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

DEPARTMENT: **El Paso Zoo**

AGENDA DATE: **November 6, 2007**

CONTACT PERSON/PHONE: **Steve Marshall, 521-1850**

DISTRICT(S) AFFECTED: **ALL**

SUBJECT:

That the City Manager be authorized to sign a License Agreement between the CITY OF EL PASO and the EL PASO ZOOLOGICAL SOCIETY for a term of five years.

BACKGROUND / DISCUSSION:

The El Paso Zoological Society, a non-profit corporation whose purpose is to promote and support the Zoo and its programs in conservation, education and recreation, and provide private sector support, both financial and otherwise, to the Zoo's development, operation and capital improvements. The El Paso Zoological Society has been in existence 66 years and the El Paso Zoological Society desires to continue this Agreement to establish, define, and coordinate a mutually beneficial relationship to insure the above purposes.

PRIOR COUNCIL ACTION:

Council Approval November 12, 2002 and September 6, 1994

AMOUNT AND SOURCE OF FUNDING:
N/A

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:** _____

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RESOLUTION

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

That the City Manager be authorized to sign a License Agreement between the CITY OF EL PASO and the EL PASO ZOOLOGICAL SOCIETY to establish, define and coordinate a mutually beneficial relationship to promote and support the programs and operations of the El Paso Zoo for a term of five years.

ADOPTED this 6th day of November, 2007.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO CONTENT:

Ernesto Rodriguez
Assistant City Attorney

APPROVED AS TO FORM:

Steve Marshall
Director, El Paso Zoo

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") made this ____ day of November, 2007 (the "Effective Date"), by and between the CITY OF EL PASO, a municipal corporation (the "City"), and the EL PASO ZOOLOGICAL SOCIETY, a Texas non-profit corporation (the "Society").

RECITALS

WHEREAS, the City owns and operates the El Paso Zoo (the "Zoo") for conservation, education, recreation, and scientific study;

WHEREAS, the Society is a non-profit corporation whose purpose is to promote and support the Zoo and its programs in conservation, education and recreation, and provide private sector support, both financial and otherwise, to the Zoo's development, operation and capital improvements; and

WHEREAS, the City and the Zoo desire to enter into this Agreement to establish, define, and coordinate a mutually beneficial relationship to insure the above purposes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows.

I. GATE ADMISSION

The City grants free gate admission to the Zoo to members of the Society pursuant to Chapter 13.25 of the El Paso City Code and reserves the right to require all members of the Society to present photo identification with their membership card before gaining admission to the Zoo facilities. No rights granted the Society members hereunder may be assigned to any other persons. Society membership categories and members admission criteria, as established by the Society, shall be set forth in a separate document reviewed and approved by the Director of the Zoo ("the Director"). The Society shall be authorized to purchase bulk reduced price admission tickets to use in promotions and events for the benefit of the Zoo as approved in advance by the Director in accordance with Chapter 13.25 of the El Paso City Code.

II. SOCIETY USE OF ZOO GROUNDS

During the term of this Agreement, the Society may be permitted reasonable use of the Zoo grounds and facilities after normal public hours, for the benefits or support of Society activities (hereinafter referred to as an "Invitational Event"). During such Invitational Events, the Zoo will be closed to the general public, normal entry fees will be suspended, and a special entry fee for attendees will be in place. Net proceeds from any Invitational Event shall be retained by the Society, and accounted for and used by the Society in the same manner as provided in Article III (b) below, with respect to membership monies.

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During the term of this Agreement, the Society may also be permitted reasonable use of the Zoo grounds and facilities during or after normal public hours, for the purpose of education or recreation of the public and for Zoo related purposes as approved by the Director. For any Society-Sponsored Events conducted during normal public hours, the zoo will remain open to the public and admission proceeds shall be collected by Zoo staff in the same manner as during normal operation of the Zoo.

Approval of the Society's use of the Zoo grounds, activities, date and times must be obtained from the Director at least (30) days in advance of any event. The Society shall be responsible for all costs of any such events, including, without limitation, the cost of additional or overtime Zoo staff or resources authorized by the Director and the indirect costs attributable to such staff at the current recovery rate applicable to the Zoo. The Society shall reimburse the City within (30) days following receipt of any invoice for such costs. This Article shall not restrict the Society from supporting, promoting, or servicing events conducted by the Zoo on Zoo grounds (hereinafter referred to as a "Zoo Event").

This Article shall not restrict the Society from any other authorized use of the Zoo grounds and facilities, such as a private rental or Zoo facilities or authorized use for Society business.

III. CONSIDERATION

In consideration for free gate admission and the right to host the above mentioned invitational and non-invitational events, the Society agrees as follows:

(a) The Society shall spend at least $7.00 from every new and renewed membership sold on development, marketing, operation and promotion of the Zoo;

(b) The Society shall use all other revenues acquired from the sale of memberships for the betterment of the Zoo, or for Society sponsored projects, as agreed upon by the Director, City Manager or her designee and the Society; provided however, that the Society shall be allowed to use membership revenue to pay for the reasonable expenses involved with the operation of the Society;

(c) The Society shall coordinate all Society activities with the Director that directly support, involve or impact the Zoo staff and programs. The Director shall be authorized to use Zoo Staff and resources in support of such activities consistent with Zoo operational needs;

(d) The Society shall assist the Zoo by sponsoring and managing the Zoo volunteers and employ a Zoo Volunteer Administrator for the benefit of the Zoo. Volunteers may be members of the Society and provide their services in conjunction with Society and Zoo activities. Eligibility and service requirements for all volunteers shall be established by the Society and approved by the Director;

(e) The Society shall assist the City in financing capital improvements, collection acquisition and equipment for the Zoo by establishing, implementing and maintaining a comprehensive development plan and related fund raising activities;

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(f) The Society shall assist the Zoo in its conservation efforts, education programs and related promotions;

(g) The Society shall develop, implement and maintain current planning documents in conjunction with and in support of the Zoo's Mission and Master Plan with the approval of the Director;

(h) The Society shall account for all funds solicited and collected for a specific Zoo project in a separate interest bearing account designated for said purpose prior to depositing it with the City as hereinafter required;

(i) The Society and its employees shall coordinate and obtain approval of the Director prior to any promotions involving the Zoo and use of the Zoo logo;

(j) The Director shall be entitled to attend all meetings of the Society;

(k) The Society shall carry liability insurance, which shall cover all of its employees, Zoo volunteers and Society activities or events;

(l) The Society shall carry general commercial liability insurance in a minimum amount of $500,000/1,000,000 that shall name the City as an additional insured for all Society activities and events which occur on Zoo grounds, and for all Society activities or events which are co-sponsored by the City;

(m) The Society shall not utilize the Zoo or its events for religious or political purposes;

(n) The Society shall provide reports through the Director to the City Manager or designee, with respect to amounts collected and expended by the Society on a quarterly basis; and

(o) The Society shall perform any and all other duties and responsibilities as shall be mutually agreed by the Director, City Manager or her Designee and Society in writing during the term of this Agreement.

IV. FINANCIAL ASSISTANCE

The financial assistance provided to the Zoo by the Society under this Agreement shall be derived from monies acquired for Zoo projects from the sale of Society memberships, goods and services, Society sponsored events, fund raising activities, bequests, donations and grants from public and private entities.

No administration fee or commission shall be paid to any individual or group for the purpose of receiving or soliciting funds concerning any Zoo development activity campaign or project unless such fee is authorized by the City Council. Additionally, any financial assistance provided by the Society pursuant to this Agreement shall be in accordance with approved Zoo plans and budgets.

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Financial assistance acquired by the Society for a specific zoo development activity, campaign or project shall be maintained, managed and designated by the Society for the specific activity, campaign or project. Restricted funds raised by the Society from grants made by public and private entities and not used for their designated purpose shall be handled in accordance with the terms of the respective grant agreements. Non-designated financial assistance acquired for the Zoo by the Society shall be maintained, managed and designated by the Society in a similar manner as stated above. If an activity, campaign or project is a recurring event, the Society may retain sufficient operating funds in its separate designated account to conduct the subsequent event. Acceptance of donations designated for a specific purpose must be in accordance with the Zoo Mission and Master Plan and approved by the Director. This Agreement shall not restrict the Society from raising funds to support Society activities. All solicitation of such funds shall identify the purpose.

V. TERM

The term of this Agreement shall be for a period of five (5) years from the Effective Date, unless otherwise terminated by either party as provided herein.

VI. TERMINATION

This Agreement shall automatically terminate, without further action, upon the dissolution of the Zoo or the Society or when either ceases to exist for the above mentioned purposes. Additionally, this Agreement can be terminated by either party, with or without cause, upon forty-five (45) days written notice to the other party.

VII. AUTHORITY OF DIRECTOR

It is understood and mutually agreed that, except as may be provided in this Agreement, on all matters affecting the Zoo, the City Council shall determine the ultimate course of any action affecting the Zoo. The Director is responsible for running and managing the Zoo, and shall be the arbiter or disputes which may arise between City staff at the Zoo and Society staff, provided, however, that the authority to resolve contractual disputes between the City and the Society shall belong to the City Council.

VIII. FINANCIAL RECORDS

The Society shall maintain complete and accurate records of all its financial transactions in a format approved by the City Manager or her designee and such other minutes and records as are required by its current bylaws. The City Manager or her designee shall have the right to examine or audit such records at any time or to require the Society to have said financial records reviewed by a certified public accountant. The Society shall provide the City with a copy of its annual financial statements, which shall include an income statement, a balance sheet and corporate federal tax return.

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IX. STRATEGIC PLAN

The Society shall prepare a strategic plan in collaboration with the Director, and in accordance with the Society's mission. The plan will be updated annually and presented on an annual basis to the City Manager through the Director.

X. COMPLIANCE WITH LAWS

The Society must all times remain in compliance with the Charitable Solicitations Ordinance of the City of El Paso, with regard to its fund raising activities and meet all applicable state laws and regulations governing charitable solicitations by non-profit organizations. With respect to all of its activities, the Society shall comply with all applicable local ordinances and with all applicable state and federal laws and regulations.

XI. ASSIGNMENT

The Society or its individual members may not assign the rights granted in this Agreement without first obtaining written consent from the City.

XII. TRANSPORTATION

The Society hereby agrees to permit Zoo employees and volunteers to utilize the Society's conservation/education outreach vehicles for transportation related to the Zoo's conservation/education programs. The City hereby agrees to permit the Society, in consideration for the use of the vehicles, to receive gas and oil from the City's Municipal Services Centers in an amount not to exceed Two Hundred Dollars ($200.00) per vehicle per month. The Society further agrees that at all times it will maintain vehicle liability insurance which names the City as an additional insured and which covers the vehicles utilized by Zoo employees and volunteers. The Society shall furnish the Director with a certificate from the insurance carrier showing such insurance to be in full force and effect during the term of this Agreement, and shall deposit with the Director copies of the binder of said policies. Said policies and certificates shall contain a provision that written notice of cancellation or any material change in said policy by the insurer shall be delivered to the Director thirty (30) days in advance of the effective date thereof.

XIII. ILLEGALITY

If any provisions of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall remain in full force and effect, and in lieu of each provision which is found to be illegal, invalid or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable as may be possible and be legal, valid, and enforceable.

XIV. ENTIRE AGREEMENT

This document contains all of the Agreements between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by a written instrument signed by both parties.

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XV. LAW GOVERNING AGREEMENT

This Agreement is entered into in the City and County of El Paso, Texas and shall be governed by the laws of the State of Texas and venue shall be proper in El Paso County, Texas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date first written above.

ADOPTED this _____day of _____, 2007

THE CITY OF EL PASO

_____
Joyce Wilson,
City Manager

EL PASO ZOOLOGICAL SOCIETY

By: _____
Hector Gonzalez

_____
President, Board of Directors

APPROVED AS TO CONTENT:

_____
Ernesto Rodriguez
Assistant City Attorney

APPROVED AS TO FORM:

_____
Steve Marshall
Director, El Paso Zoo

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EL PASO ZOO

El Paso Zoological Society

Membership

TYPES OF MEBERSHIP AVAILABLE:

$30	Spider Monkey	Annual card good for 1 adult;
$40	Sun Bears	Annual card good for 2 adult;
$45	Paraje Pals	Annual card good for 1 adult & up to 5 children;
***$50**	Wolf pack	Annual card good for 2 adults & up to 5 children;
***$50**	Prime-Mates	Annual card good for 2 adults & up to 5 grandchildren;
***$65**	Tiger Team	Annual card good for 2 adults & up to 5 children & 4 one day passes;
***$100**	Critter Club	Annual card good for 2 adults & up to 5 children & 6 one day passes; (Business Partner) Your name on the Partner recognition sign for one full year;
***$1500**	Life	One card good for life for original purchasers; Benefits include your name on the Life plaque at the Zoo and your own personal plaque.

*Memberships are good for 2 adults & up to 5 children under 18.

Membership entitles you to:

* Free or discount admission to the El Paso Zoo and to over 100 other zoos across the United States
* Special "Member Only" Parties
* Newsletters
* Zoo Decal
* Discounts in the Elephant's Trunk Gift Shop
* Discount on special programs: Workshops & Camps

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EL PASO ZOOLOGICAL SOCIETY
2007 UPDATE OF
STRATEGIC AND FUND DEVELOPMENT GOALS

MISSION: To promote and support the El Paso Zoo and its programs in conservation, education and recreation, and provide support, both financial and otherwise, for capital improvements, animal acquisition and education programs.

STRATEGIC GOALS: The El Paso Zoological Society ("EPZS") adopted a 5 year Strategic Plan in January 2006 which was presented to City Council on March 28, 2006.

The top strategic goals for 2007 – 2008 are as follows:

- Fund Development for the benefit of the El Paso Zoo
- Improved EPZS Internal Operations
- Grow the Volunteer Program
- Promote Conservation and Education

The dominant strategic goal is Fund Development. The EPZS has adopted a budget in the amount of $1,246,000, $472,300 operating budget, plus $773,700 restricted funds. Consistent with its mission, the EPZS has allocated funds to the Zoo for both Operational Expenses and Capital Improvements. Approximately 93% of the EPZS total budget is provided in direct and indirect support for the Zoo. Similarly, the EPZS has also raised approximately $750,000 during each of the last two years for Capital Improvements. This financial contribution alleviates the City from having to contribute funds to the zoo for both operational and capital improvements in the amounts described above.

In this year's budget (2007 – 2008), the EPZS's goal for funding Zoo Operations from EPZS earned revenue and fundraising income is $289,960. The board has also embraced the challenge of raising an additional $750,000 for capital improvements, making the goal for funding from restricted revenue during the 2007 – 2008 budget year $864,203. The board believes that this increase in funding is realistic.

ACCOMPLISHMENTS IN 2006-2007

The following is a short list of EPZS Accomplishments during the past year:

- Discovery Education Center. The EPZS raised over $1,027,500 to fund the new Discovery Education Center.
  - $125,000 from the Wolslager foundation
  - $131,000 from the Meadows foundation
  - $17,500 from Rotary Clubs

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- $750,000 from El Paso Water Utilities Public Service Board

- In progress "Windows to the Wild Outpost"
  - $750,000 grant from the El Paso Electric Company

- Conservation Weekends
  - EPZS sponsored three conservation weekends resulting in increased benefits to Zoo visitor

- Educational Programming
  - EPZS funded and managed Traveling Safari Outreach performed 612 programs reaching over 32,279 people.

PAST ACCOMPLISHMENTS

The EPZS has contributed to the following improvements and/or special projects:

- 2007 EPE Renewable Energy Project Windows to the Wild Outpost
- 2007 EPWU Discovery Education Center
- 2006 Electronic Sign Board
- 2004 Water Filtration Equipment
- 2004 Heating/Cooling System-Paraje
- 2003 Front Gate Bridge Renovation
- 2002 Ocelot Exhibit
- 2001 Birds of Prey Exhibit
- 2000 AZA Western Regional Conference
- 2000 "Komodo Dragon" Exhibit
- 1999 Carolyn Rosenberg-Hirsch, MD Animal Medical Center
- 1999 "Ghost of Bengal" White Tiger Exhibit
- 1999 "Reindeer Exhibit"
- 1998 "Reindeer Exhibit"
- 1998 Recognition Garden
- 1998 "Butterflies: Jewels of the Skies" Exhibit
- 1997 Hummingbird Exhibit
- 1997 Prairie Dog Exhibit Remodeling
- 1996 Americas Aviary – August
- 1996 Paraje Exhibit – April
- 1995 Asian Exhibit
- 1991 Maintenance/ Commissionary/Employee Lounge
- 1990 "Creature Features" El Paso Civic Center Weekend Event - June
- 1989 Prairie Dog Exhibit
- 1989 "Zoo Ark" Smithsonian Traveling Exhibit
- 1987 South American Pavilion
- 1983 Spider Monkey Island
- 1981 Americas Biome
- 1979 Gazebo at Zoo Entrance
- 1978 Sea Lion Pool

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FUTURE PLANS:

The EPZS consists of a board and staff of committed citizens. They all believe in making the El Paso Zoo a strong attraction and valuable asset in our community. In line with the EPZS's Strategic Goals for 2008, the EPZS is in the process of reviewing its internal operations, fund development strategies, and board development. It is working with the Nonprofit Enterprise Center to improve its effectiveness. Board members are developing a comprehensive and detailed Development Plan to ensure that the EPZS successfully reaches its goals in support of the El Paso Zoo.

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