

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

DEPARTMENT: Zoo

AGENDA DATE: July 16, 2024

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Joe Montisano, 915-212-2800

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 4 Enhance EL Paso's Quality of Life through Recreational, Cultural, and Educational Environments

SUBGOAL: 4.2-Create Innovative recreational, educational and cultural programs.

SUBJECT:

That the City Manager be authorized to sign an agreement Regarding Mutual Cooperation (the "Agreement") between the City of El Paso (the "City"), and the Paso Del Norte Community Foundation (the "PDNCF"), a non-profit 501©(3) organization in El Paso, Texas (collectively, the "Parties") to coordinate the Zoo Fund Program (the "Program") to provide fundraising support to the El Paso Zoo (the "Zoo"), and provide a not-for-profit vehicle for gifts from private and other donors for the benefit of the Zoo for a term of five (5) years and shall automatically renew for additional one (1) year period with a limit of five (5) additional periods.

BACKGROUND / DISCUSSION:

This resolution will provide a not-for-profit vehicle for the El Paso Zoo to receive donations and gifts from community, individuals or foundations for the benefit of the El Paso Zoo. These funds will be held in dedicated accounts at the Paso Del Norte Community Foundation specific to the donor intention. Funds will be distributed to the City or vendor requested once proper purchasing procedures are followed. The PDNCF will retain a maximum of 1 percent to compensate for this service and provide full accounting reports to the City of these fund balances.

PRIOR COUNCIL ACTION:

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

None- The City does have an existing similar resolution with PDNCP for the BOSS program.

AMOUNT AND SOURCE OF FUNDING:

If is funded through donations and gifts from the public, foundations and alternative source for the betterment of the Zoo.

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

DEPARTMENT HEAD:


(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

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

That the City Manager be authorized to sign an Agreement Regarding Mutual Cooperation (the "Agreement") between the **CITY OF EL PASO** (the "CITY"), and the **PASO DEL NORTE COMMUNITY FOUNDATION** (the "PDNCF"), a non-profit 501(c)(3) organization in El Paso, Texas (collectively, the "Parties") to coordinate the Zoo Fund Program (the "Program") to provide fundraising support to the El Paso Zoo (the "Zoo"), and provide a not-for-profit vehicle for gifts from private and other donors for the benefit of the Zoo for a term of five (5) years and shall automatically renew for additional one (1) year periods with a limit of five (5) additional periods.

APPROVED by the City Council of El Paso on this ____ day of _____, 2024.

THE CITY OF EL PASO, TEXAS

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:

Jesus A. Quintanilla

Jesus A. Quintanilla
Assistant City Attorney

APPROVED AS TO CONTENT:

Joe Montisano

Joe Montisano, Director
El Paso Zoo and Botanical Gardens

AGREEMENT REGARDING MUTUAL COOPERATION

THIS AGREEMENT REGARDING MUTUAL COOPERATION (this "Agreement") is entered into on ____ day of _____, 2024 (the "Effective Date") by and between the CITY OF EL PASO, a home rule municipality (the "City"), and **PASO DEL NORTE COMMUNITY FOUNDATION** (the "PDNCF"), a non-profit 501(c)(3) organization in El Paso, Texas (collectively, the "Parties").

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

WHEREAS, the PDNCF is a non-profit 501(c)(3) organization established to support the philanthropic goals of individuals, families, corporations, foundations and nonprofit organizations to improve health, education, social services, economic development and quality of life in the Paso del Norte region;

WHEREAS, the City desires to partner with the PDNCF to support the Zoo through fundraising efforts.;

WHEREAS, the Zoo Fund sustainability strategy includes diversifying funding sources through private individuals, foundations and corporate sponsorships, investing in grant writing and fundraising efforts, seeking partnership and sponsorship opportunities, advocating for continued City and County support, and fostering community engagement and support, hereinafter referred to as the "Program";

WHEREAS, in order to better accomplish the goals listed above, it will be beneficial for the Parties to outline their goals and objectives as described herein.

NOW, THEREFORE, the City and the PDNCF agree as follows:

1. **Initial Term and Automatic Renewals.** Unless terminated sooner as provided in this Agreement, the term of this Agreement shall be for a period five (5) years from the Effective Date (the "Term") and shall automatically renew for five (5) successive additional one (1) year periods with a limit of five (5) additional periods, unless either party provides written notice to the other of their decision not to renew at least sixty (60) days prior to the expiration of any Term.

2. **Agreements by the PDNCF.** Until the expiration of the Term of this Agreement or the earlier termination of thereof, the PDNCF shall:

- a. Use Commercially reasonable efforts to establish the El Paso Zoo Fund ("the Fund"), a restricted fund in the PDNCF, to receive gifts, grants, contributions and other revenue and incur liabilities to support the purposes of the Program.
- b. Have the right to transfer funds, in an amount not to exceed 1% per accepted donation, from the restricted fund to the PDNCF's general fund for administrative fees upon the Fund receiving the donation.
- c. Seek and receive City's approval through City Manager, or City Manager's designee, prior to accepting any donation that the donor restricts upon a specific project, program or use, and may include City costs to honor such donation.
- d. Cooperate with the City on any agreements PDNCF may seek to enter into in furtherance of providing on-going financial support to the Program, and shall include the City as a party and in all negotiations that involve use of the funds.
- e. PDNCF shall quarterly provide to City financial statements that account for revenue and expenses from the Fund in accordance with all relevant regular accounting practices and principals, track all transactions, and shall categorize and identify the sources of those monies in the Fund.
- f. Upon request by the City through City Manager or designee, provide amounts requested by the City through the City Manager or designee for specified use within 30 days from Fund unless the amount in the Fund is not sufficient for that specified purpose in accordance with any donor restrictions.
- g. Comply with an annual independent audit of the Fund to be provided at City's cost and provided to the City Manager or designee.
- h. Consult with the City Manager or designee, who shall include the City's Public Information Officer, in response to requests from the media regarding any aspect of this Agreement.
- i. Consult with the City Manager or designee as a point of contact over any duties, rights, or issues related to the Agreement.

Notwithstanding any of the foregoing to the contrary, in no event shall the PDNCF be required to take any action or refrain from taking any action that may, in the PDNCF's sole discretion, cause the PDNCF to be in violation of applicable Internal Revenue Code rules or regulations or other applicable law.

Except for administrative fees allowed herein, no funds shall be used for or converted to any other purpose other than to be used by the City of El Paso for benefit of the El Paso Zoo. Funds collected under this Agreement may not be invested without the City's prior written consent

through its Comptroller, and any investment shall comply with the City's Investment Policy and relevant State laws that apply to government funds.

3. **Agreements of the City and the PDNCF.** Until the expiration of the Term of this Agreement or the earlier termination thereof, the Parties agree to:

- a. Allow the PDNCF to use any creative design, logos, photography or other intellectual property and business or branding, which may be owned by the City, the Zoo, or its agents or assignees for purposes of continuity and association between the City, the PDNCF and the Program with the prior written consent of the Zoo Director or the Deputy City Manager over Quality of Life.
- b. The Parties agree that all money and the fair market value of all property in the Fund, and all income derived therefrom, shall be reported as belonging to the PDNCF, on the PDNCF's financial statements, and tax returns. It is the intent of the Parties that this Agreement be interpreted to grant the PDNCF with variance power and enable the PDNCF to treat the Fund as the PDNCF's asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC 958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB).
- c. Unless otherwise agreed in writing, any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with the Program shall be the property of the City, held for the charitable purposes of the Program.

4. **Joint Efforts.**

- a. During the term of this Agreement, the City and the PDNCF agree to acknowledge the joint efforts of each other during presentations to third parties.
- b. The Parties agree that donations over fifty thousand dollars (\$50,000) need to be presented to City Council for acceptance. The Parties agree that donations to the Fund that require a contract shall include the City as a party to such contract.

5. **Termination and Amendments.**

- a. Either Party may terminate this Agreement at any time upon thirty (30) calendar days' advance written notice to the other Party.
- b. Unless the Agreement is terminated sooner as provided above, or the Parties amend the Agreement in advance of termination, this Agreement will renew automatically upon the expiration of the Term for successive additional one (1) year periods unless either party provides written notice to the other of their decision not to renew at least sixty (60) days prior to the expiration of any Term.

- c. Upon the expiration or termination of Agreement, PDNCF will provide accounting of Fund, comply with a full audit if requested by the City Manager or designee at the City's cost, and release the balance of the Fund to the City for use at the Zoo within 60 days acknowledging the PDNCF's variance power and in accordance with any donor restrictions.

6. **Disputes and Cure Rights.** The PDNCF and the City agree to use good faith efforts to resolve any breaches of this Agreement or any disputes regarding the subject matter and transactions contemplated by this Agreement through mediation before exercising the termination rights set forth in Section 5 so long as the City is not required to incur any financial obligation for participation in mediation.

7. **Notices.** With respect to any notice required or permitted to be given in connection with Agreement (a "Notice"), such Notice shall be deemed received three (3) days after deposit of such Notice in the United States Certified Mail, return receipt requested, postage pre-paid, or on the day of delivery, when delivered personally, to the addresses and parties provided below:

To the City: **The City of El Paso
Attn: City Manager
PO BOX 1890
El Paso, Texas 79950-1890**

With Copy to: **El Paso Zoo and Botanicals Gardens
Attn: Director
4001 E. Paisano
El Paso, Texas 79905**

PDNCF: **PDNCF
Attn: CEO
221 N. Kansas St. Suite 1900
El Paso, Texas 79901**

8. **Modification of this Agreement.** This Agreement may be modified only by written agreement by the Parties.
9. **Assignment.** The Parties may not assign any obligations or rights under this Agreement without the express written consent of the other Party.
10. **No Joint Enterprise.** This Agreement does not create any joint enterprise between the Parties.
11. **Independent Contractors.** The City and the PDNCF are independent legal entities. Nothing in this Agreement creates the relationship of employer and employee, principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither the City nor the PDNCF nor any of their respective agents or employees has control or the right to control the activities of the other Party in carrying out the terms of this Agreement. Both Parties agree that neither Party has, nor will attempt to assert, authority to make commitments for or to bind the other Party to any obligation other than the obligations described in this Agreement.
12. **Headings.** The paragraph or section headings contained in this Agreement are for reference purposes only and do not control the meaning or interpretation of this Agreement.
13. **Expenditures.** Each Party to this Agreement is responsible for the costs associated with such Party's exercise of any rights or performance of any duties under this Agreement.
14. **Texas Public Information Act.** City is a political subdivision of the State of Texas and is governed by the Texas Public Information Act, Chapter 552, Texas Government Code. The Parties acknowledge and agree that City shall be obligated to perform its duties under this Agreement in compliance with the Public Information Act. To the extent to which some duties hereunder are not in conformity with the requirements of the Public Information Act, City shall be relieved of said duties without penalty or further liability. In the event that City receives a request, pertaining to this Agreement or information resulting from this Agreement, under the Public Information Act for Confidential Information it shall immediately notify PDNCF and confer on whether disclosure should be opposed. It is expressly agreed that City may request a determination from the Attorney General of the State of Texas in regard to the application of the Public Information Act to the requested information and whether the information is to be made available to the public. PDNCF may be asked to support such requests for determination by the Attorney General. It is further agreed that City, its officers and employees shall have the right to rely on the determinations of the Texas Attorney General, and that City, its officers and employees shall have no liability to PDNCF for disclosure to the public in reliance on a decision by the Attorney General. Nothing in this agreement shall require City or PDNCF to violate the terms of the Public Information Act.

15. **Governmental Function.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.

16. **Complete Agreement.** This Agreement constitutes and expresses the entire agreement between the Parties hereto in reference to the services and agreements herein described.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall constitute one and the same agreement. Delivery of an executed counterpart to this Agreement by Portable Document Format (.pdf file) attachment through electronic mail or other electronic means shall be effective as an original.

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and venue shall be proper in El Paso County, Texas.

19. **Severability.** If a court of competent jurisdiction finds any term of this Agreement to be illegal, invalid, or unenforceable, such term shall be excluded to the extent of such illegality, invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the illegal, invalid or unenforceable term shall be deemed replaced by a term that is legal, valid and enforceable and that comes closest to expressing the intention of such illegal, invalid or unenforceable term.

IN WITNESS WHEREOF, the Parties have executed this Agreement on this _____ day of _____, 2024.

THE CITY OF EL PASO, TEXAS:

Cary Westin, Interim City Manager

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:

Jesus A. Quintanilla

Jesus A. Quintanilla
Assistant City Attorney

HQ24-2877/Trans#527531|Zoo
Partnership with PDNCF and El Paso Zoo
JAQ

APPROVED AS TO CONTENT:

Joe Montisano

Joe Montisano, Director
El Paso Zoo and Botanical Gardens

Paso del Norte Community Foundation

By: _____

Name: Tracy Yellen

Title: CEO Paso del Norte Community Foundation

ACKNOWLEDGEMENT

The attached instrument, with all conditions thereof, is hereby accepted by Paso del Norte Community Foundation this 9 day of JULY, 2024.

CONTRACTOR:

Tracy J. Yellen

Name Printed: Tracy J. Yellen

Title: CEO