

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

DEPARTMENT: ZOO

AGENDA DATE: July 30, 2013

CONTACT PERSON/PHONE: STEVE MARSHALL, ZOO DIRECTOR, 521-1855

DISTRICT (S) AFFECTED: ALL

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Council authorizes the City Manager to accept the donation from the El Paso Zoological Society (EPZS) for the purpose of a multi-component tree house playground, this includes design, fabrication, site preparation and installation, for the El Paso Zoo. To also accept sponsorship for three years of programming, from 2016 through 2018 for the future Wildlife Theater to be located at the El Paso Zoo.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The El Paso Zoological Society (EPZS) and Mr. & Mrs. Paul Foster are donating to the City a completed Tree House Playground valued at \$500,000.00 to be constructed at the El Paso Zoo under the supervision and oversight of the Zoo Director. Also being donated to the City is a sponsorship for three years of programming beginning in 2016, for the public education and entertainment at the Zoo' Wildlife Theater valued at \$900,000.00

SELECTION SUMMARY:

N/A

PRIOR COUNCIL ACTION:

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

Yes, City Council has accepted donations from the El Paso Zoological Society for the Splash pad, the El Paso Water Utilities Discovery Center and the El Paso Electric Kalahari Research Station.

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?

Funding to be provided by the El Paso Zoological Society.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD:

Name

Steve Marshall 
Signature

7/23/13
Date

RESOLUTION

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

That the City of El Paso accepts, with gratitude, the donation from the El Paso Zoological Society ("Society"), of the following:

- Design, fabrication, site preparation and installation of a multi-component tree house playground, valued at up to \$500,000.00, for the El Paso Zoo as further described in the agreement with the Society attached hereto as Exhibit "A" ("Contract") and incorporated herein; and
- Sponsorship for three years of programming, from 2016 through 2018 for the future Wildlife Theater to be located at the El Paso Zoo, valued at up to \$900,000.00 as further described in the Contract.

That City Council also authorizes the City Manager to sign any necessary documentation required for this donation that does not affect the approved budget of the City of El Paso including to sign the Contract.

That the City of El Paso recognizes the donation to the Society by Mr. and Mrs. Paul Foster, which enables these projects.

Dated this _____ day of _____, 2013.

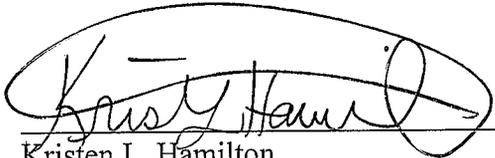
CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

APPROVED AS TO FORM:

Richarda Duffy Momsen
City Clerk



Kristen L. Hamilton
Assistant City Attorney

THE STATE OF TEXAS
COUNTY OF EL PASO

§
§
§

**DONATION AND
LICENSE AGREEMENT**

This Donation and License Agreement (“Agreement”), made this the ____ day of _____, 2013, (hereinafter the “Effective Date”) between the CITY OF EL PASO, a Texas home rule municipal corporation, hereinafter referred to as “City”, and the EL PASO ZOOLOGICAL SOCIETY, hereinafter referred to as “Donor” or “the Society” for the donation of the following: a Tree House Playground, to include design, construction and installation; and sponsorship of program costs for the Wildlife Theater at the El Paso Zoo (herein after “Site” or “Zoo”).

WHEREAS, the City owns and operates the El Paso Zoo;

WHEREAS, the Society wishes to donate to the City a completed Tree House Playground (herein after “Playground”) valued at \$500,000.00 to be constructed at the Zoo under the supervision and oversight of the Director of the El Paso Zoo (hereinafter “Director”);

WHEREAS, the Society wishes to donate to the City sponsorship for three years of programming beginning in 2016, for the public education and entertainment at the Zoo’s Wildlife Theater (herein after “Programming”) valued at \$900,000.00;

WHEREAS, the El Paso City Council finds that the donation of these items serves the municipal purpose of providing cultural and educational opportunities to the residents and visitors to El Paso, and enhances the mission of the Zoo of celebrating the value of animals and natural resources and to create opportunities for people to rediscover their connection to nature; and

WHEREAS, the El Paso City Council agrees to accept this donation for the purpose stated in accordance with this agreement.

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration, the City and the Society enter into this Agreement for the donation of the Playground and Programming, and the license to enter the Site as necessary for installation of the Playground.

1.0 TERM. This Agreement shall be from the effective date through January 1, 2019.

2.0 CONSIDERATION. The parties agree that the opportunity to participate with the City as the donor is full and adequate consideration for the donation of the Playground and Programming.

3.0 TREE HOUSE PLAYGROUND.

3.1 The Society wishes to donate, and the City wishes to accept the donation of a Tree House Playground to be located at the El Paso Zoo. The Playground will contain the components listed on the proposal attached hereto as Exhibit "A" and incorporated as if fully set forth herein. The City will give the Society naming rights to the Playground, with the consultation and approval of the Director. The Society shall enter into a contract that is reviewed and approved by the El Paso City Attorney's office and the Director, with a company approved by the Director for the design, fabrication, site preparation, and installation for the Playground (the "Construction Contract"). The company hired by the Society for this work shall hereinafter be referred to as its "Contractor." The Construction Contract shall require prior approval by the Director for final design, location, site preparation and installation of the Playground, and shall require coordination with the City's designated representative from the City Engineering Department ("Engineering"). Any changes to the proposal must be coordinated with and approved by the Director.

3.2 Construction of Improvements.

3.2.1 The Society herein covenants and agrees to require its Contractor to complete improvements to the Playground in accordance with the schedule attached hereto as Exhibit "B" and incorporated as if fully set forth herein, and shall coordinate all construction with Engineering. The estimated costs of the Playground are outlined on Exhibit "A." The Society shall require its Contractor to obtain all necessary permits to construct all improvements. With 30 days notice of completion of installation of the Playground, the Director and Engineering shall inspect the Playground and notify the Society whether the City accepts the Playground or of any deficiencies or required changes. If there are deficiencies or required changes, the Society shall require its Contractor work with the City to complete or correct such. Upon completion of any changes or corrections of deficiencies, the City shall notify the Society of its acceptance, and the Playground will become the property of the CITY.

3.2.2 The Society understands that it must independently provide for a proper foundation testing and analysis for the improvements, including but not limited to any engineering solution such as soil compacting, etc. for the Playground provided for herein. The Society shall ensure that the Playground installation includes all manufacturers' warranties for the benefit of the City and visitors to the Zoo for use and safety.

3.2.3 The work done by the Society's Contractor in placing, constructing, site preparation and installing the Playground shall be subject to and governed by all laws, rules and regulation of the City and State, Federal Communications Commission, and the U.S. Government that are applicable to the construction of the Playground.

3.2.4 Where proposed, any excavation or trenching and other construction in the Zoo shall be so carried out as to interfere as little as possible with the use of the Zoo in

accordance with any lawful and reasonable direction given by the City through the City Engineering Department or the Director.

3.2.5 The Society shall obtain payment and performance bonds for the construction, site preparation and installation of the Playground from its Contractor. The amount of the bonds shall be in the amount of 100% of the total amount of the estimated improvements to the Zoo provided for herein as pertains to the Playground.

3.4 Use of the Playground.

The Playground is for the sole use and enjoyment of the visitors to the El Paso Zoo.

3.5 LICENSE

3.5.1 The Licensed area consists of the area of the Zoo identified in the Zoo map attached hereto as Exhibit "C" and incorporated is if fully set forth herein (hereinafter "Licensed Area").

3.5.2 Nothing herein shall grant any real property interest to the Society nor give rise to any vested right in the Society, its assigns or successors in interest, none of whom shall have a cause of action for damages upon revocation or termination of this Agreement in accordance with the terms herein.

3.6 Use of the Licensed Area

3.6.1 The Society or its Contractor's use of the Licensed Area is only for the uses specified in this Agreement. Any use of the Licensed Area not specified in this Agreement is not authorized by this Agreement.

3.6.2 This License allows the construction, site preparation and installation required for the Playground on the Licensed Area, and for ingress and egress to the Licensed Area for the term of this Agreement.

3.7 The work done by the Society or its Contractor in placing, constructing, site preparation, and installation of the Playground on the Licensed Area shall be subject to and governed by all laws, rules and regulation of the City, State, and the U.S. Government that are applicable to the construction of the Licensed Area.

4.0 PROGRAMMING FOR WILDLIFE THEATER

The Society wishes to donate, and the City wishes to accept the donation of three years of sponsorship, beginning in January of 2016 through December of 2018, of programming for the Zoo Wildlife Theater, which includes administering the contract with a show content provider. Prior to selecting the show content provider, the Society shall consult the Director, and shall receive written approval of the selection by the Director. The value of this programming for three years is approximately \$900,000.00. The City will give the Society naming rights to the program, and shall display the

selected name on the stage of the Zoo's Wildlife Theater during the seasons covered by this donation. The Society shall obtain, from the El Paso City Attorney's Office, prior review of and approval as to the form for the contract with the company it hires to provide such programming.

5.0 ADDITIONAL CITY RIGHTS

5.1 The CITY expressly reserves the right to install, repair, or reconstruct the Playground.

5.2 If, prior to acceptance of the Playground, the City requires the Society to, alter, change, adapt, or relocate any items constructed in the Licensed Area due to imminent public safety concerns, the Society shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If these requirements impose a financial hardship upon the Society, it shall have the right to present alternative proposals for the City's consideration.

6.0 INSURANCE. The Society shall require any person or entity doing work on City property pursuant to this Agreement to provide the City with a certificate of insurance and shall maintain such insurance in effect during and work performed on City property. The City shall be named as an additional insured on all relevant insurance policies that are required by this Agreement. Failure to maintain insurance shall be a material breach of this Agreement and a basis for termination of this Agreement by the City. The Society's Contractor shall provide: Public Liability Insurance (comprehensive general liability) with a minimum One Million and No/100 Dollars limit per occurrence for personal injury, death and property damage; Worker's Compensation Insurance that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project; and Builders Risk Insurance (fire and extended coverage) based on 100% of the completed value of the insurable portion of the Playground.

6.1 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its elected and appointed officials, officers, agents or employees.

7.0 INDEMNIFICATION

7.1 THE SOCIETY SHALL REQUIRE ITS CONTRACTOR TO INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF SOCIETY, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS AGREEMENT.

THE SOCIETY FURTHER EXPRESSLY AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE CONDUCT, ACTS OR OMISSIONS OF THE CITY AS THEY RELATE DIRECTLY OR INDIRECTLY TO THIS AGREEMENT.

7.2 Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Society every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein.

7.3 In addition the Society shall promptly advise the City in writing of any claim or demand against the City or the Society known to the Society related to or arising out of the Society's activities under this Agreement.

8.0 TERMINATION. This Agreement may be terminated as provided herein.

8.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

8.2 Termination by Either Party. It is further understood and agreed by the Society and the City that either party may terminate this Agreement, in whole or in part, upon **thirty (30) days** written notice if the other party fails to perform any of its material obligations hereunder and fails to completely cure the breach.

8.3 Termination by City. If the Society ceases to use or occupy the Licensed Area for the purposes herein contemplated for a time period of more than two (2) continuous months, or if the Society defaults in any of its obligations under this Agreement and fails to correct such default with **thirty (30) days** written notice, City may cancel this Agreement and take possession of the property. In such an event, all rights of the Society in the Licensed Area shall then terminate. Any waiver by the City of any breach of any Society obligations shall not be deemed a continuing waiver and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Society.

8.4 Time of Performance Termination – Force Majeure. Neither party to this Agreement will be liable for failure to comply with any term of this Agreement when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Agreement unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing.

8.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party. Further, the terminated party shall not be relieved of any

liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

8.6 Upon termination of this Agreement for any reason, ownership of all permanent improvements done by the Society on the Licensed Area shall belong to the City. City shall have no duty to compensate the Society for any improvements located in the Licensed Area, except that should the City request that the Society remove such improvements, then the Society must remove the improvements at no cost to the City.

9.0 GENERAL PROVISIONS

9.2 Assignments. Society is authorized to assign rights to the License addressed herein only to its Contractor and sub-contractors as approved by the Director.

9.3 Liens and Encumbrances. SOCIETY shall require that its Contractor not give nor permit any liens or encumbrances on the Licensed Area. Upon termination of this Agreement, SOCIETY shall peacefully surrender such Licensed Area, including facilities, and improvements, to the CITY free of all such liens or encumbrances. **SOCIETY shall defend and indemnify the CITY against any liability and loss of any type arising from any such lien or encumbrance on the Licensed Area, including facilities, and improvements, together with reasonable attorney's fees, costs and expenses incurred by the CITY in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.**

9.4 Inspections. The CITY shall have the right to enter the Licensed Area, including the buildings, facilities or improvements at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Agreement.

9.5 Signs. All signs on the Licensed Area, including building, facilities and improvements, shall comply with the El Paso Building Code, El Paso Zoning Code, and other relevant ordinances of the CITY.

9.6 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given **within five (5) calendar days**, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

9.7 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

9.8 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 SOCIETY.

No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

9.9 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

9.10 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.

9.11 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.

9.12 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Agreement 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.

9.13 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 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
300 N. Campbell, 2nd Floor
El Paso, Texas 79901

COPY TO: City of El Paso
El Paso Zoo, Attn: Director
4001 E. Paisano Dr.
El Paso, Texas 79905-4223

SOCIETY: El Paso Zoological Society

Attn: Executive Director
P.O. Box 10179
El Paso, Texas 79995-0179

COPY TO: El Paso Zoological Society
Board Member Robert A. Skipworth
310 N. Mesa St, Ste 600
El Paso, Texas 79901

9.14 Warranty of Capacity to Execute Agreement. The person signing this Agreement on behalf of SOCIETY warrants that he/she has the authority to do so and to bind 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, and all attachments, in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

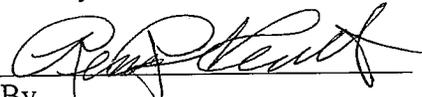
Executed, this the _____ day of _____, 2013.

SIGNATURES ON FOLLOWING PAGE

CITY OF EL PASO

Joyce A. Wilson, City Manager

Society:

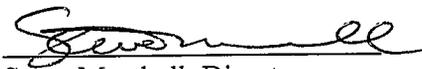
By 

Title Executive Director

APPROVED AS TO FORM:


Kristen L. Hamilton
Assistant City Attorney

APPROVED AS TO CONTENT:


Steve Marshall, Director
El Paso Zoo

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____,
2013, by Joyce Wilson, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires

ACKNOWLEDGEMENTS CONTINUE ON FOLLOWING PAGE

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____,
2013, by _____, as _____ of the El Paso
Zoological Society.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires

El Paso Zoo Playground

The proposal is for a turn-key playground.

Major components include:

1. Tree house #1 GFRC play structure
 - a. With net climb up to
2. Tree house #2 GFRC play structure
 - a. With Log pile climb
 - b. Slide
 - c. Suspension bridge up to
3. Tree house #3 GFRC play structure
 - a. Slide
 - b. Net climb
 - c. Hollow log climber up to
4. Tree house #4 GFRC play structure
 - a. Hollow strait log slide
 - b. Cargo net climber up to
5. Tree house #5 GFRC play structure
 - a. Spiral log slide
6. Log Benches (6)
7. Safety Surface

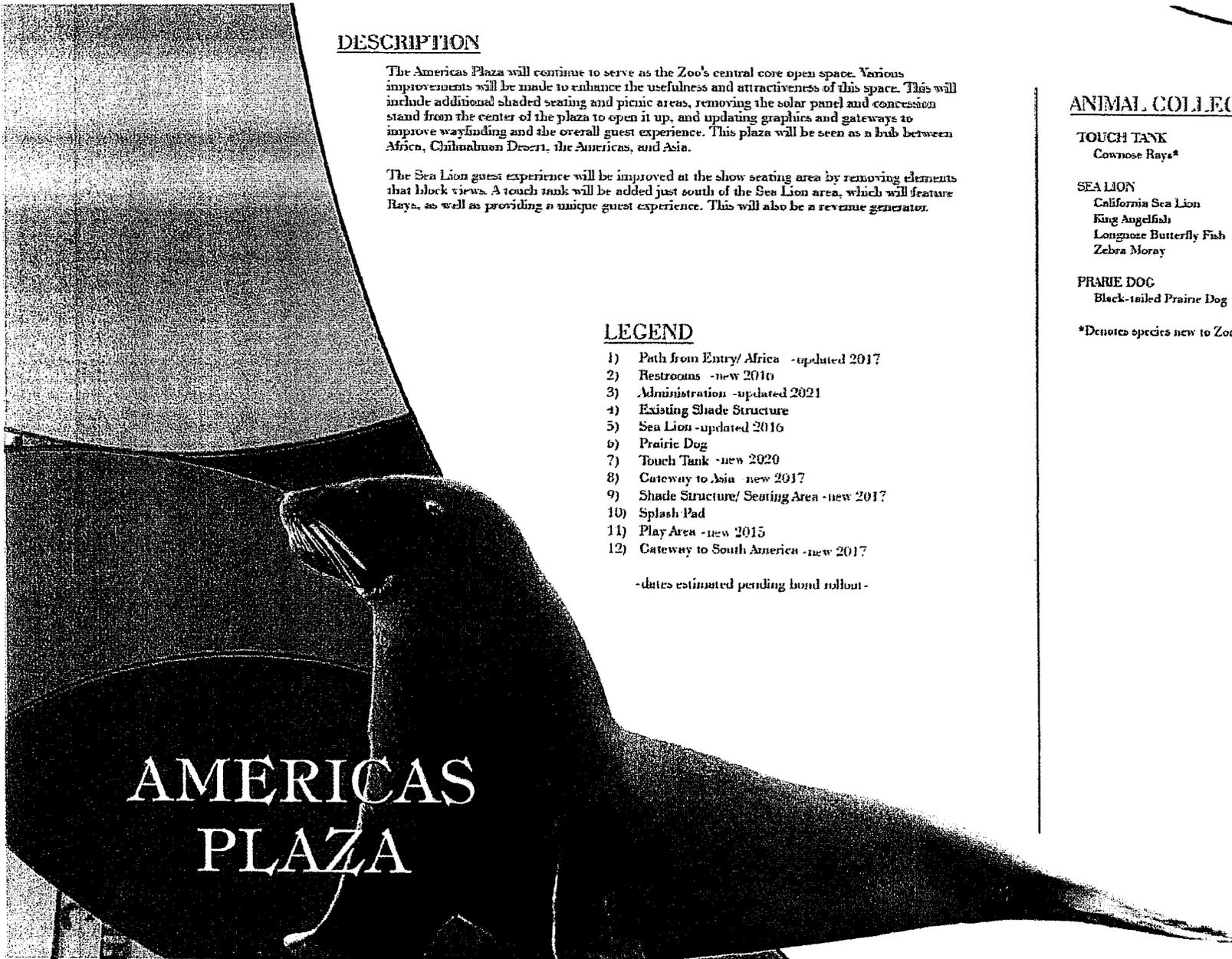
The playground is designed for durability and long life. The major components the "Tree Houses" are made of is GFRC (Glass Fiber Reinforced Concrete) over a galvanized steel frame. The net bridges are galvanized and coated chain, polymer wood, and poly rope. The slides are plastic slide surfaces in a GFRC structure. Roof components are FRP (Architectural Fiberglass).

EXHIBIT
A



El Paso Zoo
Playground Rough Cost Estimate

Task	Estimated Cost Percentage	Cost Estimate
Design	5%	\$20,000.00
Shop Drawings	5%	\$20,000.00
Samples / Models	15%	\$60,000.00
Molds	20%	\$80,000.00
Casting	30%	\$120,000.00
Site Work	10%	\$40,000.00
Installation	15%	\$60,000.00
Estimated Total Project Cost	100%	\$400,000.00



DESCRIPTION

The Americas Plaza will continue to serve as the Zoo's central core open space. Various improvements will be made to enhance the usefulness and attractiveness of this space. This will include additional shaded seating and picnic areas, removing the solar panel and concession stand from the center of the plaza to open it up, and updating graphics and gateways to improve wayfinding and the overall guest experience. This plaza will be seen as a hub between Africa, Chihuahuan Desert, the Americas, and Asia.

The Sea Lion guest experience will be improved at the show seating area by removing elements that block views. A touch tank will be added just south of the Sea Lion area, which will feature Rays, as well as providing a unique guest experience. This will also be a revenue generator.

LEGEND

- 1) Path from Entry/ Africa - updated 2017
- 2) Restrooms - new 2016
- 3) Administration - updated 2021
- 4) Existing Shade Structure
- 5) Sea Lion - updated 2016
- 6) Prairie Dog
- 7) Touch Tank - new 2020
- 8) Gateway to Asia - new 2017
- 9) Shade Structure/ Seating Area - new 2017
- 10) Splash Pad
- 11) Play Area - new 2015
- 12) Gateway to South America - new 2017

-dates estimated pending bond rollout-

ANIMAL COLLECTION SUMMARY

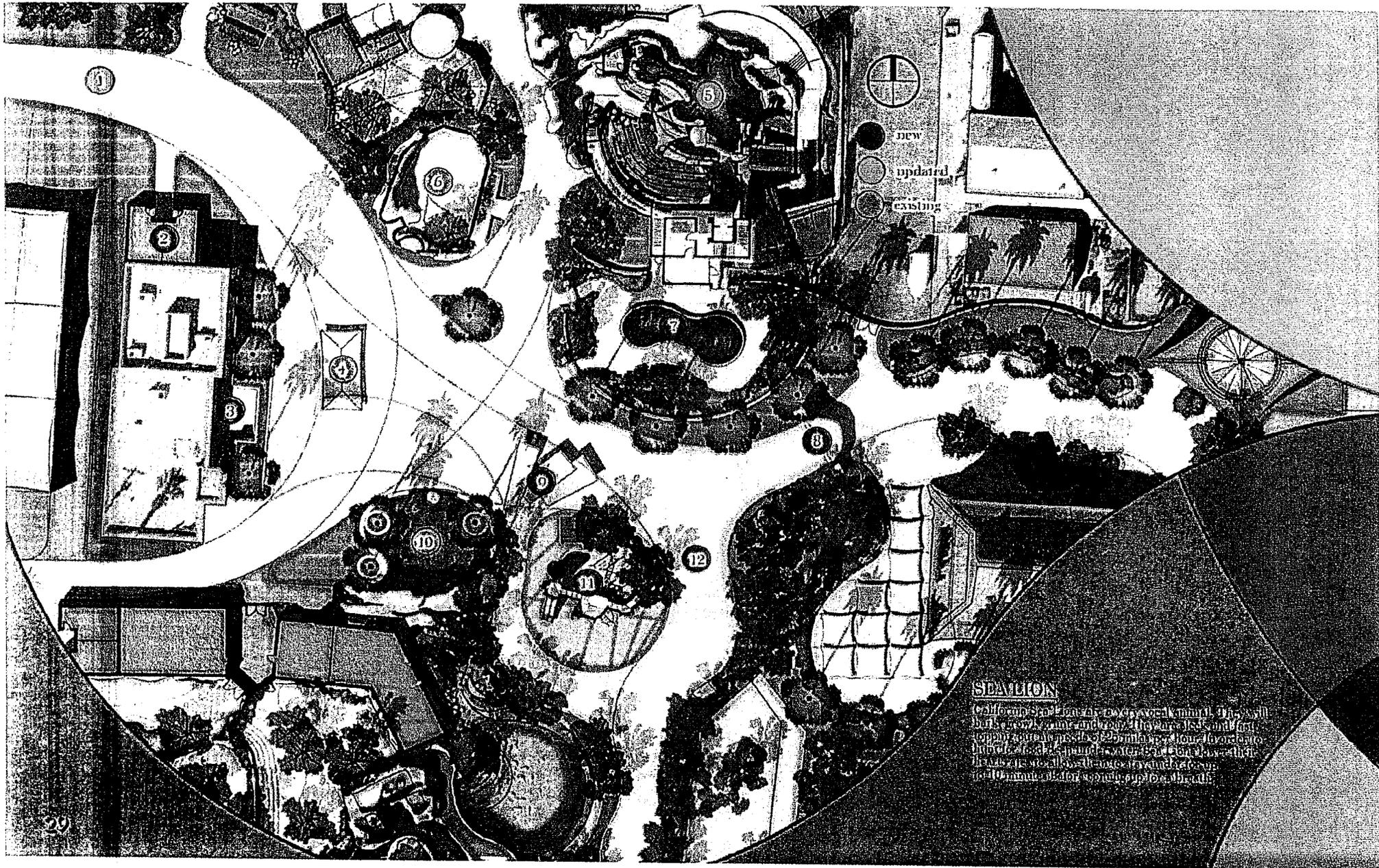
TOUCH TANK
Cownose Rays*

SEA LION
California Sea Lion
King Angelfish
Longnose Butterfly Fish
Zebra Moray

PRAIRIE DOG
Black-tailed Prairie Dog

*Denotes species new to Zoo

AMERICAS
PLAZA



new

updated

existing

SEAVIOLON

California's first and largest resort. The first
bank, hotel, and amusement park. The first
to open in the state. The first to have a
theater. The first to have a water park. The first
to have a storage building. The first to have
a 10-minute drive to the airport.