

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

CITY CLERK DEPT
07 JUL 23 PM 2:28

DEPARTMENT: El Paso Zoo
AGENDA DATE: July 31, 2007
CONTACT PERSON/PHONE: _____
DISTRICT(S) AFFECTED: 3

SUBJECT:

Request that the City Manager be authorized to execute the Agreement between the **CITY OF EL PASO, THE EL PASO ZOOLOGICAL SOCIETY, INC.,** and the **EL PASO ELECTRIC COMPANY** for the completion of the Windows to the Wild Outpost Project at the El Paso Zoo.

BACKGROUND / DISCUSSION:

The El Paso Zoological Society has spearheaded an effort to assist in securing funding to construct various improvements to the Zoo and the Society has been instrumental in garnering the financial support of the El Paso Electric Company ("EPE"), including EPE's desire to donate funds in order to complete the construction of the "Windows to the Wild Outpost Project" (the "Outpost Project"), which was one of the referenced alternates to the Africa Expansion to the Zoo and EPE's participation in the completion of the Outpost Project as a renewable energy demonstration project will allow for more renewable energy education and awareness in the City and thus, will serve an important purpose relating to the use of energy resources by the citizens of El Paso

PRIOR COUNCIL ACTION:

City Council authorized the Mayor to sign a resolution of support May 29, 2007.

AMOUNT AND SOURCE OF FUNDING:

\$750,000.00 to be provided by El Paso Electric Company.

BOARD / COMMISSION ACTION:

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:** _____

RESOLUTION

WHEREAS, the City of El Paso (the "City") and the El Paso Zoological Society, Inc. (the "Society") 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 El Paso Zoo (the "Zoo"); and

WHEREAS, the Zoo is to be expanded and otherwise generally improved through various construction projects pursuant to and in accordance with a quality of life bond, which was voted on and approved by the citizens of El Paso; and

WHEREAS the City completed design work required for the Africa Expansion to the Zoo, which included a number of alternates that were not fully funded by the quality of life bond; and

WHEREAS, the Society has spearheaded an effort to assist in securing funding to construct various improvements to the Zoo and the Society has been instrumental in garnering the financial support of the El Paso Electric Company ("EPE"), including EPE's desire to donate funds in order to complete the construction of the "Windows to the Wild Outpost Project" (the "Outpost Project"), which was one of the referenced alternates to the Africa Expansion to the Zoo; and

WHEREAS, EPE's participation in the completion of the Outpost Project as a renewable energy demonstration project will allow for more renewable energy education and awareness in the City and thus, will serve an important purpose relating to the use of energy resources by the citizens of El Paso;

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

THAT the City Manager be authorized to execute the Agreement between the **CITY OF EL PASO, THE EL PASO ZOOLOGICAL SOCIETY, INC.**, and the **EL PASO ELECTRIC COMPANY** for the completion of the Windows to the Wild Outpost Project at the El Paso Zoo.

ADOPTED THIS 31ST DAY OF JULY 2007.

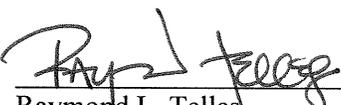
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:

Steve Marshall, Director
Zoo Department

CITY CLERK DEPT.
07 JUL 30 PM 4:06

STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

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This Agreement is entered into this ____ day of _____, 2007, by and among 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", THE EL PASO ZOOLOGICAL SOCIETY, INC., a Texas non-profit corporation, hereinafter referred to as "the Society" and the EL PASO ELECTRIC COMPANY a Texas electric utility company, hereinafter referred to as "EPE".

WITNESSETH

WHEREAS, the City and the Society 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 El Paso Zoo (hereinafter referred to as "the Zoo"); and

WHEREAS, the Zoo is to be expanded and otherwise generally improved through various construction projects pursuant to and in accordance with a quality of life bond, which was voted on and approved by the citizens of El Paso; and

WHEREAS the City completed design work required for the Africa Expansion to the Zoo, which included a number of alternates that were not fully funded by the quality of life bond; and

WHEREAS, the Society has spearheaded an effort to assist in securing funding to construct various improvements to the Zoo and the Society has been instrumental in garnering the financial support of EPE, including EPE's desire to donate funds in order to complete the construction of the "Windows to the Wild Outpost Project" (hereinafter referred to as the "Outpost Project"), which was one of the referenced alternates to the Africa Expansion to the Zoo; and

WHEREAS, EPE's participation in the completion of the Outpost Project as a renewable energy demonstration project will allow for more renewable energy education and awareness in the City and thus, will serve an important purpose relating to the use of energy resources by the citizens of El Paso; and

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

1. TERM.

This Agreement shall become effective upon the final execution of all parties and shall terminate twenty (20) years from the Effective Date of this Agreement; provided, however that the City's responsibilities related to the Renewable Energy Facilities as outlined in EXHIBIT A, which is attached hereto and incorporated herein for all purposes, is limited to fifteen (15) years, based upon the normal lifespan of such Renewable Energy Facilities.

2. DUTIES OF THE PARTIES.

- A. Upon final execution of this Agreement by all parties, EPE shall transfer SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$750,000.00) to the Society to be held in trust for the City's completion of the Outpost Project.
- B. Upon the City's receipt of SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$750,000.00) from the Society, the City shall pursue a change order to the El Paso Zoo Western Expansion Construction Contract No. 2006-145 for the completion of the Outpost Project by the City's contractor. The City will use all funds referenced herein, solely for the completion of the Outpost Project
- C. Additional roles and responsibilities of the Parties are outlined within the Term Sheet, which is attached hereto as **EXHIBIT A**.

3. LEGAL RELATIONSHIP.

Nothing in this Agreement shall be construed as creating a legal relationship between the Parties. The Society and all its members are volunteers and are providing the services noted in this Agreement as a gift. Similarly, the provision of funding by EPE is being provided to the City as a donation. Nothing herein shall be construed as creating the relationship of employer/employee, principal/agent or other license or joint venture between the Parties. Neither the Society, EPE nor the City has, nor will attempt to assert, the authority to make commitments for or bind any other party to any obligation, except as may be expressly permitted herein.

4. NOTICES.

All notices and communications made pursuant to 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 the parties are otherwise notified in writing:

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

COPY TO: El Paso Zoo
 4001 E. Paisano
 El Paso, Texas 79905

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

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EPE: El Paso Electric Company
Attn: External Affairs Department
123 W. Mills Avenue
El Paso, Texas 79901

5. SEVERABILITY.

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

6. AGREEMENT MADE IN WRITING.

This Agreement contains all of the agreements and conditions made between the Parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the Parties hereto or their respective successors in interest.

7. AUTHORIZATION TO ENTER AGREEMENT.

The Parties represent and warrant to each other that each Party and the persons signing this Agreement have authority to enter into this Agreement and bind their respective organizations thereto. Further, all persons entering into this Agreement represent that their respective entity is a duly authorized and existing entity qualified to do business in Texas. Upon any Party's request, the other Parties will provide evidence satisfactory to requesting Party confirming these representations.

8. AGREEMENT MADE IN TEXAS.

This Agreement is made in the State of Texas and the laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts of El Paso County, Texas.

9. 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.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

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

THE CITY OF EL PASO

Joyce A. Wilson, City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



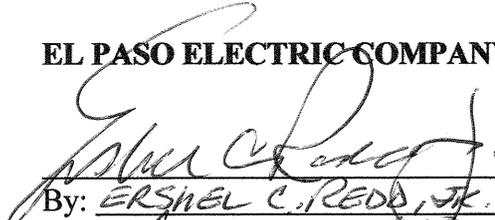
Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Steve Marshall, Director
Zoo Department

EL PASO ELECTRIC COMPANY



By: ERSNEL C. REDD, JR.
Title: PRESIDENT + CEO
Date: 7.20.07

EL PASO ZOOLOGICAL SOCIETY, INC.



By: SUSAN GORMAN
Title: VICE PRESIDENT
Date: 07-23-07

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TERM SHEET

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General

- Upon receipt of and in consideration for the funds described in the Agreement, the City agrees to construct the Outpost Project, to include the Windows to the Wild Exhibit. The Outpost Project is a renewable energy demonstration project, which includes a photovoltaic system and a thirty (30) foot wind turbine. The photovoltaic system and the turbine are hereinafter collectively referred to as the "Renewable Energy Facilities".

Renewable Energy Credits

- The City agrees to seek registration of the Renewable Energy Facilities as Renewable Energy Credit (REC) producing facilities with the REC Administrator of the Electric Reliability Council of Texas (ERCOT) pursuant to Public Utility Commission of Texas Substantive Rule §25.173(n).
- In exchange for the funds referenced within the Agreement, the City agrees to transfer to EPE, at no cost, all RECs produced by the Renewable Energy Facilities for as long as the facilities produce RECs.
- The City agrees to maintain the Renewable Energy Facilities in proper working condition so that the Outpost Project continues to operate as a renewable energy demonstration project, including the continued production of RECs.

Rights and Responsibilities of Each Party

- The City will own the entire Outpost Project facility, which includes the Renewable Energy Facilities and all other structures and equipment related to the Outpost Project.
- The City will not be charged for electric power produced by the Outpost Project.
- At its option, the City may interconnect the Renewable Energy Facilities to EPE's electric distribution system and, if it does so, will operate the Renewable Energy Facilities as distributed generation facilities pursuant to Tariff Schedule No. DG.
- Any additional electric power required by the City for the operation of the Zoo as a result of the Western Expansion Project will be sold to the City at the existing approved rate(s).
- The City will be responsible for all operation and maintenance expenses associated with the continued operation of the Outpost Project.
- The City agrees to operate the Renewable Energy Facilities in a safe and reliable manner consistent with all applicable state and federal standards. In furtherance of such agreement, the City agrees to enter into a maintenance agreement with a qualified firm or turbine manufacturer to provide operation and maintenance services for the Renewable Energy Facilities on an as-needed basis. Upon the request of EPE, the City shall provide copies of said maintenance agreement.

EXHIBIT A

- The City agrees to notify EPE of any malfunction of the Renewable Energy Facilities within forty-eight (48) hours of the City's identification of any such malfunction.
- The City agrees to allow EPE to inspect the Renewable Energy Facilities at a time agreed upon by EPE and the Zoo Director within forty-eight (48) hours of request from EPE to the Zoo Director. Said inspection may be held prior to or during regular Zoo visitation hours, at the discretion of the Zoo Director.

EPE Approvals

- The City agrees to include EPE in all aspects of the construction of the Windows to the Wild exhibit as they relate to the Renewable Energy Facilities.
- The City agrees that EPE will have final approval of all educational exhibits in the Windows to the Wild exhibit that relate to the Renewable Energy Facilities. EPE agrees that such approval shall not be unreasonably withheld and that review periods for such requests shall be limited to ten (10) calendar days from receipt.
- The City agrees to consult with and obtain EPE's approval before changing/revising any educational exhibit in the Windows to the Wild exhibit that pertains to the Renewable Energy Facilities. EPE agrees that such approval shall not be unreasonably withheld and that review periods for such requests shall be limited to ten (10) calendar days from receipt.
- The City agrees to consult with and obtain EPE's approval for any and all scripts used by tour guides with respect to renewable power and the Renewable Energy Facilities at the Windows to the Wild exhibit. EPE agrees that such approval shall not be unreasonably withheld and that review periods for such requests shall be limited to ten (10) calendar days from receipt.
- The City agrees to develop, with EPE's participation and approval, a joint marketing strategy for announcing and promoting the renewable energy demonstration project at the Zoo. The City agrees that all print, internet, audio and video references to the Outpost Project will refer to it as a "renewable energy demonstration project." EPE agrees that such approval shall not be unreasonably withheld.

Recognition of EPE Support

- The City agrees to provide a link to EPE's internet home page on the Zoo website highlighting EPE's sponsorship of the Windows to the Wild exhibit. Similarly, EPE agrees to provide the Zoo's logo and a link to the Zoo's internet home page on EPE's website.
- The City agrees to acknowledge, through signage at the exhibit and on all Windows to the Wild exhibit marketing materials, EPE's sponsorship of such exhibit. EPE and the City shall mutually agree upon appropriate signage prior to its installation at the Zoo. Any changes to EPE's logo, corporate name or otherwise that requires a revision to any existing signage shall be paid for solely by EPE.

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EXHIBIT A

City Support of EPE Project

- The Parties acknowledge that EPE intends to utilize Renewable Energy Program Funds for this renewable energy demonstration project. If, for any reason, the Public Utility Commission of Texas determines that EPE's funding of the proposed renewable energy demonstration project was not reasonable or was not a proper use of EPE's Renewable Energy Program Funds pursuant to the Stipulation and Final Order in Docket Nos. 23642 and 23644, the City agrees that it will recognize EPE's contribution of \$750,000.00 to fund the Windows to the Wild exhibit as part of EPE's charitable/civic/economic development contribution, for the next calendar year after such determination was made. Such determination by the City shall be made pursuant to and in accordance with paragraph 8 of the Rate Agreement between the City and EPE dated July 1, 2005.
- The Parties acknowledge that the City has already provided a resolution in support of EPE's pursuit of the renewable energy demonstration project contemplated herein. However, the City further agrees that, if, at any time, EPE's participation and funding of the proposed renewable energy demonstration project is questioned/reviewed by the Public Utility Commission of Texas and upon EPE's request, the City may file, a second statement in support of EPE's participation and funding of such renewable energy demonstration project, subject to the review and approval of the El Paso City Council.

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(END OF EXHIBIT)