIR or other staff reports or documents in the record of proceedings does the City or the Zoo include a formal study or evaluation of the minority community users of the Roeding Park open space facilities. In fact, although the City and the Zoo take reservations from Park patrons for the picnic facilities and have access to all of the admission fee proceeds, no records were ever introduced to support the proposed finding that the Zoo expansion would not deprive current Park users of the open space proposed for development of the new Zoo facilities, including at least eleven (11) acres of open space for larger animal enclosures---in which wild animals will be kept captive---hardly suitable for picnic facilities or other open space use by former Park visitors. Nowhere in the FEIR or the Addendum is there any specific Condition of Approval or Mitigation Measure or standard of performance that ensures that the Zoo will allow free access to the expansion area or mandates providing free participation in the Zoo's educational programs for non-paying minority members.

Furthermore, the Friends of Roeding Park and my other clients have provided numerous comments in the record of proceedings regarding the potential *off-site* alternatives to new *on-site* development which would reduce the Park's open space resources. For example, comments were submitted and included in the record that there was land available for off-site parking which would reduce the need to cover 7-9 acres of open space with more hardscape for parking. Since the City Council hearing, my clients and I have been made aware of other off-site alternatives for parking and other purposes, (such as the maintenance yard), including an 18.7 acre parcel which was for sale two blocks south of the Belmont entrance and, also, the possible construction of parking over the two storm water basins on the south side of Belmont and adjacent to the traffic circle at Golden State Boulevard and Belmont. Despite numerous comments regarding the availability and feasibility of utilizing off-site parking and electric shuttle vehicles to transport the increased number of visitors, the lead agency rejected this alternative without making a good faith analysis of the possibility of such off-site alternatives.

Finally, throughout the public meetings before the Fresno County Zoo Authority Board, the Friends of Roeding Park have lodged formal objections to the expenditure of public funds from the Measure Z initiative for the construction of infrastructure, mitigation measures, and conditions of approval *outside the existing footprint of the Fresno Chaffee Zoo*--for which there is no authorization provided in the Measure Z initiative or by the City of Fresno. In fact, in your Board's 2010 Report, at pages 2-3, the Chair of the Board notes that there is the need for a \$15 million participation by the City of Fresno for "completion of major elements of the Master Plan located outside the footprint of the Zoo" (p. 3, paragraph 1). However, nowhere in the Final EIR for the Master Plans for the Park or the Zoo Expansion is this fiscal matter disclosed, analyzed, or addressed. Among these expenditures are the parking infrastructure and other underground infrastructure necessary for the construction and *operation* of the proposed new Sea Lion Cove Exhibit Project and other proposed projects. Therefore, the Friends of Roeding Park and my other clients object to the FCZA Board's authorization of the expenditure of any public funds obtained through Measure Z unless and until these additional infrastructure requirements and mitigation measures have been identified, disclosed, analyzed, and addressed in public proceedings before your Board. And, my clients and I object to the NPS finding that the conversion of recreational open space to on-site parking does not constitute a conversion of such open space without compensating open space being required by re-locating parking off-site.

CONCLUSION

Based on the comments and objections in the record of proceedings before the City of Fresno and the Fresno County Zoo Authority Board, and the correspondence and other evidence introduced before this Board, my clients and I respectfully object to the expenditure of public funds proposed on the Board Agenda unless and until the City and your Board have disclosed, analyzed, considered, and addressed where the funding is going to be obtained to provide the necessary infrastructure for the external improvements required for the proposed on-site improvements and expansion of the Zoo—including, without limitation, the proposed African Safari Project and the others mentioned in the Agenda and Staff Report.

Finally, my clients and I urge your Board to note Paragraph 4.01 of the proposed construction contract, which states, relevant part:

“4.01 The CM shall observe all state and federal laws that affect the work under this Contract.” [Contract, at p. 5; Agenda materials, at p. 74]

For the foregoing reasons and others presented in the public hearing on May 28, my clients and I request your Honorable Board to deny the Zoo Corporation's request for approval of proposed Contract unless and until the City has certified a legally adequate Environmental Impact Report and has included the proposed Conditions of Approval and Mitigation Measures set forth hereinabove and there is a final decision by the City of Fresno to approve the Conditional Use Permit Application No. C-13-018, including the requested Conditions of Approval and Mitigation Measures.

Respectfully submitted,


RICHARD L. HARRIMAN

Enc.: Appeal of Planning Commission Decision and Action
FCZA Minutes of Board Meeting of October 30, 2013

cc: Clients

Fresno County Zoo Authority Board Meeting
October 30, 2013
Page 2 of 4

Calendar. Items removed from the Consent Calendar may be heard immediately following approval of Consent Calendar.

- A. Review and approve minutes of September 25, 2013
- B. Review and approve payment of County of Fresno invoice for Professional and Specialized Services in the amount of \$11,761.66 for September 2013
- C. Receive Treasurer's Report for September 2013 and the Quarter ended September 30, 2013

APPROVED WITH THE NOTED CORRECTION TO 2B - GL/JG - 7 AYES, 0 OPPOSED

- 4. Receive Fiscal Year 2012-13 audit report from Brown-Armstrong Accountancy Corporation

RECEIVED - ERIK GONZALEZ OF BROWN ARMSTRONG ACCOUNTANCY CORPORATION PRESENTED AN UNMODIFIED OR CLEAN OPINION, AND THERE WERE NO INTERNAL ISSUES OR FINDINGS.

- 5. Receive Fresno Chaffee Zoo Director's Report

RECEIVED - DIRECTOR SCOTT BARTON PRESENTED. THE ZOO IS DOING VERY WELL. ATTENDANCE CONTINUES TO CLIMB AND BROKE THE 600,000 MARK, WHICH IS AN ALL-TIME RECORD. STAFF IS ANTICIPATING THEY WILL REACH 640,000- TO 650,000 VISITORS BEFORE THE END OF THE YEAR. THERE IS STRONG COMMUNITY SUPPORT AND THEY RECEIVE MANY POSITIVE COMMENTS.

THE MEASURE Z CAMPAIGN IS GEARING UP AND GAINING MOMENTUM. ALL INDICATIONS ARE THAT NEXT YEAR'S MEASURE Z VOTE WILL PASS. IN CASE MEASURE Z DOES NOT PASS, DIRECTOR BARTON DISCUSSED HOW THE ZOO CORPORATION WOULD MAINTAIN THE ZOO'S SUSTAINABILITY THROUGH 2020.

THE ZOO IS STILL WAITING ON APPROVAL FROM THE NATIONAL PARK SERVICE. DIRECTOR BARTON PROPOSED THAT AT THE NEXT MEETING, THE ZOO CORPORATION REQUEST FUNDING FOR AFRICAN ADVENTURE, CONTINGENT ON THE NATIONAL PARK SERVICE APPROVAL. THIS WOULD ALLOW THE ZOO CORPORATION TO MOVE FORWARD ON CONSTRUCTION MORE QUICKLY.

MEMBERS GRAY, WATERHOUSE AND SWEARENGIN STATED THEY WERE READY TO FUND THE PROJECT AND GO FORWARD. MAYOR SWEARENGIN STATED THAT THE CITY OF FRESNO IS PREPARED TO DO WHAT IS NECESSARY TO MOVE THIS PROJECT FORWARD. MEMBER LYLES STATED HE HAD RESERVATIONS REGARDING POSSIBLE LEGAL ISSUES.

COUNSEL JANELLE KELLY INFORMED THE BOARD THAT IN ORDER FOR APPROVAL BY THE BOARD TO MOVE FORWARD, CITY OF FRESNO STAFF WOULD NEED TO REVIEW THE EIR AND DETERMINE THAT IT IS AN ADEQUATE ENVIRONMENTAL DOCUMENT TO USE, EVEN THOUGH THE APPROVALS OF THE FEDERAL GOVERNMENT HAVE NOT BEEN RECEIVED. COUNTY PLANNING STAFF WOULD

**Law Offices of
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December 5, 2013

VIA FACSIMILE TRANSMISSION
[Fax No. (559) 488-1005]

Honorable Ashley Swearingen
Mayor
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Honorable Oliver L. Baines III
Council Member
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Re: Friends of Roeding Park, et al. v. City of Fresno
Appeal of Planning Commission Decision and Action
Approving Conditional Use Permit Application No. C-13-018.
Based on Addendum to Final Environmental Impact Report
Certified November 7, 2013 [SCH No. 2008031002]
Hearing Date: November 20, 2013

Mayor Swearingen and Councilmember Baines:

As the record reflects, this office continues to represent the legal interests of the Friends of Roeding Park, a California unincorporated association, having its principal place of business located in Fresno, Lisa Flores, individually, and other residents of the City of Fresno who use the existing Roeding Park open space for family gatherings and other recreational purposes, such as walking their dogs, including, without limitation 318 persons in the groups known as the "Central Valley Chihuahua Club," "Tiny Paws," and the "Roeding Small Dog Play Group," who include 318 persons, of whom 25-30% are members of ethnic minorities.

Pursuant to Fresno Municipal Code, Chapter 12, Article 4, Section 12-406.J., the above-referenced interested parties hereby request that you refer their appeal of the decision and action

of the City Planning Commission approving Conditional Use Permit Application No. C-13-018 in reliance on the Addendum to the Final Environmental Impact Report certified by the City Council on November 7, 2013, to the Fresno City Council and set for hearing de novo at the next regularly scheduled Council meeting.

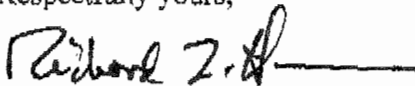
The grounds for this appeal are set forth in our letters of November 6, 2013 to the City Council and November 19, 2013 to the City Planning Commission, copies of which are attached hereto and incorporated by reference herein as though fully set forth.

In addition, my clients expressly object to the legal adequacy of the Addendum to the Final EIR, based on the fact that there is readily feasible and available off-site parking to avoid the conversion of existing recreational open space to parking for the Zoo Expansion Project, which results in inadequate parking for peak usage periods. The Measure Z funds currently available to the Zoo are more than adequate to acquire off-site parking to avoid the substantial conversion of recreational open space in Roeding Park.

Finally, the City has failed to require any specific Conditions of Approval or Mitigation Measures for the Expansion Project and the Addendum to the Final EIR which include specific performance standards to be complied with by the Zoo to ensure that current persons of color and ethnic minority Park users will be granted free access to the Zoo and its expansion. Therefore, there is a complete lack of enforceable conditions or mitigation measures to ensure that the Zoo will provide free access to the expanded recreational opportunities enjoyed by paying visitors to the new expanded Zoo.

Please provide my clients and me at least ten (10) days written notice of the date and time of the hearing on the above-referenced appeal.

Respectfully yours,


RICHARD L. HARRIMAN

Enc.: Letter of November 6, 2013 to City Council
Letter of November 19, 2013 to Planning Commission

cc: David Siegenthaler, NPS [Fax No. (415) 623-2387]
Wendy Ormont, NPS [Fax No. (202) 371-5197]
Secretary of the Interior
Clients

Review of Roeding Park - HSR Relocation of Primary Road Entrance

The removal of the North Golden State Boulevard entrance will have implications that appear to have been neither identified nor discussed in the recent actions by the Fresno City Council and Planning Commission. In reviewing the approved site plan as studied under the Project EIR (see Exhibit 'A'), the primary entrance on North Golden State Blvd. was adequately designed in that an appropriately sized 'throat' was provided. A 'throat' is a general term describing the 'receiving' roadway within a site plan before left hand or right hand movements are allowed or can be made. For more intense land uses where higher traffic volumes are experienced, a longer 'throat' is generally desired. The reason for longer throat distances has to do with the amount of traffic allowed into the site during a peak hour traffic condition. In the case where single left turn or dual-left turn movements are provided, a certain amount of throat distance is also dedicated for weaving of traffic to either make a left hand or right handed turn at the first intersection within a site plan. If a dual left condition is provided and the traffic volumes are high enough to warrant a left turn signal to stay green for upwards of 20 seconds, approximately 40 to 60 vehicles can enter a site during a single traffic signal cycle.

Upon reviewing the Roeding Park site plan as shown in Exhibit 'A', it is apparent that the proposed throat condition at N. Golden State Avenue is considerable longer than the proposed throat condition at Belmont Avenue. It is clearly erroneous to state that moving the primary entrance from N. Golden State Blvd. to Belmont Avenue will not have adverse effects, as the receiving throat condition at Belmont Avenue is currently inadequate. As example, even for minor commercial projects, city planning departments will generally require a throat distance to be no less than 200 feet. In the case of the existing Belmont Avenue entrance, a throat distance of only 115 feet (as measured from the north crosswalk to the southern curb return for the loop road within Roeding Park) exists. This distance is insufficient and does not allow for sufficient vehicles to enter the site and queue accordingly before backing up to, and into, Belmont Avenue.

Lastly, there does not appear to be any discussion of the requisite traffic study upon this location change and how relocating this entrance would impact the existing lane configuration and traffic signal management upon Belmont Avenue. Upon review, it would appear that dual lefts would be needed and that a raised concrete median would be required within Belmont Avenue from State Route 99 to Golden State Blvd.

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November 6, 2013

VIA FACSIMILE TRANSMISSION
[Fax No. (559) 488-1005]

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Re: Friends of Roeding Park, et al. v. City of Fresno
City Council Meeting Agenda Item 2A
Comments and Objections to Approval of
Addendum to Addendum to Final Environmental Impact Report
SCH No. 2008031002
Roeding Park Facility Master Plan Amendments
Hearing Date: November 7, 2013

Council President Xiong and Council Members:

As the record reflects, this office continues to represent the legal interests of the Friends of Roeding Park, a California unincorporated association, having its principal place of business located in Fresno, Lisa Flores, individually, and other residents of the City of Fresno who use the existing Roeding Park open space for family gatherings and other recreational purposes, such as walking their dogs, including, without limitation 318 persons in the groups known as the "Central Valley Chihuahua Club," "Tiny Paws," and the "Roeding Small Dog Play Group," who include 318 persons, of whom 25-30% are members of ethnic minorities.

Due to the extremely short public notice of the actions proposed to be discussed and deliberated at tomorrow's Council meeting, I shall be unable to appear personally; and my clients have authorized and directed me to submit the following comments and objections to be included in the record of proceedings for your review and consideration.

INADEQUATE DISCLOSURE AND ANALYSIS OF PARKING IMPACTS

At the outset, my clients hereby restate and reincorporate herein their comments and objections made to the original Draft Environmental Impact Report (DEIR) circulated in 2010, which was revised and amended in April, 2011 as the Revised DEIR for the Roeding Regional Park and Fresno Chaffee Zoo Facility Master Plans, and the Final EIR (FEIR) for this project, which is referred to in the "Report to the City Council," dated November 7, 2013, at page 2, paragraph 3, following the heading entitled "PROJECT DESCRIPTION."

Specifically, on page 3 of the Staff Report to your Council, at paragraph 4, the document states:

"4. Offsite Parking. The Roeding Plan included 100 free parking spaces adjacent to the park on N. Golden State Boulevard, along with 1,205 paid parking spaces within the park. Because the HST alignment would close N. Golden State Boulevard adjacent to the park, the 100 free parking spaces could not be provided in this location. However, the proposed amendment to the Roeding Plan would not affect the Roeding Plan provision for the 1,205 paid parking spaces inside the park, which meets the projected 2030 parking demand for the park."

Similarly, Section 2.4 of the proposed Addendum to the certified FEIR [Exhibit 3, p. 4 states:

"2.4 Offsite Parking

The approved Master Plans Project included 100 free parking places adjacent to the park on N. Golden State Boulevard and 1,205 paid parking spaces within the park. Because the HST alignment would close N. Golden State Boulevard adjacent to the park, the 100 free parking spaces could not be provided in this location. However, the proposed revisions to the Master Plans Project would not affect the provision of the 1,205 paid parking spaces inside the park, which meets the projected 2030 parking demand for the park."

However, as my clients and I previously objected to in our comments and objections to the DEIR, Revised DEIR, and FEIR, the on-site parking is not adequate for the expanded use of the Park by the Fresno Chaffee Zoo and the inadequacy will only be exacerbated by the proposed amendments to the Roeding Master Plans documents. [See the comments submitted by Shute, Mihaly & Weinberger regarding the Revised DEIR certified in 2011.]

Specifically, in the Revised DEIR from April, 2011, at Chapter 9, Impact 9.1, pp. 9-4 and 9-5, the analysis was made based upon:

"...the Zoning Ordinance contains a general requirement under the "O" District for "one parking space for each five persons which the facility is intended or designed to serve" and specific requirement for park and recreational uses of "one parking space for each

five thousand square feet of active recreational area within a park or playground."

...The proposed 1,205 on-site parking spaces exceed this requirement by 543. The additional spaces could be considered available for Fresno Chaffee Zoo and Rotary Storyland and Playland parking. As such under normal conditions, the Master Plans Project would have a less than significant impact as to parking." [p. 9-5, para. 1; copies of pp. 9-4 and 9-5 are attached hereto and incorporated herein by reference.]

The RDEIR concludes that 1,205 on-site parking spaces, plus 100 off-site spaces will be adequate for the projected peak parking utilization calculated at 1,137 spaces. With the proposed reduction of the 100 off-site spaces eliminated from N. Golden State Boulevard, the proposed Addendum assumes that the remaining 1,205 spaces are analyzed as adequate for 2030 buildout, assuming daily traffic volumes of 3,126 during the peak visitor season (i.e., months of May and June) and 1,137 parking spaces.

However, the proposed Addendum has not disclosed substantial new information that has been communicated by the Fresno Chaffee Zoo Executive Director to the Fresno County Zoo Authority Board and by Lyn Myers to the public media following the recent opening of the new Sea Lion Cove Exhibit at the Zoo. On September 20, 2012, KFSN-TV reported as follows:

"It's definitely upped attendance. We had the best Labor Day ever," Lyn Myers said. We had a little over 18,000 people during those three days and that's a huge increase and it definitely helps during the week."

The zoo normally gets 85-hundred visitors over Labor Day. Daily attendance has jumped by 1500 people."

[See copy of news report by KFSN-TV attached hereto and incorporated herein by Reference.]

In addition, Scott Barton has testified before the Fresno County Zoo Authority to the fact that there has been a 10 % annual increase in the Zoo attendance since the opening of the Sea Lion Cove Exhibit.

Given the figures provided by Lyn Myers, the average daily attendance over the September 2012 Labor Day holiday weekend means that an average of at least 6,000 persons per day were patronizing the Zoo. This constitutes an increase of approximately 3,000 persons per day over previous daily attendance. More important, at 6,000 people per day, based on the Fresno Zoning Ordinance, the Zoo patrons alone require 1,200 parking spaces on-site---without including the rest of the visitors who come to the undeveloped park open space and Rotary Storyland and Playland. Thus, with the removal of the 100 parking spaces on N. Golden State Boulevard, there is already a substantial deficit in the number of on-site parking spaces required for the Park and Zoo---without considering a special event, which triggers parking on unpaved open space in the Park.

In addition, in the comments and objections previously submitted by my clients, other members of the public, and Shute, Mihaly & Weinberger, we have objected to the failure of the City of Fresno and the Fresno Chaffee Zoo Corporation to analyze, consider, and discuss the feasible alternative of reducing the amount of on-site parking required within the Park by acquiring off-site parking. This comment and objection was previously rejected by the City and the Zoo Corporation on the ground that there was not a significant adverse effect to the existing open space in the Park, despite the fact that 6-9 additional acres of parking was proposed to be included in the Park open space.

Specifically, my clients and I submit that your Council should not approve the proposed Addendum to the FEIR unless and until there has been an amended EIR prepared which considers the significant new information set forth hereinabove and until the City and the Zoo have taken action to acquire off-site parking spaces to mitigate the demonstrated shortfall in on-site parking required for the proposed expansion of the Zoo. We assert again that the City and the Zoo Corporation need to work together to acquire the land on the northwest corner of Olive Avenue and N. Golden State Boulevard (east of the Lyles Diversified property) to be used for off-site parking, which will also reduce the newly created traffic circulation impacts at the Olive Avenue entrance to the Park, by diverting vehicles to the off-site parking facility at the northwest corner of Olive Avenue and N. Golden State Boulevard.

Failure to disclose the new significant information and to re-analyze the on-site parking and off-site parking alternatives constitutes an abuse of discretion to the prejudice of the public interest due to the failure to proceed in the manner required by law, pursuant to Public Resource Code sections 21166(a), 21168, and 21168.5 and CEQA Guidelines section 15162(2).

FAILURE TO OBTAIN PERMIT REQUIRED BY LAND AND WATER CONSERVATION FUND ACT

During the preparation and certification of the FEIR, neither the City nor the Fresno Chaffee Zoo Corporation had submitted the application required to be reviewed by the Secretary of the Interior for the National Park Service under the Land and Water Conservation Fund Act (LWCFA), due to the contractual obligations entered into by the City of Fresno when it received LWCFA funding for improvements to the federally protected open space in the Park. As a result, the environmental analysis performed prior to the approval of the Roeding Park and Chaffee Zoo Master Plans was conducted solely under the California Environmental Quality Act, and did not include the federal environmental review required by the National Environmental Policy Act (NEPA), which has much more stringent requirements for the project alternative analysis. In fact, my clients and I objected to the omission of the federal environmental review in our comments regarding the DEIR, RDEIR, and FEIR.

To date, there has been no final decision or approval by the Secretary of the Department of the Interior of the application of the City and the Zoo Corporation for a permit under the LWCFA to convert federally protect open space land to developed open space within the protected area of Roeding Park. Moreover, since the certification of the FEIR by the City in 2011, the Trust for Public Land 2013 ParkScore Index discloses that Fresno ranks at the bottom

of the 13 lowest-ranking city park systems in the nation in terms of open space amenities. This information was not available nor disclosed in the previously certified FEIR nor has it been disclosed to your Council in the proposed Addendum to the FEIR for the Roeding Park and Fresno Chaffee Zoo Master Plans.

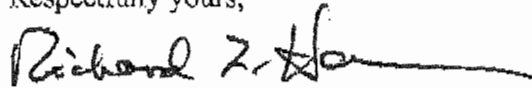
The proposed Addendum to the FEIR fails to refer to, disclose, analyze, or consider the City of Fresno General Plan Update, which is due to be approved within the next 2-3 months. In the new General Plan Update, the City proposes to adopt a Land Use Element and other supporting elements, policies, goals, objectives, and implementation measures to **increase population density and land use intensity** in the downtown and areas in close proximity to Roeding Park, which will create increased demand and necessity for **more** undeveloped open space and parking for use of Roeding Park and the Fresno Chaffee Zoo.

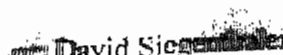
Therefore, before your Council approves any amendments to the Roeding Park and Fresno Chaffee Zoo Master Plans, my clients and I submit that the City should prepare, circulate, and review a subsequent EIR in which the City performs a land use consistency analysis which addresses and considers the significant changes to the environmental setting and land use baseline which will be occurring with the final approval and adoption of the City's General Plan Update--particularly in the Circulation, Conservation, and Open Space Elements and the ratio of undeveloped open space and parks to the increased population in the downtown area caused by the projected increased population in the downtown area and in proximity to Roeding Park and the Fresno Chaffee Zoo.

In conclusion, the significant new information referred to hereinabove and the omitted significant information regarding the status of the LWCFAs permit application, and the imminent adoption of the City General Plan Update should be disclosed, analyzed, and considered prior to consideration of the proposed amendments to the Master Plans.

On behalf of my clients and the general public, I am requesting your Council to deny the approval of the proposed Addendum and Master Plan amendments and to remand the matter to City Staff and your consultants with instructions to prepare a subsequent EIR after there has been a final determination of the application for a permit to convert LWCFAs protected open space by the Secretary of the Department of the Interior.

Respectfully yours,


RICHARD L. HARRIMAN

 David Siegel, NPS [Fax No. (415) 623-2387]
Wendy Ormont, NPS [Fax No. (202) 371-5197]
Secretary of the Interior
Clients

Significant Impacts and Mitigation Measures

The Proposed Master Plans would not result in significant parking impacts; and thus no mitigation measures are required.

Less Than Significant Impacts

Impact 9.1: The Proposed Master Plans Project will provide parking stalls to adequately accommodate projected parking demand during peak visitor season.

Impact Analysis

Peak Months Parking Demand

The future peak daily parking demand resulting from full build-out of the Master Plans Project during the peak visitor season (i.e., months of May and June) is calculated as 1,137 vehicles. This demand was calculated by applying the conservative 2030 annual projected growth factor of 1.94 from the Traffic Impact Study prepared for the Project to the maximum number of vehicles currently observed on-site ($586 \times 1.94 = 1,137$ vehicles). The growth factor of 1.94 was derived by dividing the 2007/2008 daily traffic volumes of 1,616 by the 2030 daily traffic volumes of 3,136.

The proposed Master Plans would provide approximately 1,155 on-site parking spaces, which are expected to accommodate the projected peak demand at a high utilization rate. With the addition of 50 zoo employee parallel parking spaces, the total on-site parking capacity would be 1,205. Along Golden State Boulevard, it is estimated that approximately 2,000 feet of the existing 2,600 feet of frontage will be developed with parallel parking. Currently, as well as in the future, there are no fire hydrants along Golden State Boulevard to limit the amount of parallel parking; however, there will be an entrance along Golden State Boulevard that will reduce the existing frontage available for parallel parking to approximately 2,000 feet. Assuming an average stall length of 20 feet, it is estimated that the project will include the construction of approximately 100 new off-site parking stalls. The total of on-site parking stalls plus new off-site parking stalls is $1,205 + 100 = 1,305$. Therefore, the projected peak parking utilization is calculated as $1,137 / 1,305 = 87$ percent. During the peak season of the park, on days without special events, the proposed parking capacity will meet demand.

Americans with Disabilities Act

The project will provide a total of 1,305 parking stalls that will serve Roeding Regional Park, Fresno Chaffee Zoo and Rotary Storyland and Playland. As previously discussed in the Regulatory Setting in this chapter, the Federal Government's "ADA Standards for Accessible Design" require a total of 20 ADA stall for every 1,000 parking stalls proposed for the project and one ADA stall for every 100 stalls over 1,000 parking stalls. Therefore, the Master Plans Project will require 24 accessible parking stalls to be implemented within the project. The total 1,305 parking stalls proposed for the Master Plan includes 24 accessibly designed parking stalls for the disabled. Therefore, the proposed project meets ADA standards and will not have a significant effect on accessible parking stalls.

Relationship to Zoning Ordinance Parking Requirements

As previously described in this chapter, the Zoning Ordinance contains a general requirement under the "O" District for "one parking space for each five persons which the facility is intended or designed to serve" and specific requirement for park and recreational uses of "one parking space for each five thousand square feet of active recreational area within a park or playground."

Roeding Regional Park would have 76 acres of landscaped, or public, land under the Master Plans. Assuming this land is considered "active recreational area," the park would need 662 parking spaces to comply with the 1 space per 5,000 square feet requirement (76 acres x 43,560 sq. ft. per acre / 5000 sq. ft. = 662 parking spaces). The proposed 1,205 on-site parking spaces exceed this requirement by 543 spaces. The additional spaces could be considered available for Fresno Chaffee Zoo and Rotary Storyland and Playland parking. As such, under normal conditions, the Master Plans Project would have a less than significant impact as to parking.

Special Events

Although the future peak daily parking demand resulting from full build-out of the Master Plans Project during the peak months of May and June is approximately 1,137 vehicles, less than the total on-site and off-site parking available, during special events, the total demand for parking may exceed capacity. However, under the Proposed Master Plans, the number of special events that currently are held at Roeding Regional Park are not proposed to be increased. Therefore, the continued use of a traffic management plan for special events (i.e., quickly collecting tolls at the park entrances and providing on-site grass parking or off-site parking, if necessary) would be needed. The Master Plans project would not increase an impact on the existing parking availability during special events.

Sources

City of Fresno. City of Fresno Parking Manual. April 1987.

City of Fresno. Municipal Code and Charter, Chapter 12 – City Planning.

Peters Engineering Group. Traffic Impact Study for the Proposed Roeding Regional Park and Fresno Chaffee Zoo Master Plan, Fresno, California. July 2010.

11/6/13

abclocal.go.com/kfsn/story?section=news/entertainment&id=8819011&pt=print

Entertainment 13

Sea Lion Cove at Fresno's Chaffee Zoo boosts attendance

Thursday, September 20, 2012

Sept. 20, 2012

Topic: chaffee zoo, fresno, fresno county, entertainment, date yours
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FRESNO, California (KFSN) -- The brand new Sea Lion Cove at Fresno's Chaffee Zoo has proved to be an instant hit.

Catalina, Avila, Ariel and the rest of the gang at Sea Lion Cove want you to know they love their new \$10.5 million home.

Families like the coastal feel, the prime viewing locations and the little ones love the children's beach. The three sea lions and two seals entertain all day in their 200-thousand gallon exhibit.

"What I like more is how they swim and the interacting," Cindy Mercado said. "I like the spots they have. Over there you can watch them, over here you can watch them close-up."

One viewing spot allows visitors to come nose to nose with sea lions like Pismo. Sea Lion Cove has quickly become Fresno's coolest spot.

"It's definitely upped attendance. We had the best Labor Day ever," Lyn Myers said. "We had a little over 18,000 people during those three days and that's a huge increase and it definitely helps during the week."

The zoo normally gets 85-hundred visitors over Labor Day. Daily attendance has jumped by 1500 people.

For these kids nothing's better than coming face to face with the sea lions at this underwater viewing section.

Visitors describe it as something they'd expect from a bigger park in a big city. It will be hard to top this exhibit, but the Chaffee Zoo is ready to put more Measure Z money to use for otters, king cobras and an expanded Africa exhibit.

Lyn Myers asked, "Do you remember when Fresno used to have lions and you would hear them roaring through the Tower District? They're coming back but they're not coming back singly we're bringing a pride."

These swimming stars will welcome the Africa exhibit in 2014.

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Topic: chaffee zoo, fresno, fresno county, entertainment, date yours

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The Trust for Public Land Releases 2013 ParkScore® Index

Minneapolis unseats San Francisco as nation's top park system; New York ranks 2nd as Fresno repeats last place finish

San Francisco - 06/05/2013

Contact: Tim Ahern June 5, 2013 415-495-4014 Cell 415-710-9095 Tim.ahern@tpl.org The Trust for Public Land Releases 2013 ParkScore® Index, Rating Park Systems in 50 Largest U.S. Cities Minneapolis unseats San Francisco as nation's top park system; New York ranks 2nd as Fresno repeats last place finish SAN FRANCISCO, Ca. -

Minneapolis took top honors in The Trust for Public Land's 2nd annual ParkScore index, earning the first perfect "5 park bench" rating from the nonprofit organization. Defending champion San Francisco fell from first place to third, and New York improved from third place to second. For the second consecutive year, Fresno, California, was the lowest-rated city park system.

Minneapolis was not rated by ParkScore in 2012 and was included this year because the index expanded to the 50 largest cities in the United States, up from the 40 largest last year. Minneapolis is the 48th largest U.S. city, according to the Census Bureau.

"In Minnesota, safe, attractive, and accessible outdoor spaces are key to our much-valued quality of life. In our cities, we rely upon our parks for individual recreation, family outings, and community activities. I congratulate Minneapolis upon receiving this national recognition for providing our country's best park system," said Minnesota Governor Mark Dayton.

"The latest ParkScore rankings are further evidence that New York City is the 'Queen of Green,'" said New York City Mayor Michael R. Bloomberg. "Not only do we have a huge open space network, but we have one of the best park systems overall. Our sustained investment in building great parks and maintaining them well pays off for City residents and visitors alike, making NYC a great place to live, work, and visit. Look out, Minneapolis-we may be Number 2, but not for long."

ParkScore ratings are based equally on three factors: Park access, which measures the percentage of residents living within a 10-minute walk of a park (approximately 1/2-mile); Park size, which is based on a city's median park size and the percentage of total city area dedicated to parks; and Services and investment, which combines the number of playgrounds per 10,000 city residents and per capita park spending.

Minneapolis scored strongly on all ParkScore rating factors. With 94 percent of residents living within a 10-minute walk of a park, the city received especially high marks for park access. The city's strong parks budget also boosted its ParkScore rating. New York fared even better on park access, with 96 percent of residents living within a 10-minute walk of a park. However, New York was hurt by its low median park size, just 1.06 acres compared to Minneapolis' 6.51-acre median.

"You can't have a great city without great parks," said Adrian Benepe, Senior Vice President and Director of City Park Development for The Trust for Public Land. "Parks bring neighbors together and help create a sense of community. They give kids and adults a place to play, walk around, and just relax and experience nature. That's why we believe that

cities with great park systems tend to be healthier and have lower rates of obesity."

ParkScore uses advanced GIS (geographic information system) computer mapping technology to create digital maps evaluating park accessibility, making it the most realistic assessment system available. Instead of simply measuring distance to a local park, ParkScore's GIS technology takes into account the location of park entrances and physical obstacles to access. For example, if residents are separated from a nearby park by a major highway, ParkScore does not count the park as accessible to those residents (unless there is a bridge, underpass, or easy access point across the highway).

In addition to the at-a-glance park bench summary rating, ParkScore features an in-depth website that local leaders can use as a roadmap to guide park improvement efforts. The website, parkscore.tpl.org, provides extensive data and analysis that pinpoints the neighborhoods where parks are needed most critically. The website includes interactive maps of each ParkScore city that allow users to zoom in and study park access on a block-by-block basis. The website allows users to browse detailed information about each public park in the 50 cities and to view local obesity rates compiled by the Centers for Disease Control and Prevention. The website is free and open to the public.

"Physical inactivity is a major contributor to the obesity epidemic and a risk factor for many serious and preventable chronic diseases," said William H. Dietz, MD, PhD, a pediatrician who recently served as Director of the Division of Nutrition, Physical Activity, and Obesity at the Centers for Disease Control and Prevention. "Improving access to places to play is a proven strategy for increasing activity that all municipal leaders should embrace. Parks improve health and prevent disease," Dietz said.

According to The Trust for Public Land, the 10 highest-ranking city park systems in the United States are:

1. Minneapolis	5.0 park benches
2. New York	4.5 park benches
3. Boston (tie)	4.0 park benches
3. Sacramento (tie)	4.0 park benches
3. San Francisco	4.0 park benches
6. Washington, DC	4.0 park benches
7. Portland	4.0 park benches
8. Virginia Beach	4.0 park benches
9. San Diego	4.0 park benches
10. Seattle	4.0 park benches

The 13 lowest-ranking city park systems are:

38. Houston (tie)	2.0 park benches
38. Miami (tie)	2.0 park benches
38. Nashville (tie)	2.0 park benches
38. Tucson (tie)	2.0 park benches
42. Memphis	1.5 park benches
43. Oklahoma City	1.5 park benches
44. Jacksonville (tie)	1.5 park benches
44. San Antonio (tie)	1.5 park benches
46. Mesa, AZ	1.5 park benches
47. Indianapolis (tie)	1.0 park benches

47. Indianapolis (tie)	park benches
47. Charlotte (tie)	1.0 park benches
49. Louisville	1.0 park benches
50. Fresno	1.0 park benches

For more information about ParkScore, visit parkscore.tpl.org and join the discussion on Twitter [@TPL_org](https://twitter.com/TPL_org) #ParkScore.

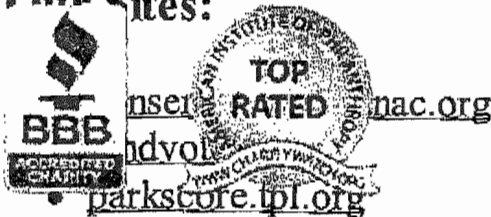
About The Trust for Public Land

Founded in 1972, The Trust for Public Land is the leading nonprofit working to conserve land for people. Operating from more than 30 offices nationwide, The Trust for Public Land has protected more than three million acres from the inner city to the wilderness and helped generate more than \$34 billion in public funds for conservation. Nearly ten million people live within a ten-minute walk of a Trust for Public Land park, garden, or natural area, and millions more visit these sites every year.

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November 19, 2013

VIA FACSIMILE TRANSMISSION
[Fax No. (559) 488-1005]

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Re: Friends of Roeding Park, et al. v. City of Fresno
Planning Commission Meeting, Agenda Item VIII.D.
Comments and Objections to Approval of
Finding re Addendum to Final Environmental Impact Report
SCH No. 2008031002 and Approval of Conditional Use Permit
Amendment Application No. C-13-018 re Roeding Park and
Fresno Chaffee Zoo Master Plan Amendments
Hearing Date: November 20, 2013

Honorable Chair Holt and Members of the City of Fresno Planning Commission:

As the record reflects, this office continues to represent the legal interests of the Friends of Roeding Park, a California unincorporated association, having its principal place of business located in Fresno, Lisa Flores, individually, and other residents of the City of Fresno who use the existing Roeding Park open space for family gatherings and other recreational purposes, such as walking their dogs, including, without limitation 318 persons in the groups known as the "Central Valley Chihuahua Club," "Tiny Paws," and the "Roeding Small Dog Play Group," who include 318 persons, of whom 25-30% are members of ethnic minorities.

The above-mentioned clients have authorized and directed me to submit the following comments and objections to be included in the record of proceedings for your review and consideration.

INTRODUCTION

At the outset, my clients and I wish to thank and commend the City Staff and the Chaffee Zoo Corporation for having proposed amendments to the Roeding Park and Fresno Chaffee Zoo Master Plans which will improve and expand the historic ponds, in order to mitigate the adverse impacts to the historic resource values of Roeding Park.

The remainder of our comments and objections are focused on procedural defects and proposed Conditions of Approval and mitigation measures which are necessary to comply with the California Environmental Quality Act (CEQA) [Public Resources Code (PRC) section 21000 et seq.] and the State Planning and Zoning Act (SPZA) [Government Code (GC) section 65300 et seq.] and to correct a mistake in the letter from the National Park Service (NPS), dated November 5, 2013 (copy attached), and to implement the direction of the California Department of Parks and Recreation (DPR) letter, dated November 7, 2013 (copy included as Exhibit 6 to the Staff Report, dated November 20, 2013).

CORRECTION TO FINDING IN NPS LETTER

At pages 2-3, paragraph 5, lines 4-10, the NPS letter, dated November 5, 2013, states, in relevant part:

“...Visitors will continue to enjoy the scenery of the area, although it will change somewhat to resemble an African savanna. Visitors *will continue to eat and picnic in the expansion area, as well as walk for pleasure*...Access to the expansion area will require payment of the existing zoo visitor fee. The Roeding Park admission fee for cars will remain unchanged. Pedestrians will continue to be able to access the park, *except for the zoo*, free of charge.” (emphasis added)

The foregoing statement is inaccurate with respect to the ability of the public to enjoy the scenery of the area. Visitors will have to pay the fee to enter the Zoo, in order to enjoy the African savanna scenery, due to American Zoo Association requirements that preclude the ability to observe the open space (savanna), in which the African animals will be segregated, from the Park area outside the Zoo. Second, although visitors will be able to eat, picnic, and observe the savanna from inside the Zoo (from the Safari Lodge, for example); visitors who have not paid the fee to enter the Zoo will not be able to eat and picnic in the 18 acres used for the African Savanna Exhibit.

In other words, the enclosed African Savanna Exhibit will not be visible to the Park visitors who have not paid the Zoo entry fee, and the 18 acres which are to be enclosed for the exhibit will no longer be open space available to Park visitors *nor* will the existing open space be available for eating and picnicking by visitors to the Park who have not paid the Zoo entry fee. As a result the 18 acres will be converted from *free* recreational open space to enclosed *private* enclosed space reserved for paying guests only. Thus, my clients and the general public will be deprived of the free use of the existing recreational open space.

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION LETTER

In the DPR letter dated November 7, 2013, the Office of Grants and Local Services states:

"However, NPS notes the following and encourages the City to take the steps necessary to mitigate any adverse effects to historic park resources and to maintain the multi-use character of the Park.

...

- NPS is also aware that some community opposition exists to the zoo expansion proposal, and that opponents include the Friends of Roeding Park and the Roeding Family.

Next Steps Based on the NPS Determination Described Above

To complete OGALS records, please provide a response to NPS' encouragement for the City to mitigate any adverse effects to historic park resources and to maintain the multi-use character of the Park. NPS will not review the City's response. Additionally, OGALS recognizes that the City is the lead agency under CEQA."
[page 1, final paragraph, and page 2, paragraphs 1 and 2]

Despite the request of the DPR/OGALS in its recent letter, neither the Staff Report nor the Addendum to the Final Environmental Impact Report includes a discussion of the request for a response to the letter, nor does either document provide a response to the request of DPR/OGALS. My clients and I object to the lack of a discussion of this portion of the DPR letter and to the lack of a written response to the DPR letter, especially since there is no evidence in the record that the DPR or OGALS has been given notice of the actions proposed to be approved and taken at this hearing.

The Friends of Roeding Park and the Roeding Family have been joined by Ms. Flores and the three groups who are named above in objecting to the elimination of the 18 acres of free recreational open space, including the Dog Park, and to the privatization of the free public recreational open space which has been commandeered and privatized by the City for the private benefit of the Chaffee Zoo Corporation. Therefore, my clients and I request the addition of a Condition of Approval and Mitigation Measure that the City and the Chaffee Zoo be required to meet and confer with the Ms. Flores and representatives of the three organizations set forth above to consult with them concerning the re-location of the Dog Park and mitigation measures necessary to avoid or reduce the adverse effects to the regular users of the Dog Park, prior to the approval of the proposed actions.

OMISSION OF DISCUSSION OF ENVIRONMENTAL JUSTICE ISSUES

My clients and I want to bring to the attention of the Planning Commission that there is no discussion in the Staff Report or elsewhere in the record of Environmental Justice issues raised by the expansion of the Zoo into existing free recreational open space and the segregation of the enclosed privatized commercial open space for the exclusive use of visitors who have paid the fee to enter the Zoo compound. Given the fact that there has been no survey provided with

the Staff Report or elsewhere in the record of the racial and ethnic demographics of Park visitors who utilize the free recreational open space and given the diverse racial and ethnic backgrounds of the Dog Park users, we object to the approval of the proposed actions without a formal Environmental Justice analysis of who will be adversely affected by the privatization of the African Savanna Exhibit by the City and the Zoo Corporation.

Finally, the Zoo Corporation has made representations that the Zoo serves the minority community of the City of Fresno by providing programs for children from diverse backgrounds. However, nowhere in *any* of the City environmental review documents, including the certified FEIR and the Addendum approved on November 7, 2013 (without notice and circulation of the Addendum to the public responsible or trustee agencies or the public) has the City required Conditions of Approval or mitigation measures that impose a duty on the Zoo Corporation to dedicate a specific amount of the *Measure Z funds raised by a sales tax on the public* for such educational programs or any specific amount of free admission to racially and ethnically diverse members of the public.

Therefore, my clients and I request that the Planning Commission require a Condition of Approval and/or a Mitigation Measure that requires the Zoo Corporation to segregate and allocate 5% of the visitor fees paid for entry to the Zoo to be used to pay for free entry to the Zoo for people of color and for free participation in Zoo-sponsored programs and/or activities.

FINDINGS REQUIRED FOR APPROVAL OF CONDITIONAL USE PERMIT

Fresno Municipal Code Section 12-405-A-2 is set forth on page 10 of the Staff Report. After a careful review of the Staff Report dated November 20, 2013, the Addendum to the FEIR, and the other documents identified in the Staff Report, my clients and I submit that the Commission cannot properly make "Finding a" for the following reasons.

Since the Staff Report does not include a copy of my clients' letter to the City Council on November 7, 2013, we have attached a copy for the record and for your review and consideration.

Inadequate Analysis of Parking Demand and Off-Site Parking Alternative

In addition to the objections set forth in the letter of November 7, 2013, we have been unable to find evidence that the Staff or consultants have disclosed and analyzed the peak parking demands for the Zoo expansion, based upon projected attendance at peak hours on holiday weekends when there are special events at the Zoo, plus peak visitor presence on major holiday weekends, such as Easter, Cinco de Mayo Memorial Day, Independence Day, Labor Day, Grito de Dolores (Mexican Independence Day), Columbus Day, Veterans Day, Thanksgiving, and/or Christmas. The FEIR makes a specific finding that when there are special event programs, there *will be inadequate parking on paved areas and that vehicles will be parked on open space in the Park*. Neither the FEIR, the Addendum, nor the Traffic Study provides an alternatives analysis which includes the reduction of the 100 parking spaces on N. Golden State Boulevard, due to the HST Project, and the analysis of off-site parking on the northwest corner of

N. Golden State Boulevard and Olive Avenue. (Current site of the parking lot for retail commercial land use.)

We respectfully submit that the FEIR, including the Addendum, is legally inadequate, due to the lack of analysis of off-site parking for peak hour demand for special events in the Park, plus Park visitors on major holiday weekends, and the new Sea Lion Cove Exhibit and the proposed African Savanna Exhibit. The FEIR, as amended by the uncirculated Addendum, are legally inadequate, due the City's failure to proceed in the manner required by law, in violation of the PRC sections 21168 and 21168.5, based on the defective project alternatives analysis resulting from the reduction of the 100 parking spaces on N. Golden State Boulevard and lack of analysis of peak hour parking demand, as set forth above.

Finally, the users of the Dog Park, which will be re-located, submit that the preferred alternative for the Master Plan amendments is to re-locate the Dog Park to the open space currently designated for the new parking in the center of the park. The parking has not been constructed, although it was required as a condition of opening the Sea Lion Cove Exhibit; and the new parking can be re-located to the off-site location at N. Golden State Boulevard and Olive Avenue---which results in mitigation of the traffic impacts at the Olive Avenue entrance to the Park, by having vehicles turn into the proposed off-site parking area, thereby avoiding additional stacking and turn movements at the Olive Avenue entrance to the Park.

Failure to Consider the Future Baseline Population Increase Disclosed in the City of Fresno Draft General Plan Update

The Staff Report dated November 20, 2013 fails to disclose and consider the background setting and environmental setting set forth in the City of Fresno Draft General Plan Update, which is known to City Staff and is readily available to the City Staff. Specifically, the data and information set forth in the text of the Draft General Plan and available to Staff in the Draft EIR for the General Plan Update regarding the anticipated population density and intensity projected for development and build-out during the term of the General Plan Update in downtown Fresno, the Tower District, and other areas in close proximity to the Zoo. Also available in the new General Plan Update and Draft EIR for the GPU is the traffic assumptions used for the Circulation Element, which are not shared with the Commission, the responsible and trustee agencies, my clients, or the public.

Since the standard of review upon which legal adequacy of EIRs and Addenda is base is the "good faith effort at full disclosure," and given the fact that the Addendum was not circulated to any of the responsible and trustee agencies, including the DPR, or to the public, my clients submit that the omission of the current information and background setting projected in the GPU and DEIR for the GPU constitutes a failure to proceed in the manner required by law, in violation of PRC sections 21168 and 21168.5, and constitutes an abuse of discretion by the City, determined to be the lead agency, as set forth in the excerpt from the DPR/OGALS letter of November 7, 2013 cited above.

In effect, City Staff, who are uniquely knowledgeable about the status of the new GPU and the DEIR for the GPU, including the population and traffic data and projected increase in urban development and density in the downtown, Tower District, and other proposed development should have disclosed this new significant information in the Addendum and in the Staff Report for the action items proposed in Agenda Item VIII.D. Instead, Staff addressed only the land use consistency citing the 2025 General Plan, without even mentioning new and significant information contained in the background documents for the new GPU and its DEIR or disclosing that the new GPU, along with its DEIR, are due to come before your Commission in the early part of the New Year. [See Staff Report, page 7]

Therefore, we respectfully submit that there is an inadequate analysis of the consistency of the proposed CUP amendments with the General Plan, based on the overt and intentional failure to provide a good faith effort at full disclosure of the projected build-out of the downtown, Tower District, and other baseline information and environmental setting, as required by CEQA. [See *Woodward Park Homeowners Assn. v. City of Fresno* (2007) 154 Cal.App.4th 683.]

LACK OF PUBLIC OUTREACH AND PUBLIC INVOLVEMENT

The Staff Report purports to discuss "Public Outreach" at page 6-7. Given the "encouragement" from the DPR/OGALS cited in the excerpt quoted hereinabove, it is ironic that the City provides no evidence whatsoever of any public notices posted in the Park, no written notices to the Dog Park users, and no advance notice to the public of the intended amendments to the Roeding Park and Chaffee Zoo Master Plans or of the Addendum to the FEIR. Under these circumstances, the lack of public disclosure and outreach constitutes an intentional bad faith effort by the City and the Zoo to keep the public uninformed and in the dark until the last possible minute, regarding the proposed amendments and FEIR Addendum, which constitutes a failure to proceed in the manner required by law, pursuant to CEQA Guidelines 15201 and an abuse of discretion to the prejudice of the public interest.

INADEQUATE DISCLOSURE AND ANALYSIS OF PARKING IMPACTS

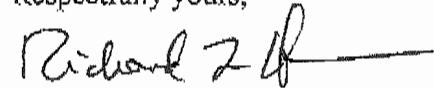
Our letter of November 7, 2013 to the City Council is attached hereto and is hereby incorporated by reference herein, as though fully set forth.

In conclusion, the significant new information referred to hereinabove and the inaccurate significant information regarding the NPS interpretation of the LWCF permit application, and the imminent adoption of the City General Plan Update should be disclosed, analyzed, and considered prior to consideration of the proposed amendments to the Master Plans.

On behalf of my clients and the general public, I am requesting your Commission to deny the approval of the proposed Addendum and Master Plan amendments and to remand the matter to City Staff and your consultants with instructions to prepare a subsequent EIR which addresses the inadequacies of the proposed FEIR Addendum, including the project alternatives analysis and the alternatives proposed hereinabove, and including the new and significant information

disclosed in the new General Plan Update and Draft EIR for the GPU, and to direct City Staff and the Zoo Corporation to meet and confer with Ms. Flores and representatives of the Dog Park user organizations prior to further consideration of these matters.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Richard L. Harriman", followed by a horizontal line.

RICHARD L. HARRIMAN

cc: Jean A. Lacher, DPR; OGALS
Clients