OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM Agenda Item No. 11(A)(9)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: December 7, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Resolution approving amended and restated operating agreement for Miami-Dade Zoological Park and Gardens between Miami-Dade County and Zoological Society of Florida and directing County Mayor to execute such on behalf of the County

Resolution No. R-1206-10

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Dennis C. Moss.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: December 7, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 11(A)(9)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(9)
12-7-10

RESOLUTION NO. R-1206-10

RESOLUTION APPROVING AMENDED AND RESTATED OPERATING AGREEMENT FOR MIAMI-DADE ZOOLOGICAL PARK AND GARDENS BETWEEN MIAMI-DADE COUNTY AND ZOOLOGICAL SOCIETY OF FLORIDA AND DIRECTING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SUCH ON BEHALF OF THE COUNTY

WHEREAS, pursuant to Resolution No. R-1286-98 (attached hereto as Exhibit "A"), the Zoological Society of Florida ("Society") and the County entered into the Miami Metrozoo Operating Agreement ("Original Operating Agreement") dated November 24, 1998 for the joint operation of Miami Metrozoo; and

WHEREAS, pursuant to Resolution No. R-444-00 (attached hereto as Exhibit "B"), the County and the Society agreed to amend the Original Operating Agreement to allow the County to reimburse the Society for marketing and educational programming at Miami Metrozoo, subject to the availability of County funds for that purpose and subject to the extent such funds are included in the budget on an annual basis by the Board of County Commissioners; and

WHEREAS, on April 6, 2010, this Board adopted Resolution No. R-329-10 approving the renaming of Miami MetroZoo to "Miami-Dade Zoological Park and Gardens," recognizing that the name "Zoo Miami" would be used for marketing and recognition purposes; and

WHEREAS, the County and the Society desire to amend and restate the Original Operating Agreement in its entirety as provided in the Amended and Restated Operating Agreement (attached hereto as Exhibit "C"),

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Amended and Restated Operating Agreement for the Miami-Dade Zoological Park

and Gardens by and between Miami-Dade County and the Zoological Society of Florida, in substantially the form attached hereto as Exhibit "C", and directs the County Mayor or Mayor's designee to execute such agreement on behalf of Miami-Dade County.

The Prime Sponsor of the foregoing resolution is Chairman Dennis C. Moss. It was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Barbara J. Jordan** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	aye		
Jose "Pepe" Diaz, Vice-Chairman	aye		
Bruno A. Barreiro	aye	Lynda Bell	aye
Audrey M. Edmonson	aye	Carlos A. Gimenez	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Natacha Seijas	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	absent		

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of December, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Monica Rizo

ATTACHMENT A

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 10(A)(1)
11-24-98

RESOLUTION NO. 1286-98

RESOLUTION AUTHORIZING EXECUTION OF AN OPERATING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE ZOOLOGICAL SOCIETY OF FLORIDA

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the attached operating agreement between Miami-Dade County and the Zoological Society of Florida, except that the attached shall be amended to provide that contracts to be entered into in furtherance of the operating agreement shall be subject to the County's minority and small business enterprise ordinances, as applicable.

The foregoing resolution was offered by Commissioner Dr. Barbara M. Carey-Shuler who moved its adoption. The motion was seconded by Commissioner Jimmy L. Morales and upon being put to a vote, the vote was as follows:

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Dr. Miriam Alonso	aye	Bruno A. Barreiro	aye
Dr. Barbara M. Carey	aye	Miguel Diaz de la Portilla	aye
Betty T. Ferguson	aye	Gwen Margolis	aye
Natacha Seijas Millan	aye	Jimmy L. Morales	aye
Dennis C. Moss	absent	Pedro Roberado	absent
Dorrin D. Rolle	aye	Katy Sorenson	aye
Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of November, 1998. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
To form and legal sufficiency.

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MEMORANDUM

Amended
Agenda Item No. 10(A)(1)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: November 24, 1998

SUBJECT: Zoological Society Operating Agreement

FROM: M. R. Stierheim
County Manager

R-1286-98

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing the execution of an operating agreement between the County and the Zoological Society of Florida, which provides terms and conditions of our joint responsibilities at Miami Metrozoo. This is the first agreement of its kind in the County's 42-year relationship with the Society and is very important in order to clearly establish our respective roles for the future growth of the Zoo.

BACKGROUND

As the Board is aware, the County has operated a zoological park since 1947 and has enjoyed the support of the Board and members of the Zoological Society of Florida. While the Zoo realizes earned income from admissions, it relies heavily on a subsidy from the County's general fund. Given the county's funding constraints, the Zoo would not have been able to achieve what it has today without the financial and volunteer support of the Zoological Society. Most recently, the Society has contributed approximately $30 million since 1983 to a variety of capital projects and other programs. One hundred-twenty (120) active volunteers provide education and other services at the Zoo. It may come as a surprise that the County has not had an operating agreement with the Society which defines the roles and responsibilities and how the organization is to support the facility in relation to County activities. This has frankly led to difficulties over the years with the County and Society at odds at times over who should do what and how. This recommended agreement addresses that problem.

In the fall of last year, Mayor Penelas undertook negotiations with the Society to formulate an operating agreement. Early this calendar year, an accreditation review team from the American Zoological and Aquarium Association was also asked to review the Zoo and the County's relationship with the support organization. After its report was released in April, 1998 which cited the Society-County relationship as a serious issue to resolve, the staff worked with the Society to establish an appropriate governance structure and to finalize an operating agreement.

The governance structure is addressed by the creation of an Oversight Board, which is implemented by a companion second reading ordinance on this agenda. That ordinance provides for the creation of a seven-member board, comprised of: the Mayor, the County Manager, the Park and Recreation Director, the Zoo Society sitting president, the immediate past president, the director of Metrozoo and the executive

director of the Society. The Oversight Board ordinance refers to the operating agreement as the guiding instrument defining how the County and Society will carry out their duties. In summary, the following outlines the delineation of responsibilities:

Miami-Dade County, through its Park and Recreation Department:

- Building and grounds maintenance, including security
- Food services
- Conservation and research
- Transportation within the park
- Animal care
- Veterinary services
- County gate revenue collection and administration support
- Graphics

Zoological Society of Florida:

- Development
- Fundraising
- Membership
- Operation of gift shop
- Education (including contact yard and ecology theater of the Children's zoo (PAWS)
- Marketing

The agreement also provides for the Society to adhere to nationally recognized fundraising standards, to furnish audited financial statements and to operate programs at national accreditation standards. The County and the society will jointly develop master/strategic plans and prepare annual budgets to ensure appropriate coordination of activities. The agreement provides for a "maintenance of effort" of the general fund subsidy at a level equivalent to no less than 80 percent of the average subsidy level for FY 1996-98. This provision however, acknowledges the annual authority of the Board to set appropriations as part of the budget adoption process.

It is very important to the future of Metrozoo that the Board approves this agreement and the accompanying governance structure. The Park and Recreation Department and the Board of the Zoological Society have worked hard to reach a mutually acceptable approach to guiding the further progress of the zoo. The Society has indicated the prospect for significant private donations following the approval of these steps of formalizing the private-public partnership at the zoo. Therefore, your approval is respectfully recommended.

Attachment

O#98-168

MIAMI METROZOO OPERATING AGREEMENT

This agreement is entered into this 24 day of Nov., 1998 by and between Miami-Dade County, a political subdivision of the State of Florida (the "County") and the Zoological Society of Florida, a Florida non profit corporation (the "Society"). The parties agree:

1. General Governing Principles

The parties agree that their relationship shall at all times be governed by the following general principles to which they subscribe:

a. The County, through its Park and Recreation Department owns Miami Metrozoo, a zoological park located at 12400 S.W. 152 Street.

b. The Society is a non-profit corporation organized under the laws of the State of Florida. Among its corporate purposes set forth in Article III of its charter are to sponsor and encourage comprehensive zoological studies, to gather and disseminate information to all persons interested in natural history, and to cooperate and assist the County and other governmental entities in the State of Florida in the promotion and development of zoological parks and gardens. The Society shall agree to exclusively direct their efforts and resources to the support of Miami Metrozoo and its programs.

c. Metrozoo is an internationally recognized zoo, housing over 900 wild animals in its 295 developed acres, exhibiting mammals, birds and reptiles on a zoogeographic scale, reproducing where possible native habitats and architectural and historical features indigenous to their places of origin.

d. Metrozoo is invaluable as a source of education and recreation to our residents and visitors and as a national and international tourist attraction.

e. The parties to this agreement have formed the partnership evidenced in this agreement to support and develop Metrozoo. The parties have entered into this agreement to delineate

their relati rights and responsibilities and thereb void misunderstandings, improve management, optimize resources, and eliminate duplication of efforts in the conduct of their affairs so as to better accomplish their individual and collective mission to improve Metrozoo.

f. The County shall be principally responsible for the operations of Metrozoo.

g. The Society shall be principally responsible for the marketing, the membership program, promotion of Metrozoo, expanding education and volunteer support, and shall serve as the fund-raising arm of Metrozoo. The Society may access the County's marketing services contract and shall seek resources to complement county marketing funds.

h. Metrozoo shall be governed by an oversight board comprised of members of the Society and the County, as more particularly set forth in this agreement.

i. Metrozoo shall have a strategic plan, annual program plans, including programmatic objectives, and capital and operating budgets which are jointly prepared and adopted by the Society and County.

j. It is recognized that the Zoo's success will depend on mutual cooperation and support at all organizational levels. The parties agree to have its respective staff assist each other to the fullest extent possible and reasonable for the betterment of the Zoo.

k. The Zoo Board organized pursuant to the accompanying ordinance and this Agreement shall be representative of the racial, ethnic and gender composition of Miami-Dade County.

2. **Governing Board**

Metrozoo shall be governed by the Miami Metrozoo Oversight Board (the "Zoo Board") lending assistance to the Board of County Commissioners. The Zoo Board shall be composed of nine members consisting of:

(1) the Director of Metrozoo,

(2) the Executive Director of the Society,

(3) the Director of the Park and Recreation Department,

(4) the County Manager or designee,

(5) the Mayor of Miami-Dade County or in the absence of the Mayor, a designee who shall be a County Commissioner,

(6) the sitting President of the Society,

(7) the immediate past President of the Society,

(8) a member of the Board of County Commissioners to be designated by the Executive Mayor,

(9) a member of the Executive Committee of the Zoological Society.

The Zoo Board shall be a governing advisory board to the Board of County Commissioners, and have such rights and responsibilities as are set forth in this agreement and in the Ordinance establishing its existence (the "Ordinance"). The Ordinance shall establish the term of office, staff support and quorum and meeting requirements of the Zoo Board. The Zoo Board shall be entitled to promulgate its own rules for the conduct of its affairs. In the event of any conflict between the provisions of this agreement and the Ordinance, the Ordinance shall govern. The Zoo Board shall be responsible for establishing the long and short term strategic and program plans for Metrozoo, including establishment of goals and objectives guiding all activities and for overseeing the preparation of a consolidated (Society and County resources) budget of Metrozoo for adoption by the Society and Board of County Commissioners.

3. **Master Plan**

The Zoo Board shall determine a set date for the parties to complete, and deliver to the Zoo Board for its approval a master strategic plan for the facility containing at a minimum the following:

a. all proposed land uses for Metrozoo;

b. a long term business plan for Metrozoo, identifying current and potential markets for Metrozoo, and the programs or services that will allow Metrozoo to develop those markets;

c. as assessment and evaluation of existing facilities, features and programs and recommendations for future development

d. a financial program that provides a viable, sustainable plan for capital development and ongoing operations and maintenance of Metrozoo which will be compliant with national accreditation standards.

The Zoo Board shall resolve any dispute between the parties with respect to the master strategic plan. The Zoo Board shall determine a set date and deliver the approved master plan to the Board of County Commissioners for its approval.

Any and all amendments to the master strategic plan shall similarly be first approved by the Zoo Board, for ultimate approval by the Board of County Commissioners.

4. **Capital Improvements**

The design and construction of capital improvements shall be carried out jointly by the Society and County. Whenever a formal selection process is utilized by either party for the selection of architects, engineers or contractors, where subjective factors are evaluated as a condition of award, each party shall designate, where, a representative to participate in the process of evaluation and recommendation. Capital improvements shall be constructed in accordance with the adopted master plan and applicable procedures. Either party may contract for design and construction services and perform the related contract management function, all subject to the applicable legal requirements. The Zoo Board shall render recommendations as to the appropriate party to carry out projects on a case-by-case basis. No projects including new construction, exhibit, feature or other capital improvement may be undertaken unless funding is set forth in the approved budget.

5. **Budget**

The County and Society shall, on an annual basis, collaborate in the development of a consolidated budget representing the combined resources and expenditure plans of both parties for Metrozoo. The parties shall no later than February 1 of each year complete and deliver to the Zoo Board for its approval a proposed consolidated budget for Metrozoo. The budget shall be consistent with the strategic/master plan and identify all anticipated receipts of income and all capital, maintenance and operating expenses expected to be borne specifically by each of the parties during the fiscal year. The budget shall conform with a format adopted for county agencies by the County Manager as part of the annual budget process. The Zoo Board shall resolve any dispute between the parties with respect to the budget. The Zoo Board shall approve a final proposed budget not later than March 1 of each year, whereupon it will be submitted through the County Manager. The County Manager will submit to the Board of County Commissioners and the Society Executive Director will submit to the Society Board of Directors for approval the proposed consolidated Zoo budget for the upcoming fiscal year for review and incorporation of County support in the County Manager's Proposed Budget for the upcoming fiscal year. In the event that the final proposed consolidated budget is approved by both the Board of County Commissioners, through the adopted County budget, and the Society Board of Directors, it shall become the final Metrozoo budget. In the event that either the Society or the County increase, reduce or otherwise materially alter any of the items pertaining to their respective obligations as set forth in the final proposed budget, the Zoo Board shall determine the most appropriate adjustments to the final proposed budget to accommodate those changes and approve a final Metrozoo budget. It is understood that due to unique audit requirements and the existence of independent financial accounting systems, the consolidated budget, will include separate Society and County budget components.

6. **Zoo Operations**

Except with respect to those functions specifically identified in this agreement to be performed by the Society, the County shall be primarily responsible for the operations of Metrozoo. Specifically, the County will be responsible for the following Metrozoo functions:

a. building and grounds maintenance, including security;

b. food services;

c. conservation and research;

d. transportation within the park;

e. animal care and veterinary services, and

f. County gate revenue collection and administrative support,

g. graphics

7. **Society Operations**

The Society shall operate the Metrozoo gift shop and the contact yard and ecology theater areas of the Children's Zoo ("PAWS") subject to the requirements of this Agreement. The gift shop policies and procedures shall conform with generally accepted business practices for similar retail activities and all prices to be charged shall be approved by the Zoo Board. All revenues derived from and expenses related to the Society's operations at Metrozoo shall be accounted for in the approved consolidated zoo budget. No activity to be conducted by the Society shall be in contravention of any existing right of any concessionaire or other third-party contractor of the County, and the Society agrees to immediately cease and desist from any such activity upon request from the County. Any new third party contracts or the extension of any such contracts shall be approved by the Zoo Board.

The County shall provide to the Society office and retail space within Metrozoo reasonably required by the Society to conduct its activities in support of Metrozoo. In addition, the County shall

provide to the Society space within Metrozoo as may be reasonably required for the Society to conduct fundraising activities in support of Metrozoo.

8. Marketing

Unless otherwise identified in this agreement to be performed by the County, the Society shall be responsible for the marketing and promotion of Metrozoo. Subject to Zoo Board approval, the Society shall carry out certain public relations, group sales and guest services activities in cooperation with existing Zoo staff. As a component of the master strategic plan, the parties agree to jointly complete and submit to the Zoo Board for approval, a comprehensive marketing plan for the promotion of Metrozoo. Proposed expenditures for marketing shall be identified in the approved budget. To the extent feasible and in the best interest of Metrozoo, the County's general advertising and marketing contract(s) may be utilized for externally procured marketing services. The Society shall be authorized to procure outside marketing services, subject to the appropriate budget authorization.

9. Fundraising

The Society is the fundraising arm of Metrozoo. Accordingly, the Society shall be the primary non-profit organization with which the County has contracted to promote, sponsor and support the activities of Metrozoo. The Society shall be principally responsible for efforts to solicit corporate, foundation and individual donations. The County shall be primarily responsible for applying for and administering, in conjunction with the Society, all grants from the federal, state or local governments. Nothing herein shall prevent the Society from seeking grants where appropriate in conjunction with the County and with the Zoo Board approval.

Fundraising shall be performed only for activities specifically approved in the Miami Metrozoo master/strategic plan. Fundraising goals and related timetables shall be in accordance with the approved master/strategic plan and budget. Private fundraising shall conform with the national

Standards of Philanthropy established by the National Charities Information Bureau as well as the standards for Charitable Solicitations established by the Council for Better Business Bureaus.

10. **Donor Recognition Program**

In connection with its fundraising, the Zoo shall at all times maintain a donor recognition program to express the parties' gratitude for public beneficence. The donor recognition program shall be subject to the approval of the Board and to all applicable legal requirements. The parties shall abide by the terms of the donor recognition program.

11. **Special Tours**

In connection with its fundraising and goodwill efforts on behalf of Metrozoo, the Society shall be entitled to conduct tours of Metrozoo including behind the scene tours. These tours will be conducted free of charge, except where they might require extraordinary expenses, in which case the expenses must be provided for within the adopted budget. The tours will be conducted during normal Zoo hours. The Society shall give to the County Zoo staff notice at least forty-eight (48) hours in advance of an anticipated special tour. If the 48-hour notice is not possible, the Society will provide as much advance notice as possible and will provide the reason why the requisite notice was not provided. Tours other than during normal business hours will be reserved for major benefactors only, and notice will be provided to the Zoo Director as noted above.

12. **Education**

The Society and the County shall develop, and present to the Zoo Board for approval as part of the master/strategic plan a single and comprehensive education program to be offered to the public. The program shall identify with specificity the relative obligations of the County and the Society. The approved education program shall not be changed without approval of the Zoo Board.

13. **Membership Costs, Zoo Passes, Zoo Society Membership Resident Rates Discounts.**

Immediately upon execution of this agreement, the Society, in cooperation with the Park and

Recreation Department shall develop an appropriate Zoo Membership program. Such program shall balance the need to broaden the support membership base with optimizing earned operating revenue for the zoo. The program shall be approved by the Zoo Oversight Board.

14. Contingency Reserve

The parties shall maintain a contingency fund deemed reasonable in the consolidated budget process to address unanticipated, extraordinary costs or revenue reductions. Either party may apply for contingency funds, subject to the approval of the Zoo Board.

15. Accreditation

Metrozoo, and the parties to this agreement, shall at all times comply with all accreditation standards published by the American Zoo and Aquarium Association (AZA) and any other nationally recognized accreditation boards for zoos or similar park and recreation facilities. In the event that either party falls below any of those standards in the conduct of its activities or functions for Metrozoo, or notice is given by those organizations that the accreditation or ranking of Metrozoo is comprised, the party responsible for such deficiency shall address the deficiency immediately and correct it as soon as possible, at that party's sole expense.

16. Audit

The Society shall maintain its books and records in accordance with generally accepted accounting principles. Each year, the Society shall cause its books and records to be audited by an independent certified public accountant, and a copy of the audited financial statement shall be delivered to the County not later than one hundred and twenty days after the end of the Society's fiscal year. The County is hereby authorized to access the books and records of the Society during normal business hours, upon reasonable notice to the Society or to its independent auditor, such data as may be needed to adequately reflect the operation of the Society and the Society's compliance with the

terms of this Agreement. At all times, the identity of the donors to the Society who desire to remain anonymous shall be protected.

17. **Term; Effectiveness**

This Agreement shall become effective on the effective date of the Ordinance establishing the Zoo Board. This Agreement shall be in effect for the period of three years following its effective date, and shall be automatically renewed annually for subsequent terms of one year, unless 60 days prior to the expiration of the then current term, either party notified the other of its intent not to renew this Agreement.

This Agreement shall be subject to review and concurrence of the United States Department of the Interior as may be required for deed requirements.

18. **County Maintenance of Effort**

The County will make every good faith effort to maintain the county general fund subsidy at no less than 80 percent of the average subsidy level for fiscal years FY 1996 – FY 1998. However it is understood that the Board of County Commissioners has a statutory limitation in committing to multi-year funding levels and must maintain annual budget setting authority.

19. **General Provisions**

During the term of this Agreement, the following provisions shall apply:

a. Neither the County nor the Society may transfer in any fashion all or any part of its respective interest in this Agreement to a third party.

b. The County and the Society shall obey all laws, statutes, ordinances, codes, rules and regulations of all governmental entities with appropriate authority and jurisdiction, including meetings insurance levels in accordance with established County Risk Management requirements.

c. Indemnification

The Society shall indemnify and save the County harmless from any and all claims, liability, losses and causes of action which may arise out of the negligence or intentional acts of Society, its agents and employees in performance under this agreement. The Society directly or through its insurance carrier shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the County when applicable, and shall pay all costs and judgments which may issue thereon.

To the extent allowed and subject to the monetary and other limitations set forth in Section 768.28 of the Florida Statutes, the County shall indemnify and save the Society harmless from any and all claims, liability, losses and causes of action which may arise out of the negligence of intentional acts of the County, its agents and employees, in performance under this agreement. The County directly or through its insurance carrier shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the Society when applicable, and shall pay all costs and judgments which may issue thereon.

d. No indulgence, consent to, or waiver of any breach of any provision of this Agreement by either party shall be construed as a consent to or waiver of any other breach of the same or any other provision of this Agreement unless specifically acknowledged in writing by both parties.

e. The occurrence of any non performance of an action required hereunder, or the performance of any action contrary to the terms of this Agreement shall constitute a default of this Agreement.

f. Upon notice of default by either party, the party receiving such notice shall immediately cure or, if such default cannot be immediately cured, commence to cure the default, if such

default exists. Failure to cure a default immediately or to immediately commence and diligently pursue cure to a timely conclusion, shall be adequate grounds for immediate termination of this Agreement.

g. Correspondence and notices shall be deemed given when received by hand delivery or delivery by U.S. Mail, Certified, Return Receipt Requested or, in the event that the U.S. Mail or hand delivery is not accepted, receipt of correspondence or notice shall be deemed to have occurred on the third day after posting by U.S. Mail, Certified, Return Receipt Requested, at the addresses below:

For the Society:	President Zoological Society of Florida 12400 SW 152 Street Miami, FL 33177-9990
For the County:	County Manager Miami-Dade County 111 NW 1 Street, Suite 2910 Miami, FL 33128
Copy:	Robert A. Ginsburg Miami-Dade County Attorney 111 NW 1 Street, Suite 2810 Miami, FL 33128

Or to such other addresses as may be designated in writing. Courtesy copies of notices shall be sent to the additional parties as may be requested in writing by the Society or the County.

h. Where any approval is required, such approval shall not be unreasonably withheld or unduly delayed.

i. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

j. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision has never been contained herein. Further, in the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable by virtue of its scope, but may be made valid, legal or enforceable by limitation thereof, such provision shall be deemed to be amended to the minimum extent necessary to render it valid, legal or enforceable under the laws of the jurisdiction in which validity, legality, or enforceability is sought.

k. Contracts to be entered into in furtherance of this Agreement shall be subject to the County's minority and small business enterprise ordinances, as applicable.

This Agreement with those agreements and exhibits referred to or incorporated herein, constitutes the entire Agreement between the Society and the County and may not be changed or amended except in writing and duly approved and signed by the parties.

IN WITNESS WHEREOF, the parties set their hands and seal of approval.

ATTEST:

HARVEY RUVIN, CLERK

BY: _____

WITNESS:

BY: _____

DADE COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS

BY: _____
MERRETT R. STIERHEIM
County Manager

ZOOLOGICAL SOCIETY OF FLORIDA,
A Florida non-profit corporation

BY: _____

ATTACHMENT B

COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 6(L)(1)(G)
5-9-00

RESOLUTION NO. R-444-00

RESOLUTION APPROVING AN AMENDMENT TO THE MIAMI METROZOO OPERATING AGREEMENT AND WAIVING FORMAL BID PROCEDURES, AND REQUIREMENTS OF ADMINISTRATIVE ORDERS 3-2 AND 3-4, AUTHORIZING THE PARK AND RECREATION DEPARTMENT TO REIMBURSE THE ZOOLOGICAL SOCIETY FOR EDUCATIONAL PROGRAMMING AND MARKETING FOR THE MIAMI METROZOO

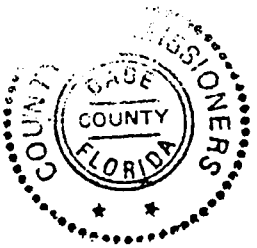
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by Reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves an amendment to the Miami Metrozoo Operating Agreement substantially in accordance with the forms attached hereto and made a part hereof, and authorizes the County Manager to execute same for and on behalf of Miami-Dade County, Florida; and finds it to be in the best interest of the County to waive formal bid procedures and the requirements of Administrative Orders 3-2 and 3-4 to allow the Park and Recreation Department to reimburse the Zoological Society for educational programming and marketing for the Zoo, formal bidding being waived in this instance pursuant to Section 4.03 (D) of the Home Rule Charter by two-thirds (2/3) vote of the Board members present.

The foregoing resolution was offered by Commissioner Dorrin D. Rolle, who moved its adoption. The motion was seconded by Commissioner Bruno A. Barreiro and upon being put to a vote, the vote was as follows:

Dr. Miriam Alonso	absent	Bruno A. Barreiro	aye
Dr. Barbara M. Carey-Shuler	absent	Miguel Díaz de la Portilla	aye
Betty T. Ferguson	aye	Gwen Margolis	absent
Natacha Seijas Millán	absent	Jimmy L. Morales	absent
Dennis C. Moss	aye	Pedro Reboredo	aye
Dorrin D. Rolle	aye	Katy Sorenson	aye
Javier D. Souto	absent		

The Chairperson thereupon declared the resolution duly passed and adopted this 9th day of May, 2000. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. AC

BY: KAY SULLIVAN
Deputy Clerk

ATTACHMENT C

AMENDED AND RESTATED MIAMI-DADE ZOOLOGICAL PARK AND GARDENS OPERATING AGREEMENT

This Amended and Restated Miami-Dade Zoological Park and Gardens Operating Agreement ("Operating Agreement"), is made this _____ day of_____, 2010, by and between Miami-Dade County, a political subdivision of the State of Florida (the "County") and the Zoological Society of Florida, a Florida non-profit corporation (the "Society"), jointly referred to herein as the "Parties".

WITNESSETH

WHEREAS, pursuant to Resolution No. R-1286-98, the Society and the County entered into the Miami Metrozoo Operating Agreement ("Original Operating Agreement") dated November 24, 1998 for the joint operation of Miami Metrozoo; and

WHEREAS, pursuant to Resolution No. R-444-00, the County and the Society agreed to amend the Original Operating Agreement to allow the County to reimburse the Society for marketing and educational programming at Miami Metrozoo, subject to the availability of County funds for that purpose and subject to the extent such funds are included in the budget on an annual basis by the Board of County Commissioners, and

WHEREAS, on April 6, 2010, the Board adopted Resolution No. R-329-10 approving the renaming of Miami MetroZoo to "Miami-Dade Zoological Park and Gardens," recognizing that the name "Zoo Miami" would be used for marketing and recognition purposes; and

WHEREAS, the County and the Society desire to amend and restate the Original Operating Agreement in its entirety as provided in this Operating Agreement,

NOW THEREFORE, in consideration of the mutual promises obligations, covenants contained in this Operating Agreement, the sufficiency of which are hereby acknowledged, the County and Society hereby agree as follows:

1. General Governing Principles

The Parties agree that their relationship shall at all times be governed by the following general principles to which they subscribe:

a. The County, through its Park and Recreation Department, owns the Miami-Dade Zoological Park and Gardens ("Zoo Miami"), a zoological park located at 12400 S.W. 152 Street.

b. The Society is a non-profit corporation organized under the laws of the State of Florida. Among its corporate purposes set forth in Article III of its charter are to

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sponsor and encourage comprehensive zoological studies, to gather and disseminate information to all persons interested in natural history, and to cooperate and assist the County and other governmental entities in the State of Florida in the promotion and development of zoological parks and gardens. The Society shall agree to exclusively direct their efforts and resources to the support of Zoo Miami and its programs.

c. Zoo Miami is an internationally recognized zoo, housing more than 2,000 exotic animals, exhibiting such animals on a zoogeographic scale, and reproducing where possible native habitats and architectural and historical features indigenous to their place of origin.

d. Zoo Miami is invaluable as a source of education and recreation to our residents and visitors and as a national and international tourist attraction.

e. The Parties to this agreement have formed the partnership evidenced in this agreement to support and develop Zoo Miami. The parties have entered into this agreement to delineate their relative rights and responsibilities and thereby avoid misunderstanding, improve management, optimize resources, and eliminate duplication of efforts in the conduct of their affairs so as to better accomplish their individual and collective mission to improve Zoo Miami.

f. The County shall be principally responsible for the operations of Zoo Miami.

g. The Society shall be principally responsible for (1) the marketing, membership program, and promotion of Zoo Miami, (2) expanding educational and volunteer support, and (3) shall serve as the fund-raising arm of Zoo Miami. The Society may access the County's marketing services contract and shall seek resources to complement County marketing funds.

h. Zoo Miami shall be governed by the Miami-Dade Zoological Park and Gardens Oversight Board (the "Zoo Board") comprised of members of the Society and the County, as more particularly set forth in Section 2-1151 of the Code of Miami-Dade County, Florida.

i. Zoo Miami shall have a master strategic plan, annual program plans, including programmatic objectives, and capital and operating budgets which are jointly prepared and adopted by the Society and County.

j. It is recognized that Zoo Miami's success will depend on mutual cooperation and support at all organizational levels. The Parties agree to have its respective staff assist each other to the fullest extent possible and reasonable for the betterment of Zoo Miami.

k. The Zoo Board shall be representative of the racial, ethnic, and gender composition of Miami-Dade County.

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2. Governing Board

Zoo Miami shall be governed by the Zoo Board, lending assistance to the Board of County Commissioners. The Zoo Board shall be a governing advisory board to the Board of County Commissioners, and have such rights and responsibilities as are set forth in this Operating Agreement and in the Ordinance establishing its existence (the "Ordinance"). The Ordinance shall establish the term of office, staff support and quorum and meeting requirements of the Zoo Board. The Zoo Board shall be entitled to promulgate its own rules for the conduct of its affairs. In the event of any conflict between the provisions of this Operating Agreement and the Ordinance, the Ordinance shall govern. The Zoo Board shall be responsible for establishing the long and short term strategic and program plans for Zoo Miami, including establishment of goals and objectives guiding all activities and for overseeing the preparation of a consolidated (Society and County resources) budget of Zoo Miami for adoption by the Society and Board of County Commissioners.

3. Master Plan

The Zoo Board shall determine a set date for the parties to complete, and deliver to the Zoo Board for its approval, a master strategic plan for the facility containing at a minimum the following:

a. All proposed land uses for Zoo Miami;

b. A long-term business plan for Zoo Miami, identifying current and potential markets for Zoo Miami, and the programs or services that will allow Zoo Miami to develop those markets;

c. An assessment and evaluation of existing facilities, features and programs and recommendations for future development; and

d. A financial program that provides a viable, sustainable plan for capital development and ongoing operations and maintenance of Zoo Miami which will be compliant with national accreditation standards.

The Zoo Board shall deliver the approved master plan to the Board of County Commissioners for its approval, which approval shall be granted or denied in the sole and absolute discretion of the County.

Any and all amendments to the master strategic plan shall similarly be first approved by the Zoo Board, for ultimate approval by the Board of County Commissioners.

4. Capital Improvements

The design and construction of capital improvements shall be carried out jointly by the Society and County. Whenever a formal selection process is utilized by either party for the selection of architects, engineers or contractors, where subjective factors are evaluated as a condition of award, each party shall designate, when feasible, a representative to participate in the process of evaluation and recommendation. Capital improvements shall be constructed in accordance with the adopted master strategic plan and applicable procedures. Either party may contract for design and construction services and perform the related contract management function, all subject to the applicable legal requirements. The Zoo Board shall render recommendations as to the appropriate party to carry out projects on case-by-case basis. No projects, including new construction, exhibit, feature or other capital improvements, may be undertaken unless funding is set forth in the approved budget.

5. Budget

The County and the Society shall, on an annual basis, collaborate in the development of a consolidated budget representing the combined resources and expenditure plans of both Parties for Zoo Miami. The Parties shall, no later then February 1 of each year, complete and deliver to the Zoo Board for it approval a proposed consolidated budget for Zoo Miami. The Budget shall be consistent with the master strategic plan and identify all anticipated receipts of income and all capital, maintenance and operating expenses expected to be borne specifically by each of the Parties during the fiscal year. The budget shall conform to a format adopted for County agencies by the County Mayor or Mayor's designee as of the annual budget process. The Zoo Board shall resolve any dispute between the parties with respect to the budget. The Zoo Board shall approve a final proposed budget not later than March 1 of each year, whereupon it will be submitted to the County Mayor or Mayor's designee. In the event that the final proposed consolidated budget is approved by both the Board of County Commissioners, through the final adopted County budget, and the Society Board of Directors, it shall become the final budget for Zoo Miami. In the event that either the Society or the County increase, reduce of otherwise materially alter any of the items pertaining to their respective obligations as set forth in the final proposed budget, the Zoo Board shall determine the most appropriate adjustments to the final proposed budget to accommodate those changes and approve a final budget for Zoo Miami. It is understood that due to unique audit requirements and the existence of independent financial accounting systems, the consolidated budget will include separate Society and County budget components.

6. Zoo Operations

Except with respect to those functions specifically identified in this Operating Agreement to be performed by the Society, the County shall be primarily responsible for the operations of Zoo Miami. Specifically, the County will be responsible for the following Zoo functions:

a. Building and grounds maintenance, including security;

b. Food services;

c. Conservation and research;

d. Transportation within the park;

e. Animal care and veterinary services;

f. County gate revenue collection and administrative support; and

g. Graphics.

7. Society Operations

The Society shall operate the contact yard and ecology theater areas of the Children's Zoo ("PAWS") subject to the requirements of this Operating Agreement. All revenues derived from, and expenses related to, the Society's operations at Zoo Miami shall be accounted for in the approved consolidated Zoo budget. No activity to be conducted by the Society shall be in contravention of any existing right of any concessionaire or other third-party contractor of the County, and the Society agrees to immediately cease and desist from any such activity upon request from the County. Any new third-party contracts or the extension of any such contracts shall be approved by the Zoo Board, prior to such items being presented to the Board of County Commissioners.

The County shall provide to the Society office space within Zoo Miami reasonably required by the Society to conduct its activities in support of Zoo Miami. In addition, the County shall provide to the Society space within Zoo Miami as may be reasonably required for the Society to conduct fundraising activities in support of Zoo Miami.

8. Marketing

Unless otherwise identified in this agreement to be performed by the County, the Society shall be responsible for the marketing and promotions of Zoo Miami. Subject to the Zoo Board approval, the Society shall carry out certain public relations, group sales and guest services activities in cooperation with existing Zoo staff. As a component of the master strategic plan, the Parties agree to jointly complete and submit to the Zoo Board for approval no later than September 1 of each year, a comprehensive marketing plan for the promotion of Zoo Miami for the upcoming County fiscal year. Proposed expenditures for marketing shall be identified in the approved budget. To the extent feasible and in the best interest Zoo Miami, the County's general advertising and marketing contract(s) may be utilized by the Society for externally procured marketing services. In the event that the Society does not employ the use of the County's general advertising and marketing contracts, the Society shall be authorized to procure outside marketing services, subject to the appropriate budget authorization. The County shall reimburse the Society for the Society's expenditures under this section to the extent such funds are available for that purpose and to the extent such funds are included in the budget on an annual basis by the Board of County Commissioners for advertisement, marketing, and promotion at Zoo Miami.

9. Fundraising

The Society is the fundraising arm of Zoo Miami. Accordingly, the Society shall be the primary non-profit organization with which the County has contracted to promote, sponsor and support the activities of Zoo Miami. The Society shall be principally responsible for efforts to solicit corporate, foundation and individual donations. The County shall be primarily responsible for applying for and administering, in conjunction with the Society, all grants from the federal, state or local governments. Nothing herein shall prevent the Society from seeking grants where appropriate in conjunction with the County and with the Zoo Board approval.

Fundraising shall be performed only for activities specifically approved in the master strategic plan. Fundraising goals and related timetables shall be in accordance with the approved master strategic plan and budget. Private fundraising shall conform tothe national Standards of Philanthropy established by the National Charities Information Bureau as well as the standards for Charitable Solicitations established by the Council for Better Business Bureaus.

10. Donor Recognition Program

In connection with its fundraising, Zoo Miami shall at all times maintain a donor recognition program to express the Parties' gratitude for public beneficence. The donor recognition program shall be subject to the approval of the Zoo Board and to all applicable legal requirements. The Parties shall abide by the terms of the donor recognition program.

11. Special Tours

In connection with its fundraising and goodwill efforts on behalf of Zoo Miami, the Society shall be entitled to conduct tours of Zoo Miami, including "behind-the-scenes" tours. These tours will be conducted free of charge, except where they might require extraordinary expenses as determined in the discretion of the County, in which case the expenses must be provided for within the adopted budget. The tours will be conducted during normal Zoo hours. The Society shall give to the County Zoo Staff notice at least forty-eight (48) hours in advance of an anticipated special tour. If the 48-hour notice is not possible, the Society will provide as much advance notice as possible and will provide the reason why the requisite notice was not provided. Tours other than during normal business hours will be reserved for major benefactors only, and notice will be provided to Zoo Miami Director as noted above.

12. Education

Unless otherwise identified in this Operating Agreement to be performed by the County, the Society and the County shall be jointly responsible for carrying out educational programming at Zoo Miami. As a component of the master strategic plan, the Parties agree to jointly complete and submit yearly to the Zoo Board for approval, a comprehensive education program for Zoo Miami. Proposed expenditures for educational programming shall be identified in the master strategic plan. The County shall reimburse the Society for the Society's expenditures under this section to the extent such funds are available for that purpose and to the extent such funds are

included in the budget on an annual basis by the Board of County Commissioners for educational programming at Zoo Miami.

13. Membership Costs, Zoo Passes, Zoo Society Membership Resident Rates Discounts.

Immediately upon execution of this Operating Agreement, the Society, in cooperation with the Park and Recreation Department, shall develop an appropriate Zoo Membership program. Such program shall balance the need to broaden the support membership base with optimizing earned operating revenue for Zoo Miami. The program shall be approved by the Zoo Board.

14. Contingency Reserve

The Parties shall maintain a contingency fund deemed reasonable in the consolidated budget process to address unanticipated, extraordinary costs or revenue reductions. Either party may apply for contingency funds, subject to the approval of the Zoo Board.

15. Accreditation

Zoo Miami, and the Parties to this agreement, shall at all times comply with all accreditation standards published by the American Zoo and Aquarium Association (AZA) and any other nationally recognized accreditation boards for zoos or similar park and recreation facilities. In the event that either party falls below any of those standards in the conduct of its activities or functions for Zoo Miami, or notice is given by those organizations that the accreditation of ranking of Zoo Miami is comprised, the party responsible for such deficiency shall address the deficiency immediately and correct is as soon as possible, at that party's sole expense.

16. Audit

The Society shall maintain its books and records in accordance with generally accepted accounting principles. Each year, the Society shall cause its books and records to be audited by an independent certified public accountant, and a copy of the audited financial statement shall be delivered to the County not later than one hundred and twenty days after the end of the Society's fiscal year. The County is hereby authorized to access the books and records of the Society during normal business hours, upon reasonable notice to the Society or to its independent auditor, such data as may be needed to adequately reflect the operation of the Society and the Society's compliance with the terms of this Agreement. At all times, the identity of the donors to the Society who desire to remain anonymous shall be protected.

17. Term; Effectiveness

This Operating Agreement shall become effective on the date that the County executes this Operating Agreement. This Agreement shall be in effect for the period of three years following its effective date, and shall be automatically renewed annually for subsequent terms of one year, unless

60 days prior to the expiration of the then current term, either party notified the other of its intent not to renew this Operating Agreement.

This Agreement shall be subject to review and concurrence of the United States Department of the Interior, as may be required for deed requirements.

18. County Maintenance Effort

The County will make good faith efforts to maintain the County general fund subsidy to Zoo Miami at no less then 80 percent of the average subsidy level for fiscal years FY 1996 – FY 1998, provided, however, such subsidy is subject to an annual appropriation by the Board of County Commissioners from legally available non ad valorem revenues in accordance with Florida law. Such general fund subsidy shall only be used to pay for the cost of operating Zoo Miami.

19. General Provisions

During the term of this Operating Agreement, the following provisions shall apply:

a. Neither the County nor the Society may transfer in any fashion all of any part of its respective interest in this Operating Agreement to a third party.

b. The County and the Society shall obey all laws, statues, ordinances, codes, rules, and regulations of all governmental entities with appropriate authority and jurisdiction, including meetings insurance levels in accordance with established County Risk Management requirements.

c. Indemnification

The Society shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Operating Agreement by the Society or its employees, agents, servants, partners principals or subcontractors. The Society shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Society expressly understands and agrees that any insurance protection required by this Operating Agreement or otherwise provided by the Society shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The County does hereby agree to indemnify and hold harmless the Society to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a person injury or property damage claim or judgment by nay one person which exceeds the sum of $100,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of $200,000, form any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify the Society from any liability or claim arising out of the negligent performance or failure of performance of the Society or any unrelated third party.

d. No indulgence, consent to, or waiver of any breach of any provision of this Operating Agreement by either party shall be construed as a consent to or wavier of any other breach of the same of any other provision of this Operating Agreement unless specifically acknowledged in writing by both Parties.

e. The occurrence of any non-performance of any action required hereunder, or the performance of any action contrary to the terms of this Operating Agreement shall constitute a default of this Operating Agreement.

f. Upon notice of default by either party, the party receiving such notice shall immediately cure or, if such default cannot be immediately cured, commence to cure the default, if such default exists. Failure to cure a default immediately or to immediately commence and diligently pursue cure to a timely conclusion, shall be adequate grounds for immediate termination of this Operating Agreement.

g. Correspondence and notices shall be deemed given when received by hand delivery or delivery by U.S. Mail, Certified, Return Receipt Requested or, in the event that the U.S. Mail or hand delivery is not accepted, receipt of correspondence or notice shall be deemed to have occurred on the third day after posting by U.S. Mail, Certified, Return Receipt Requested, at the addresses below:

For the Society:	Chair of Board of the Zoological Society of Florida 12400 SW 152 Street Miami, FL 33177-9990
For the County:	County Mayor Miami-Dade County 111 NW 1 Street, Suite 2910 Miami, FL 33128
Copy:	Miami-Dade County Attorney 111 NW 1 Street, Suite 2810 Miami, FL 33128

Or to such other addresses as may be designated in writing. Courtesy copies of notices shall be sent to additional parties as may be requested in writing by the Society or the County.

h. Where any approval is required, such approval shall not be unreasonable withheld or unduly delayed.

i. This Operating Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

j. In the event any one or more of the provisions contained in the Operating Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Operating Agreement and this Operating Agreement shall be construed as if such invalid, illegal, or unenforceable provision has never been contained herein. Further, in the event that any provision of this Operating Agreement shall be held to be invalid, illegal or unenforceable by virtue of its scope, but may be made valid, legal or enforceable by limitation thereof, such provision shall be deemed to be amended to the minimum extent necessary to render it valid, legal or enforceable under the laws of the jurisdiction in which validity, legality, or enforceability is sought.

k. Contracts to be entered into in furtherance of this Operating Agreement shall be subject to all applicable County ordinances and State law, as reasonably determined by the County.

20. Sovereign Rights

It is expressly understood that notwithstanding any provisions of this Operating Agreement and the County's status thereunder:

a. The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of Zoo Miami or the operation thereof, or be liable for the same; and

b. The County shall not by virtue of this Operating Agreement be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of Zoo Miami.

c. Notwithstanding and prevailing over any contrary provision in this Operating Agreement, any County covenant or obligation that may be contained in this Operating Agreement shall not bind the Board, the County's Planning and Zoning Department, DERM, or any other County, Federal or State Department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

This Operating Agreement constitutes the entire agreement between the Society and the County and may not be changed or amended except in writing and duly approved and signed by the Parties.

IN WITNESS WHEREOF, the Parties set their hands and seal of approval.

ATTEST:

HARVEY RUVIN, CLERK

BY:_____

DADE COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS

BY:_____

County Mayor

WITNESS:

BY:_____

ZOOLOGICAL SOCIETY OF FLORIDA, A Florida non-profit corporation

BY:_____

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MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item:	**11(A)9**
File Number:	**102103**
Committee(s) of Reference:	**Board of County Commissioners**
Date of Analysis:	**November 4, 2010**
Type of Item:	**Resolution Approving Amended and Restated Operating Agreement**
Prime Sponsor:	**Chairman Dennis C. Moss**

Summary

This item approves the amended and restated operating agreement (OA) for Miami-Dade Zoological Park and Gardens between Miami-Dade County and Zoological Society of Florida (ZSF).

Background and Relevant Legislation

The last amendment to the OA was approved on May 9, 2000, through resolution R-444-00 which allowed the County to reimburse the Society for marketing and educational programming at Miami Metrozoo. In accordance to the OA, the ZSF receives an annual allotment from Miami-Dade County to create and execute a marketing plan for the zoo. The annual allotment is executed on a reimbursement basis.

ZSF's Financial Statements show that in addition to the Miami Metrozoo Marketing transactions, the Society receives grants through the Cultural Affairs Department, Safe Neighborhood Parks (SNP) Bond funds and General Obligation Bonds (GOB).

ZSF's Financial Statements for 2007 and 2008 lists Miami Metrozoo marketing allotment of $1,005,000 for FY2007 and $950,000 for FY2008. ZSF was awarded $248,080 and $308,412 in Cultural Affairs grants for years ending September 30, 2007 and 2008 respectively. Actual amounts for SNP funds are administered by the ZSF on a cost reimbursement basis and these activities have not been recorded in the accompanying statement of activities.

ZSF's Financial Statements for 2008 and 2009 lists Miami Metrozoo marketing allotment of $950,000 for FY2008 and $1,150,000 for FY2009. ZSF was awarded $308,412 and $325,524 in Cultural Affairs grants for years ending September 30, 2008 and 2009 respectively.

On February 6, 2007, the Board approved Resolution R-120-07, authorizing the County to enter into a grant agreement with the ZSF for the construction of GOB Project No. 46. Additionally, R-120-07 authorized a

significant modification to GOB Project No. 46. This significant modification revised the project description to: "Construction of Amazon and Beyond Project and Phase IV Lakes and Australia Exhibit." This significant modification allowed the Amazon and Beyond Project to be funded by GOB funds. The amount of GOB funds transferred to the Amazon and Beyond Project from GOB Project No. 46 was $18.7 million. The $18.7 million was used to contribute to the total project cost for Amazon and Beyond which was estimated at $50 million.

On September 21, 2006, ZSF's Board of Directors passed a resolution that commits the ZSF to raise $18.7 million in private funds to repay the County in understanding of Miami-Dade County's intent to reassign GOB funds, estimated at $18 million, to complete the Amazon and Beyond Project.

Resolution R-120-07 does not legally commit the ZSF to pay the County $18.7 million, however, ZSF's financial statements reflect its intent on paying this balance by 2014.

How much of the $18.7 million has been repaid by the ZSF to Miami-Dade County to date?

According to Miami-Dade Legislative File No. 102289, ZSF has advised the County that the difficult economic situation over the last three years have made it extremely challenging to raise private dollars anticipated to restore the funding by 2014 ($18.7 million) but the organization stands committed to raising $3 million for the Florida Exhibit (GOB Project No.47) by the time it is ready to open.

Due to ZSF's inability to pay by 2014, how will that affect project no. 46, no. 47 and/or other GOB projects?

Policy Change

Changes in the OA include the following:

- Replaces reference of Miami MetroZoo to "Miami-Dade Zoological Park and Gardens" and recognizes that the name "Zoo Miami" will be used for marketing and recognition purposes;
- Updates Zoo Miami description in Section 1 (c) from "900 wild animals in its 295 developed acres, exhibiting mammals, birds and reptiles" to "Housing more than 2,000 exotic animals";
- Removes the section of the agreement that references the Governing Board Membership since this is already included in Section 2-1151 of the Miami Dade County Code; and
- Removes ZSF responsibility of operating the Zoo Miami gift shop and will only operate the contact yard and ecology theatre areas of the Children's Zoo.

Comments

The General Fund subsidy for FY09-10 to the zoo was $9.261 million.

Prepared by: Mia B. Marin