

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: El Paso Zoo

AGENDA DATE: March 29, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Steve Marshall, Zoo Director 521-1855

DISTRICT(S) AFFECTED: All

SUBJECT:

Request that City Council authorize the City Manager to accept the donation of \$250,000.00 from the Society for the purpose of funding and supporting the construction of an interactive water play feature known as a splash pad.

BACKGROUND / DISCUSSION:

The El Paso Zoological Society secured funding for the construction of an interactive water play feature known as a splash pad at the El Paso Zoo to be available to the public in the summer of 2011.

PRIOR COUNCIL ACTION:

Yes, the El Paso Water Utilities Discovery Center and the El Paso Electric Kalahari Research Station.

AMOUNT AND SOURCE OF FUNDING:

\$250,000.00 from the El Paso Zoological Society

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, the City of El Paso (hereafter “City”) wishes to have an interactive water play feature known as a splash pad at the El Paso Zoo designed and constructed to be available for the public in the summer of 2011 (hereafter the “project”); and

WHEREAS, the El Paso Zoological Society (hereafter “Society”) desires to fund and support the construction of the project by donating a total of two hundred fifty thousand dollars (\$250,000.00) in multiple payments over the period of four years; and

WHEREAS, the City Council wishes to accept this donation for the purpose stated; and

WHEREAS, the City Council authorizes the City Manager to accept this donation, which will be made in multiple payments, and to execute necessary documents to accept the donation and allocate such funds.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Council authorizes the City Manager to accept the donation of \$250,000.00 from the Society for the purpose of funding and supporting the construction of an interactive water play feature known as a splash pad at the El Paso Zoo designed and constructed to be available for the public in the summer of 2011 (hereinafter the “project”). Payment of this donation will be made in multiple payments as follows: \$100,000.00 within two weeks of the adoption of this resolution; \$50,000 by April 1, 2012; \$50,000 by April 1, 2013; and \$50,000 by April 1, 2014. The City Manager is also hereby authorized to enter into the attached Agreement with Society and to execute any and all necessary documents for the acceptance of the donation for this purpose and any necessary documents for the allocation of such funds.

ADOPTED this ____ day of _____, 2011.

CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
Municipal Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Kristen L. Choi
Assistant City Attorney

Steve Marshall, Director
El Paso Zoo

2. The City accepts donation as outlined above, however Society recognizes that the City will have already funded the project prior to the receipt of the full amount, therefore, the funds received will be allocated in accordance with the City's policies and procedures. City will construct or cause to be constructed, the project in reliance up on this donation to be available to the public by August 31, 2011.
3. **RELATIONSHIP.** The Society is an independent contractor. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.
 - 3.1 As an independent contractor, the Society understands and agrees that it will be responsible for its respective acts or omissions, and the City shall in no way be responsible as an employer to Society's officers, employees, agents, representatives or sub-contractors, who perform any service in connection with this Agreement.
4. **NO COMPENSATION.** The Society shall not receive any compensation or benefit from the City under this Agreement, except as expressly set forth herein.
5. **GOVERNMENTAL FUNCTION.** The Society understands and expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the City enters into this Agreement as a governmental entity for the purpose of performing a governmental function.
6. **TERMINATION.** This Agreement shall terminate simultaneously with the City's acceptance of the final payment as outlined in paragraph 1.4 herein, unless the parties mutually agree to extend said date. The Parties may terminate the Agreement by mutual consent upon such terms as they may agree in writing.
7. **GENERAL PROVISIONS**
 - 7.1 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the City and the Donor. The City Manager is authorized to enter into such Amendment if it does not affect the City's annual budget.
 - 7.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

- 7.3 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.
- 7.4 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Contract is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.
- 7.5 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address listed below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY: City of El Paso
Attention: City Manager's Office
Two Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

COPY TO: City of El Paso
Director, El Paso Zoo
4001 E. Piasano Drive
El Paso, Texas 79905

DONOR: El Paso Zoological Society
Attention: Ms. Renee R. Neuert
P.O. Box 10179
El Paso, Texas 79995

- 7.6 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the project and no amendment or modification of the terms hereof shall be binding unless same be in writing and signed by both parties.
- 7.7 Warranty of Capacity to Execute Agreement. The person signing this Agreement on behalf of the Society warrants that he/she has the authority to do so and to bind the Society to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

EXECUTED, this _____ day of _____, 2011.

CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:

Steve Marshall, Director
El Paso Zoo

DONOR: EL PASO ZOOLOGICAL SOCIETY

By: _____
Title: _____
Printed Name: _____

Back-up for Splash pad agenda item 3/29/11

Resolution and Donation Agreement.

One of the two new features planned for this year for the Zoo is an interactive water play feature called a splash pad. It is also referred to as a “zero-depth” fountain. The concept is, water squirts up from the ground and drains back into a surface designed for children to play on.

In the constant effort to bring more people to the Zoo, this play feature will accomplish that, as well as, increase length of stay at the Zoo.

This family friendly water feature will be designed as a fun guest amenity. The water jets are programmable to create an ever-changing “dancing waters” effect. Located at the site of the former sea lion pool, the design will be in natural colors and will include information on natural desert springs and water conservation. Plenty of seating and shade will be provided around the feature which will have a toddler zone and an area for older kids.

Our design will also be driven by water conservation. The feature will be of moderate size at about 2400 sq feet, have low flow water jets with a maximum output of 100 gal per minute, designed for recirculation of the water, and equipped to sanitize the water to meet all required codes for safety. Motion sensors will reduce or turn off the water flow when no one is on the site.

Funding for this addition to the Zoo has come to us through the support of the El Paso Zoological Society. A generous pledge of \$250,000 was secured by the Society from the Hunt Family Foundation for the design and construction of this project.

Increased operational costs will be negligible, management and maintenance of the system will be accomplished by the Zoo’s current Aquatic Systems Manager, and any additional operating costs will be absorbed by the Zoo.

The Resolution and Donation Agreement on the Council agenda will authorize the City Manager to accept the donation for this project in a series of payments over the next three years with the project being designed, constructed and operational by August of this year using City funds borrowed from the reserve. The reserve will be repaid over the course of the pledge payments.



4401 North Mesa, El Paso, TX 79902-1150
P.O. Box 12667, El Paso, TX 79913-0667
Office 915 533-1122 • Fax 915 533-1172

February 12, 2010

Ms. Renee R. Neuert, Executive Director
El Paso Zoological Society
P.O. Box 10179
El Paso, Texas 79995

RE: Funding Commitment

Dear Ms. Neuert:

On behalf of the Hunt Family Foundation, we are pleased to confirm with you our pledge agreement of \$250,000 towards the Interactive Water Feature project at the El Paso Zoo. The foundation commits to five annual payments of \$50,000 beginning March 1, 2010 and ending on March 1, 2014. A formal letter along with our initial check will follow in approximately two weeks.

We appreciate your efforts and accomplishments in the community and we look forward to continuing our relationship with the El Paso Zoo for many years to come.

Best regards,

A handwritten signature in black ink, appearing to read 'Joshua W. Hunt', written over a horizontal line.

Joshua W. Hunt
President

JWH/bv

cc: Steve Marshall, El Paso Zoo