

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

DEPARTMENT: ZOO
AGENDA DATE: DECEMBER 18, 2012
CONTACT PERSON/PHONE: STEVE MARSHALL, DIRECTOR, ZOO 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 nearly 50 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.

SELECTION SUMMARY:

N/A

PRIOR COUNCIL ACTION:

Council Approval – November 6, 2007, November 12, 2002, and September 6, 1994

AMOUNT AND SOURCE OF FUNDING:

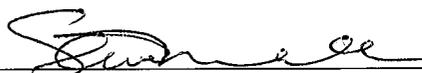
N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD: Steve Marshall  12/11/12
Name Signature Date

RESOLUTION

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

THAT the City Manager be authorized to sign a License Agreement and any amendments that do not affect the approved budget of the City of El Paso, 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") for free gate admission to members and the right to hold the above-mentioned invitational and non-invitational events in consideration of providing financial and training assistance to the El Paso Zoo under the direction of the El Paso Zoo Director, and/or the City Manager.

PASSED AND APPROVED this _____ day of _____, 2012.

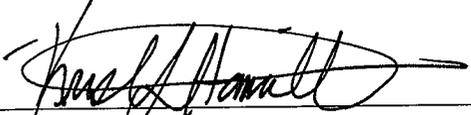
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

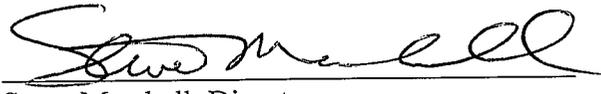
Richarda Duffy Momsen
Assistant City Attorney

APPROVED BY FORM:



Kristen L. Hamilton
Assistant City Attorney

APPROVED BY CONTENT:



Steve Marshall, Director
El Paso Zoo

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") made this ____ day of _____, 2012 (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 agree as follows:

1. GATE ADMISSION

The City hereby agrees to grant free admission to the Zoo to members of the Society 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.

2. 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 benefit 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, accounted for, and used by the Society in the same manner as provided in Article 3(b) below, with respect to membership monies.

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 (1) for the purpose of education or recreation of the public; or (2) for the benefit or support of the Zoo (hereinafter referred to as a "Society-Sponsored Event"). For any such Society-Sponsored Events conducted during normal public hours, the Zoo will remain open to the public and Zoo staff shall collect admission proceeds in the same manner as during normal operation of the Zoo.

Approval of the Society's use of the Zoo grounds, activities, dates and times must be obtained from the Director of the Zoo at least 30 days in advance of any event. The Society shall be responsible for all costs of any such event, 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, as agreed upon by the Zoo Director.

3. CONSIDERATION

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

- a. The Society shall spend at least \$18.75 from every new and renewed membership sold on development, marketing, operation, education, conservation or 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, the Society or City Manager; provided, however, that the Society shall be allowed to use membership revenue and Invitational Event funds 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 authorize the use of 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 shall be members of the Society and provide their services in conjunction with Society and Zoo activities. Training, access, hours, supervision, age, behavior, appearance and other criteria are subject to review and approval 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;

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

g. The Society shall develop, implement and maintain a current fundraising plan in conjunction with and approved by the Zoo Director in support of the Zoo's mission.

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 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 serve as an ex-officio member of the Society Board of Directors;

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 and 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 carry insurance to guard against employee dishonesty in the amount of \$500,000.00, and shall obtain and maintain directors' and officers' liability insurance in the amount of \$2,000,000.00. The Society shall annually provide the City, through the Zoo Director, documentation of its compliance with this Section no later than ninety (90) days after the execution of this Agreement and annually thereafter.

n. The Society shall not utilize the Zoo or its events for political purposes;

o. 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;

p. The Society shall perform any and all other duties and responsibilities as shall be mutually agreed by the parties in writing during the term of this Agreement.

4. 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 or private entities.

No administrative 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 the City Manager through the Director authorizes such fee. Additionally, any financial assistance provided by the Society pursuant to this Agreement shall be in accordance with approved Zoo plans and budgets.

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 or 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 their 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 solicitations of such funds shall identify the purpose.

5. 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 ("initial term"). Upon the expiration of the initial term, this agreement will automatically renew for one year terms on the anniversary of the effective date for up to five additional one year terms, subject to the termination clause.

6. 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 45 days' written notice to the other party.

7. 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 Manager 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 of disputes which may arise between City staff and 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 Manager.

8. CESSATION OF RIGHTS

At the end of the term of this Agreement or upon cancellations as provided herein, the

Society members shall not be allowed free gate admission to the Zoo upon expiration of their current membership.

9. FINANCIAL RECORDS

The Society shall maintain complete and accurate records of all its financial transactions in a format approved by the City Manager and such other minutes and records as are required by its current bylaws. The City Manager 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, balance sheet and corporate federal tax return.

10. STRATEGIC PLAN

The Society shall prepare a five (5) year 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.

11. COMPLIANCE WITH LAWS

The Society must at 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.

12. ASSIGNMENT

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

13. 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 program. 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 Service Centers in an amount not to exceed \$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 vehicle utilized by Zoo employees and volunteers. Lessee 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 30 days in advance of the effective date thereof.

14. 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 similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

15. ENTIRE AGREEMENT

This Agreement 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.

16. 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.

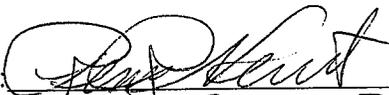
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date first written above.

ADOPTED this _____ day of _____, 2012

THE CITY OF EL PASO

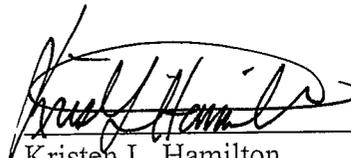
EL PASO ZOOLOGICAL SOCIETY

Joyce Wilson
City Manager

By: 
Printed Name: Renee R. Neuert
Title: Executive Director

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Kristen L. Hamilton
Assistant City Attorney



Steve Marshall, Director
El Paso Zoo

El Paso Zoological Society Support of the El Paso Zoo 2008 – 2012

Founded in 1963, the El Paso Zoological Society, a 501 (c) (3) organization, is an integral partner to the growth and success of the El Paso Zoo. With only seven employees, the Society operates 7 days a week, following the zoo hours of operation. Fulltime positions include the Executive Director, Office Manager, Membership Clerk, and Volunteer Coordinator. Part time positions include an Assistant Volunteer Coordinator and 2 weekend membership staff.

A Board of Directors, consisting of 23 community leaders, governs the Society.

The El Paso Zoological Society

- Administers zoo memberships
- Supports and operates the zoo volunteer program
- Organizes and manages the children's summer zoo camp
- Funds promotions, publications and advertising
- Supports education and conservation programming
- Provides grant writing
- Finances capital improvements

The Society expends its funds to support the zoo in such areas as capital improvements and landscaping, animal exhibits and acquisitions, public education and staff development, visitor amenities, marketing, publications and public relations.

The Society has successfully secured and administered grants from the following foundations and business

- Hunt Foundation
- El Paso Community Foundation
- El Paso Electric
- El Paso Water Utilities-Public Service Board
- Western Refining Company
- Wolslager Foundation
- Robert E. & Evelyn McKee Foundation
- Shiloff Family Foundation
- Meadows Foundation
- Boeing Inc.
- Wells Fargo Bank
- Bank of the West
- Helen of Troy
- Gerald J. & Stanlee N. Rubin Family Trust
- Prices Creameries
- Jobe Concrete
- James & Luther, Inc.
- RMPersonnel, Inc.
- El Paso Veterinary Association

Below are some of the projects funded by the Society from 2007 through 2012

2007

- | | |
|---|-----------|
| 1. El Paso Water Utilities Discovery Education Center | \$750,000 |
| a. Donation from the Public Service Board | |

2008

- | | |
|---|-----------|
| 1. El Paso Electric Kalahari Research Station | \$750,000 |
| 2. Volunteer Program | \$ 30,000 |
| 3. Education Program | \$ 10,000 |
| 4. Zoo Events | \$ 6,000 |
| a. Boo at the Zoo, Elephant Fest, Party for the Planet,
World Oceans Day, Bug Fest, etc. | |
| 5. Conservation | \$ 7,000 |
| 6. Advertising and Marketing | \$ 40,000 |

2009

- | | |
|---|-----------|
| 1. Golden Eagle Project-Bird of Prey Housing | \$ 30,000 |
| a. Grant from Texas Parks & Wildlife - injured
Golden Eagle rehabilitated and trained for
Educational Zoo Programs, as well as housing
For the eagle and other birds of prey | |
| 2. Capital Improvements | \$ 44,306 |
| 3. Volunteer Program | \$ 45,000 |
| 4. Animal Acquisition, Care, & Conservation | \$ 16,783 |
| 5. Economic Impact Study | \$ 10,000 |
| 6. Education Program | \$ 10,000 |
| 7. Zoo Events | \$ 6,000 |
| 8. Advertising and Marketing | \$ 40,000 |

2010

- | | |
|--|-----------|
| 1. Hunt Family Desert Spring Splash Pad | \$250,000 |
| 2. Capital Improvements | \$ 56,656 |
| 3. Water System for Exhibit Moats | \$ 8,100 |
| 4. Landscaping and Lighting in Africa | \$ 6,550 |
| 5. Asia Grasslands Upgrade | \$ 30,000 |
| 6. Volunteer Program | \$ 45,000 |
| 7. Zoo Staff Development and Training | \$ 10,000 |
| 8. Promotional Safari Vehicle | \$ 10,000 |
| 9. Zoo Adventure Program for Low Income Schools | \$ 15,000 |
| a. Grant funding provides transportation, zoo admission
for students/teachers, a zoo education class,
lunch and zoo gift | |
| b. Schools supported by the program include:
Zavala, Beall, Burleson, Clardy, and Aoy | |
| 10. Zoo Field Trip for Non Profit Child Care Facilities | \$ 10,000 |
| a. Child Crisis Center, Lee Moore Children Home,
Salvation Army, Center Against Family Violence | |
| 11. Education Program | \$ 3,000 |

12. Zoo Events	\$ 8,000
13. Animal acquisition, care and conservation	\$ 10,843
14. Advertising and Marketing	\$ 50,000
a. In 2010, the Society secured (pro bono) services from <u>The Laster Group</u> . The agency provided all marketing, press releases, public relations and advertising for the opening of Africa	
b. Zoo Rack Card distribution & maintenance in Carlsbad, Ruidoso, Las Cruces, Deming, and surrounding areas	
15. Zoological Society brought Jack Hanna to the Plaza Theater	
16. Society hosted a Welcome Home Dinner for Major General Pittard	

2011

1. Zoo Strategic/Master Plan	\$100,000
2. Landscaping	\$ 38,500
3. Volunteer Program	\$ 50,000
4. Zoo Adventure Program for Low Income Schools	\$ 21,000
a. Schools noted in 2010 along with Hart, Loma Linda, Alta Vista, Henderson, Milan, Guillen, Alamo, Cooley, Douglas, and Roosevelt	
5. Zoo Field Trip for Non Profit Child Care Facilities	\$ 10,000
6. Support to Ft. Bliss Soldiers & Military Families	\$ 10,000
a. In partnership with MWR, Society pays for admission, Education Programs and lunch for military families new to El Paso & soldiers returning from deployment	
7. Education Program	\$ 3,000
8. Zoo Employee Incentives & Morale	\$ 2,000
9. Zoo Events	\$ 8,000
10. Conservation Programs	\$ 9,000
a. Includes travel costs for Education Specialist to Indonesia	
11. Advertising and Marketing	\$ 65,000
a. Society continues relationship with The Laster Group	

2012

1. Giraffe Viewing Hut	\$120,000
2. Digital X-Ray Equipment	\$150,000
3. Capital Improvements	\$ 65,000
a. Includes shade structures, Sea Lion Exhibit, landscaping	
4. Volunteer Program	\$ 60,000
5. Zoo Adventure Program for Low Income Schools	\$ 25,000
6. Hands On Science at the Zoo	\$ 10,000
a. Partnership with UTEP Education Dept., & 4 th grade Burseson Elementary students	
7. Community Development/Chamizal Neighborhood	\$ 6,000
8. Support to Ft. Bliss Soldiers & Military Families	\$ 6,000
9. Education Program	\$ 5,000

10. Zoo Events	\$ 8,000
11. Conservation Programs	\$ 9,000
12. Zoo Employee Incentives	\$ 4,000
a. Funds zoo staff morale program	
13. Advertising and Marketing	\$ 75,000
a. Secured (pro bono) advertising services from Mithoff/Burton	
b. Secured (pro bono) website service and management for the zoo from Stanton Street Company	

Annual Volunteer Hours Provided to Zoo Programs

2008 – 10,237 hours
2009 – 13,750 hours
2010 – 14,900 hours
2011 – 16,426 hours
2012 – 16,989 hours

Annual Memberships and Zoo Attendance

2008 – Memberships 2,552	Zoo attendance 278,744
2009 – Memberships 2,627	Zoo attendance 281,724
2010 – Memberships 3,955	Zoo attendance 331,812
2011 – Memberships 2,809	Zoo attendance 221,173
2012 – Memberships 3,215	Zoo attendance 354,134

Everything we do supports the operation of the El Paso Zoo