

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

DEPARTMENT: El Paso Zoo

AGENDA DATE: May 1, 2007

CONTACT PERSON/PHONE: Steve Marshall/521-1850

DISTRICT(S) AFFECTED: District 3 Primary District

SUBJECT:

That the City Manager be authorized to sign a donation agreement between the City and the Zoological Society, Inc. to provide donated design services, construction documents and funding for construction of the Discovery Education Center in the proposed Western Expansion area of the Zoo.

BACKGROUND / DISCUSSION:

El Paso Zoological Society mission is to fund raise and promote zoo programs and projects. Zoological Society helped identify additional funds and matching grant money from foundation and private donors.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Approved design and construction of Zoo Western Expansion Project including new Entry complex with public activities/education building.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

The El Paso Zoological Society and matching funds of \$180,000.00 for Education Building wing, supplementing existing Quality of Life Western Expansion Bond Project funds. These resources also represent leverage for matching funds to be placed as follows:

Zoo Western Expansion Project PQLZO 106, Department 31255014 Local Capital Project,

Account 50827 Construction, Fund 27709 Capital Projects Private, Class 31000 Public Works .

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____


(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

07 APR 26 PM 5:43
CITY CLERK DEPT.

RESOLUTION

That the City Manager be authorized to sign a donation agreement between the City and the Zoological Society, Inc. to provide donated design services, construction documents and funding for construction of the Discovery Education in the proposed Western Expansion area of the Zoo.

ADOPTED this 1st day of May 2007.

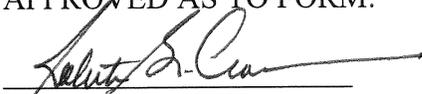
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

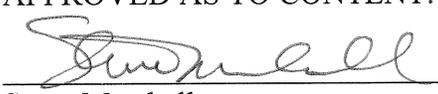
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Roberta B. Cross
Assistant City Attorney

APPROVED AS TO CONTENT:



Steve Marshall
Zoo Director

STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

This Agreement is entered into this _____ day of May, 2007, by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "the City", and **THE EL PASO ZOOLOGICAL SOCIETY, INC.**, a Texas non-profit corporation, hereinafter referred to as "the Society".

WITNESSETH

WHEREAS, the Parties have been working together pursuant to a "License Agreement", dated November 12, 2001, whereby the Society has provided various goods and services for the betterment of the Zoo; and

WHEREAS, the El Paso Zoo (hereinafter referred to as "the Zoo") is to be improved, pursuant to a quality of life bond, voted on and approved by the citizens of El Paso; and

WHEREAS, the Society desires to donate design services, construction documents, and funding to the City in an effort to supplement allotted quality of life bond funds for the Zoo and allowing for additional improvements to the Zoo; and

WHEREAS, the Society has spearheaded an effort to assist in building a Discovery Education Center at the Zoo as part of these additional improvements and the Society has been instrumental in garnering the financial and other support of the Public Service Board/El Paso Water Utilities (collectively referred to as the "PSB") for the construction and operation of this facility; and

WHEREAS, the PSB's participation in the project will allow for more water conservation education and awareness in the City and thus, serves an important purpose relating to the management of water resources by the PSB; and

WHEREAS, the Society has utilized this important participation by the PSB to leverage other contributions to this project; and

WHEREAS, The City and the Society have determined that this cooperative effort shall best serve both Parties by allowing the allotted funds for the Zoo to be augmented.

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto do mutually agree as follows:

1. **DURATION AND SCOPE.** This Agreement shall terminate upon completion and final acceptance of the planned improvements as related to the Zoo as set forth herein.

2. **DUTIES OF THE PARTIES.**

A. The Society will provide the following goods, services and funding to the City regarding the construction of the El Paso Water Utilities Discovery Education Center, as part of the Zoo Western Expansion Project currently under construction at the Zoo.

- (1) The donation of design and construction documents (the Plans) for a Discovery Education Center, as a permanent Zoo improvement. The donation shall include the costs and work associated with making external necessary reviews done pursuant to or in accordance with the Americans with Disabilities Act. The Plans shall be provided in a format suitable to the City and the donation shall include all costs of printing the appropriate number of plans and other associated printing costs. The Plans shall comply with any and all applicable codes, laws or regulations, and administrative policies and procedures of the City's Engineering, Building Services, and Financial Services Departments relating to City construction projects. The Plans shall also be in a format appropriate to City construction projects to ensure the eventual approval and usage of the Plans by the City. By and through this agreement the City acknowledges receipt of the Plans. The parties agree that the City shall not make modifications to the Plans, unless necessary to comply with applicable codes or existing City policies and procedures, without first obtaining the prior written approval of the Society prior to the start of construction. The Society shall not unreasonably withhold its approval. Once construction has commenced, the City shall notify the Society as soon as practicable of any Plan modifications.
- (2) The donation of funding to be used for the construction of the El Paso Water Utilities Discovery Education Center in the amount of \$180,000.00. Such funding shall be remitted to the City for inclusion within the City's Zoo Western Expansion Project (which includes the construction of the Discovery Education Center) not later than five business days after the effective date of this agreement.
- (3) The donation of exhibits fabrication supplies, equipment and graphics for use in the Discovery Education Center of the value and amounts as set forth in Exhibit A, attached hereto. Such items shall be delivered to the City pursuant to a timetable agreed upon by the Society and the Director of the Zoo.

B. The Society, through its agreement with its architect, shall provide for the availability of the architect to provide consultation and services related to the construction of the Discovery Education Center, as requested by the City. Such services of the architect shall be at no cost to the City and its contractors.

C. The City will use all goods, services and funding provided by the Society pursuant to this agreement solely for the Zoo Western Expansion Project including the construction and set up of the Discovery Education Center.

D. The City will collaborate with the PSB for the operation of the facility in conformity with the provisions of any Joint Resolution adopted by the City Council and the PSB.

3. **LEGAL RELATIONSHIP.** Nothing in this Agreement shall be construed as creating a legal relationship between the Society and the City. The Society and all its members are volunteers

and are providing the services noted in this agreement as a gift. Nothing herein shall be construed as creating the relationship of employer/employee, principal/agent or other License or joint venture between the parties. The Society does not have, and will not attempt to assert, the authority to make commitments for or bind the City to any obligation.

4. **SAFETY.** The Society shall comply with all applicable laws, ordinances and regulations and shall encourage its participants in this Agreement to comply with all applicable laws, ordinances and regulations. The Society shall exercise every precaution for the safety of public and private property and persons.

5. **DISCRIMINATION.** The Society, its officers, agents, servants, employees, volunteers and third parties will not discriminate on account of race, color, religion, sex or national origin, nor shall it permit or allow any discrimination in the work done pursuant to this Agreement.

6. **HANDICAPPED ACCESSIBILITY STANDARDS.** The Society agrees, that in the performance of this Agreement, it will comply with the Americans with Disabilities Act ("ADA"), as may be required by law. The Society also agrees and understands that the City is required to comply with numerous local, state and federal laws. In addition, these various laws and regulations often determine the City's abilities to implement improvements to municipal property. Accordingly, should the City choose not to implement the design, as presented by the Society, the Society hereby agrees and understands that certain modification of said design may be necessary and shall not be the basis for non-compliance with this Agreement, on the part of the City.

7. **COMPLIANCE WITH LAWS.** The Society shall comply with all applicable federal, state and local laws and regulations, all City ordinances and all codes and regulations. Failure to do so in any manner which materially impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder shall constitute a material breach of this Agreement.

8. **TERMINATION.** Either party may terminate this Agreement by sending written notice to the other if the other is in default in a matter of serious importance to the aggrieved party. Termination shall be without prejudice to any obligation by one party to the other, which shall have accrued and be owing prior thereto.

9. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

10. **NOTICES.** All notices and communications under this Agreement shall be in writing and shall be either hand-delivered or sent by certified mail, return receipt, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: Mayor
City of El Paso
2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901

COPY TO: City Engineer
2 Civic Center Plaza, 4th Floor
El Paso, Texas 79901

SOCIETY: The El Paso Zoological Society
Attn: Hector Gonzalez, President
4001 E. Paisano St.
El Paso, TX 79905

11. **ENTIRE AGREEMENT.** This Agreement constitutes and expresses the entire agreement between the parties hereto, and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement shall not be modified except by written instrument signed by both parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date noted above.

THE CITY OF EL PASO

Joyce Wilson, City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Roberta B. Cross
Assistant City Attorney

APPROVED AS TO CONTENT:



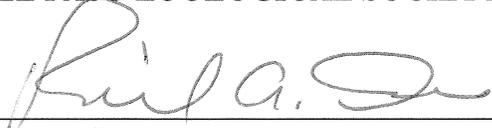
Steve Marshall
Director, Zoo Department

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.
Interim City Engineer

THE EL PASO ZOOLOGICAL SOCIETY

A handwritten signature in cursive script, appearing to read "Richard A. Olivo", written in black ink above a horizontal line.

Richard A. Olivo