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

DEPARTMENT: Museums and Cultural Affairs

AGENDA DATE: October 16, 2007

CONTACT PERSON/PHONE: Michael Tomor 532-1707

DISTRICT(S) AFFECTED: All

CITY CLERK DEPT.
07OCT -8 PM 1:04

SUBJECT:

A Resolution adopting guidelines and fees for the use of the El Paso Museum of Archaeology facilities.

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?

This policy is for the purposes of establishing guidelines and fees for individuals and entities' use of the El Paso Museum of Archaeology facilities. MCAD is interested in a uniform approach to its facility rental policies among the various museums.

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

This Resolution conforms with the provisions previously authorized in the 2008 City of El Paso Budget Resolution on October 3, 2006.

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?

N/A

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:** _____

RESOLUTION

CITY CLERK DEPT.
07 OCT 16 PM 2:19

WHEREAS, the Museums and Cultural Affairs Department recommends the establishment of guidelines and fees for the use of the El Paso Museum of Archaeology facilities, attached hereto as Exhibit "A"; and

WHEREAS, the offering of a one-time reduced fee event per City fiscal year to certain non-profit agencies that are funded or have been funded during two of the three years preceding the current year, supports groups whose initiatives are specifically tied to the preservation and promotion of archaeology in the community and therefore directly furthers the mission of the El Paso Museum of Archaeology (the "Museum"); and

WHEREAS, the offering of free rental for space normally rented for events, as well as free security, audio-visual equipment/operator, and Museum staff fees for events held by the El Paso Archaeological Society for the sole purpose of supporting and promoting exhibits and special Museum events, fundraising or presenting educational programs benefiting the Museum, directly furthers the mission of the Museum; and

WHEREAS, El Paso Archaeological Society events shall not displace paying customer events; and

WHEREAS, the Museum shares a public mission with other non-profit entities to provide education programs not otherwise offered by for-profit businesses, so that a twenty percent (20%) rental fee reduction for non-profit entities that do not qualify under the first two recitals above, for those agencies that provide unique and specialized education and public service programs to the community, furthers the spirit of the mission of the Museum; and

WHEREAS, Council finds that the recommended guidelines and fees contained in Exhibit "A" are appropriate and necessary and should be adopted as official City policy;

WHEREAS, Council finds that the guidelines and fees described in "Exhibit A" constitute an important public purpose or benefit to the City and citizens of El Paso for which the City is

willing to utilize City resources and provide services in order to directly support the mission of the El Paso Museum of Archaeology and advance the spirit of the public education and public service program aspect of the mission of the El Paso Museum of Archaeology.

WHEREAS, the rental agreements between the Museum and individuals or entities desiring to rent Museum space and facilities will be in substantial conformity with the Special Events Use Agreement form attached hereto as Exhibit "B"; and

WHEREAS, this Resolution conforms with the provisions previously authorized in the 2008 City of El Paso Budget Resolution.

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

THAT the guidelines and fees appearing in Exhibit "A" and the form agreement appearing in Exhibit "B" are adopted.

PASSED AND APPROVED this _____ day of _____, 2007.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

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07OCT -8 PM12:19

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Yolanda Alameda, Director
Museums and Cultural Affairs Department

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EXHIBIT "A"

EL PASO MUSEUM OF ARCHAEOLOGY
FACILITY RENTAL POLICY AND PROCEDURES
Effective November 1, 2007

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Eligible Organizations

1. Individuals and entities ("Groups") using the El Paso Museum Archaeology facility ("the Museum") must comply with all laws and City Policies and Procedures for such use. All events must be sedate, compatible with the function and purpose of the museum, not include vigorous physical activities and movements of people or objects, and not include commercial events to include sales, trade shows and fundraising except for fundraising events related to the Museum mission of preservation, development and promotion of the archaeology in the local area, and except as permitted herein for certain El Paso Archaeological Society events benefiting the El Paso Museum of History.

2. All "Groups" shall pay the equipment and personnel fees attached hereto as Attachment "A" or as may be set forth in the City Council Budget Resolution, and the facility use fees set forth in the Budget Resolution, except as provided below:

   A. Non-profit non-governmental entities currently receiving City funding by and through the MCAD which have additionally received funding during two of the three years preceding the current year ("Museum core Group") shall be permitted use of the Auditorium/Gallery hall or any smaller area on one reduced fee event reduced fee event during each City fiscal year. Such event shall be related to the Museum mission of preservation and promotion of archaeology in the local area. The rental fee will not be charged for such event. However, the entity shall pay all other assessed fees.

   B. The El Paso Archaeological Society may use designated portions of the Museum without paying rental fees, security fees, audio-visual equipment/operator fees, and Museum staff fees for events held for the sole purpose of supporting and promoting exhibits and special museum events, fundraising or presenting educational programs benefiting the Museum. All such events shall be coordinated with the Museum Director and subject to availability of the Museum.

   C. Non-profit entities that do not qualify under subsection 2.A or 2.B above will receive a 20% reduction in the rental fee.

   D. Any City Department using the Museum for an event shall reimburse the Museum for the actual cost of the event but shall not be required to pay a rental fee. All such events shall be coordinated with the Museum Director and subject to availability of the Museum.

3. City Manager or his/her designee shall develop procedures for the rental and use of the Museum consistent with this policy, to include criteria for scheduling, procedures for submitting applications, guidelines for food and beverage service, use of Museum facilities and equipment, use of photography, and security.

4. The City Manager or his/her designee shall develop procedures and practices pertaining to the safety and security of the collections during such events and may restrict activities that could pose a danger to the safety and security of the collections or the facility. All "Groups" and participants must immediately comply with all instructions of the Museum staff regarding safety and security of the collections. Museum personnel and security are authorized to expel individuals who violate Museum policies, procedures and practices.

5. The City Manager shall require all "Groups" to obtain liability insurance, which may be satisfied by an election to be covered by liability insurance obtained by the City for events. Any "Groups" electing such coverage shall pay to the City the prorated share of the premium for such insurance as provided for in Attachment "B." Alcoholic beverages shall be permitted only as approved by the City Manager or his/her designee, provided that such "Groups" agree to indemnify the City and obtain liability insurance coverage.

6. The City Manager or his/her designee is authorized to make claims against and seek reimbursement from any "Groups" or other persons including spectators in the event of any damage to person or property, including, but not limited to, collections and temporary exhibits, resulting from the use of Museum property.

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Attachment "A"

ADDITIONAL FEES FOR SERVICES OR USE OF MUSEUM EQUIPMENT

The Licensee must reimburse the Museum for the costs of supporting events and maintaining the facility and equipment.

Museum Personnel

Security Officer (each)	$30 per hour
Audio-Visual Equipment/Operator	$30 per hour
Event Staff (each)	$30 per hour

(The minimum charge for security staffing is two hours for two people. The Licensee must arrange for all equipment and staffing not provided by the Museum.)

Furniture/Equipment Rentals

Chairs	$2 per chair
Tables (6' rectangular)	$10 per table
Podium/lectern	$12 per podium/lectern
Sound System	$50
Slide Projector	$25
Electronic Media projector	$50
TV/VCR	$25

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Attachment "B"

Insurance requirements are as set forth below:

Events with 1-150 attendees:	$ 52.80 per event
Events with 151-500 attendees:	$ 88.00 per event
Events with 501 – 998 attendees:	$173.80 per event

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EXHIBIT "B"

SPECIAL EVENTS USE AGREEMENT FORM

STATE OF TEXAS

SPECIAL EVENTS USE AGREEMENT

COUNTY OF EL PASO

This Special Events Agreement (hereinafter "Agreement") is made and entered into on this _____, by and between the City of El Paso, a municipal corporation (hereinafter "CITY") and _____. (hereinafter "APPLICANT").

WITNESSETH:

WHEREAS, APPLICANT desires use a portion of the El Paso Museum of Archaeology, located at 4301 Transmountain Road, El Paso, Texas (hereinafter "Museum") for _____ (hereinafter "Event"), and thus, enters into this Agreement with the CITY;

NOW, THEREFORE, for and in consideration of the following mutual covenants of this Agreement, and other good and valuable consideration, the APPLICANT and CITY agree that the CITY hereby grants to APPLICANT a non-assignable right for APPLICANT to use a portion of the Museum. The use of the Museum by APPLICANT for said Event includes the _____ located in the museum and the adjacent areas within the structure and access to the bathroom facilities.

1. **USE OF PROPERTY**

(A) APPLICANT understands and agrees to keep the Museum in good repair and condition during the term of this Agreement. Further, APPLICANT understands and agrees to reimburse the CITY for the cost of any repair to the Museum occasioned by damage arising from the Event, as determined to be reasonably necessary in the judgment of the Director of the Museum.

(B) APPLICANT understands and warrants that it will not slide nor drag furniture, equipment or other materials connected with said Event across the floor of the Museum. Furniture, equipment or other materials with casters may be rolled across the floor with prior approval of the Director of the Museum or his/her designee. It is expressly understood and agreed that the cost of any damage to the Museum floor during the Event, including set-up or take-down, caused by sliding or dragging of furniture, equipment or other materials will be reimbursed by the APPLICANT to the CITY.

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2. DURATION AND SCOPE

(A) The CITY agrees that APPLICANT may use the Museum from _____p.m. through p.m. for the specific purpose of the Event. APPLICANT agrees that the Museum will be vacated and that all equipment and other items connected with the Event shall be removed from the Museum no later than _____ p.m. on _____. In the event that the APPLICANT fails to vacate the Museum and remove all equipment and other items connected with the Event as specified in this Agreement, the CITY may, at its option and within its sole discretion, either extend the time for removal or remove said materials and charge the cost thereof to the APPLICANT. The APPLICANT agrees to pay all reasonable cost(s) incident to such removal by the CITY.

(B) APPLICANT agrees to conduct its Event on _____ in accordance with the Agreement between APPLICANT and the CITY.

3. CONSIDERATION. As consideration for the use of the Museum for said Event, the APPLICANT shall pay the CITY the sum of _____ on or by to prevent cancellation of this Agreement.

4. INDEMNIFICATION. APPLICANT SHALL 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 ACTS OR OMISSIONS OF THE APPLICANT, ITS INVITEES, AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, LICENSEES, REPRESENTATIVES OR ANY OTHER THIRD PARTY. APPLICANT FURTHER EXPRESSLY AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE ACTS OR OMISSIONS OF THE CITY, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE, GROSS NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE OR GROSS NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS. APPLICANT EXPRESSLY AGREES TO INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES TO PROPERTY OR CLAIMS FOR PERSONAL INJURY OR DEATH ARISING OUT OF OR RELATING IN ANY WAY OF THE OCCUPANCY OR USE OF THE MUSEUM BY APPLICANT, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS.

5. TERMS AND CONDITIONS:

(A) CATERING. If food is to be served at said Event, it must be catered. Further, food or other refreshments will be restricted to the lobby of the Museum or the gazebo only.

(A-1) Use of any type of fire or flame for food or refreshment preparation and/or service is prohibited.

(A-2) APPLICANT is hereby granted permission to serve alcoholic beverages as a part of the event.

(A-2-1) APPLICANT understands and agrees that it shall provide liability insurance coverage for serving alcohol, in an amount no less than $1,000,000.00 for the term of this Agreement. Said policy is in addition to the insurance requirements set out in Section E below in this Agreement.

(A-2-2) APPLICANT further agrees to obtain an insurance policy that includes the CITY as an additional named insured on the policy relating to the service of alcohol. A copy of the insurance policy, or certificate of insurance, issued by and insurance company authorized a licensed to do business in the State of Texas and reflecting the coverage required by this Agreement for service of alcohol, shall be furnished to the Director of the Museum on or by _____. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Agreement.

(B) SMOKING. No smoking will be permitted within the Museum during said Event, as required by Chapter 9.50, El Paso Municipal Code. Violators will be reported to the Fire Department and/or Police Department for potential prosecution.

(C) SECURITY. The CITY will provide security guard and event staff service during said Event, including set-up and take down of equipment and other items connected with the Event. APPLICANT understands and agrees to pay the cost for the security guard and event staff at the current City rates, which shall be in addition to the rental fee. The cost for guard and event staff is currently estimated to be _____. Payment for the guard and event staff to be used at said Event shall be due upon receipt of bill.

(D) NUMBER OF ATTENDEEES. APPLICANT understands and agrees that, by order of the Fire Marshal, the number of attendees for said Event shall not exceed five hundred (500), without prior written approval by the Fire Marshal. APPLICANT further understands and agrees that if the number of people present during the Event exceeds five hundred (500) or such other number authorized by the Fire Marshal, the Event will be terminated and all attendees will be instructed to leave. Failure to leave will result in criminal prosecution.

(D-1) APPLICANT understands and agrees that if it violates any condition imposed by the Fire Marshal, the Event will be terminated and all attendees will be instructed to leave. Failure to leave will result in criminal prosecution.

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(D-2) APPLICANT further understands and warrants that it will ensure compliance with any and all orders and/or directives of the Fire Marshal or security guards relating to fire or other matters of safety.

(D-3) APPLICANT understands and acknowledges that it shall pay directly to the Fire Department any fees or charges for the attendance of Fire Inspectors at said Event that the Fire Marshall requires or deems necessary to ensure safety and compliance during the Event. Such fees or charges shall be in addition to rental fees and charges paid to the Museum, as set forth in this Agreement.

(E) INSURANCE. APPLICANT understands and warrants that it shall provide liability insurance coverage in no less than the following amounts: $250,000 per individual per occurrence for personal injury; $500,000 per occurrence for personal injury for more than one person; $100,000 for property damage (including damage to the rented premises) for the term of this Agreement.

(E-1) APPLICANT agrees to obtain an insurance policy that includes the CITY, as owner of the premises used to conduct the Event, as an additional named insured. A copy of the insurance policy, or certificate, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required by the Agreement, shall be furnished to the Director of the Museum on or by_____. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Agreement.

(E-2) APPLICANT hereby states and warrants that any entity providing services to APPLICANT during said EVENT fully comply with all workers' compensation requirements in the State of Texas. As an alternative to providing the workers' compensation insurance coverage as described above, APPLICANT may, at its option, elect to be covered by liability insurance obtained by the CITY for events at the Museum by paying to the CITY the prorated share of the premium for such insurance. Such prorated premium shall be at the following rates: events with 500 attendees -- $52.80 per day. Coverage for an additional named insured, if requested, will require an additional fee of $50.00 each. In the event APPLICANT elects to obtain the CITY-provided coverage, payment shall be made with and in addition to the fees described above in this Agreement.

(F) SAFETY. APPLICANT shall comply with all applicable laws, ordinances and regulations and shall encourage its participants in the Event to comply with all applicable laws, ordinances and regulations. APPLICANT shall exercise every precaution for the safety of public and private property and persons.

(G) DISCRIMINATION. APPLICANT, its officers, agents, servants, employees, volunteers and third parties will not discriminate on account of race, color, religion, sex or national origin, nor will it permit or allow any discrimination in the work done pursuant to this Agreement. Admission to the Museum for the Event covered by this Agreement shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

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(H) NON-RELIGIOUS ACTIVITIES. APPLICANT will conduct its Event, insofar as it may involve the CITY, in a manner that is exclusively non-religious in nature and scope; there will be no religious services, proselytizing, instruction, or any other religious influences in connection with the Event insofar as it may involve the CITY. There will be no religious discrimination in terms of employment or benefits provided in the conducting of the Event insofar as it may involve the CITY. APPLICANT shall not represent that the CITY is in support of or in favor of any religious services, proselytizing, instruction, or any other religious influences in connection with the Event.

(I) LIABILITY. APPLICANT expressly warrants and understands that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. APPLICANT further expressly warrants and understands that every act or omission of the CITY that, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.

(I-1) The CITY will not be liable to APPLICANT, nor any person claiming rights for incidental, consequential, special, punitive or exemplary damages of any kind, whether based on tort, contract or other theory of recovery, including but not limited to lost profits, loss of business, injury to property, mental anguish, emotional distress, negligence, and any other expenses or economic damages. As a result of breach of any term of this Agreement, regardless of whether the CITY was advised, had other reason to know, or in fact knew of the possibility thereof.

(I-2) In no event shall the City's aggregate liability to APPLICANT, including any person or persons whose claim or claims are based on or derived from a right or rights claimed by APPLICANT, with respect to any and all claims at any and all times arising from or related to the subject matter of this Agreement, whether in contract, tort or any other cause of action, whether based on statute or common law, exceed the amount of consideration actually paid by the APPLICANT to the CITY under the terms of this Agreement.

(J) CLEAN UP. APPLICANT agrees that it will remove from the Museum and contiguous areas all trash and litter generated by the Event. APPLICANT will clean up litter and/or trash and place the same in the Museum trash receptacles on site.

6. COMPLIANCE WITH LAWS. APPLICANT 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 that materially impairs the quality of performance hereunder or affects the administration of the funds provided hereunder shall constitute a material breach of this Agreement.

7. 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.

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8. EFFECTIVENESS. This Agreement shall be effective as of the date the CITY delivers this Agreement to APPLICANT. All proposals, negotiations, notices and representations with reference to matters covered by this Agreement are merged in this instrument, and no amendment or modification thereof shall be valid unless evidence in writing is signed by both parties.

(A) The person signing this Agreement on behalf of the APPLICANT warrants that he/she has the authority to do so and to bind the APPLICANT to this Agreement and all the terms and conditions contained herein.

9. ENTIRE AGREEMENT. This Agreement constitutes and expresses the entire agreement of the parties hereto in reference to any of the matters herein provided for or herein discussed or mentioned in reference to the providing of such services, all promises, representatives, and understandings relative hereto being herein merged.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____day of _____, 2007.

THE CITY OF EL PASO

Marc Thompson, Ph.D. – Director
El Paso Museum of Archaeology

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APPLICANT:

(Applicant)

_____
(Applicant's signature)

Form Agreement Approved by
Josette Flores, Assistant City Attorney