

AN ORDINANCE **2011-04-14-0300**

AUTHORIZING AN AGREEMENT WITH SEAWORLD SAN ANTONIO FOR AN IN-KIND DONATION WITH AN ESTIMATED VALUE OF \$120,000.00 TO ANIMAL CARE SERVICES THAT WILL PROVIDE TWO FREE AMUSEMENT PARK TICKETS TO EACH PERSON ADOPTING A DOG OR CAT FROM ANIMAL CARE SERVICES FROM MARCH 25, 2011 THROUGH JUNE 15, 2011.

* * * * *

WHEREAS, in February 2011, Animal Care Services was approached by SeaWorld to join their “Happy Tails Program”; and

WHEREAS, SeaWorld’s Happy Tails Program is a new adoption program offered by SeaWorld worldwide that will provide pet lovers two free single day admission tickets to SeaWorld when they adopt a dog or cat from a participating animal shelter; and

WHEREAS, Animal Care Services adopts an average of 300 animals monthly; and

WHEREAS, given the community’s existing animal overpopulation issue, Animal Care Services continues to look for innovative collaborations and programs to enhance live release opportunities; and

WHEREAS, heightened service expectations make this mission vital and SeaWorld has long supported local animal shelters; and

WHEREAS, by becoming a participating shelter, Animal Care Services will augment existing “live release” opportunities by collaborating with SeaWorld to increase our adoptions and offer adopters two (2) free single day admission tickets; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

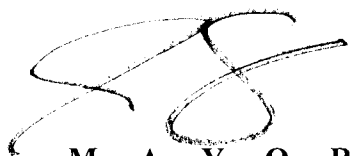
SECTION 1. The City Manager or her designee or the Director of the Animal Care Services Department or his designee is authorized to execute an agreement with SeaWorld San Antonio whereby each person adopting a dog or cat from Animal Care Services from March 25, 2011 through June 15, 2011 will receive two free tickets to the amusement park. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The department will record an in-kind transaction for the services authorized by this ordinance.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

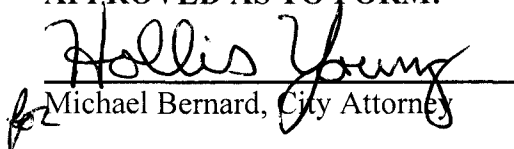
SECTION 4. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 14th day of April, 2011.

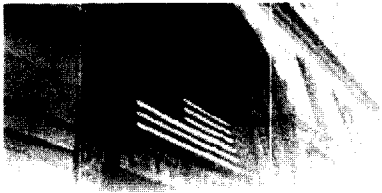

M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

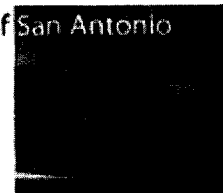
APPROVED AS TO FORM:


for Michael Bernard, City Attorney



Request for
**COUNCIL
 ACTION**

City of San Antonio



Agenda Voting Results - 14

| Name: | 14 | | | | | | |
|------------------------|---|-------------|-----|-----|---------|--------|--------|
| Date: | 04/14/2011 | | | | | | |
| Time: | 10:06:06 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | An Ordinance authorizing an agreement with SeaWorld San Antonio for an in-kind donation with an estimated value of \$120,000.00 to Animal Care Services that will provide two (2) free amusement park tickets to each person adopting an animal from Animal Care Services from April 14, 2011 through June 15, 2011. [Erik J. Walsh, Assistant City Manager, Gary Hendel, Director, Animal Care Services] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Julián Castro | Mayor | | x | | | | |
| Mary Alice P. Cisneros | District 1 | | x | | | | x |
| Ivy R. Taylor | District 2 | | x | | | | |
| Jennifer V. Ramos | District 3 | | x | | | | |
| Philip A. Cortez | District 4 | | x | | | | |
| David Medina Jr. | District 5 | x | | | | | |
| Ray Lopez | District 6 | | x | | | | |
| Justin Rodriguez | District 7 | | x | | | x | |
| W. Reed Williams | District 8 | | x | | | | |
| Elisa Chan | District 9 | | x | | | | |
| John G. Clamp | District 10 | | x | | | | |

**TICKET DONATION
AGREEMENT**

THIS **TICKET DONATION AGREEMENT** (this "Agreement") is made as of _____ 2011, (the "Effective Date") between the City of San Antonio ("City"), on behalf of its Animal Care Services Department ("ACS") a Texas Municipal Corporation with its principal place of business at 4710 State Highway 151, San Antonio, TX 78227, and Sea World of Texas LLC dba SeaWorld San Antonio, a Delaware limited liability company, with its principal office at 10500 Sea World Drive, San Antonio, Texas 78251. ("Sea World"). The City and Sea World may be referred to herein collectively as the "Parties," or individually as a "Party."

WHEREAS, the City is a Texas Municipal Corporation; and

WHEREAS, the City's ACS department cares for and arranges for the adoption of dogs and cats in need, and advances the reduction of the homeless animal population through spay and neuter programs; and

WHEREAS, Sea World owns and operates the marine adventure park known as SeaWorld San Antonio (the "Park"); and

WHEREAS, Sea World desires to support the City's mission and adoption program by donating tickets to the Park, as further set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and for good and valuable consideration, the Parties agree as follows:

1. **DESCRIPTION OF PROGRAM.** Sea World will donate two tickets to the City for every dog or cat that is adopted from the City during the period between March 25, 2011 through June 15, 2011 (the "Donation Period") subject to the terms and conditions contained herein (the "Program"). Upon written confirmation from both parties, the Donation Period may be extended for an additional six (6) month period.

2. PROGRAM OBLIGATIONS.

(a) During the Donation Period and subject to the terms contained herein, Sea World will:

(i) Provide City access to the print-at-office program sponsored by Sea World under which City can order Tickets, subject to the terms herein, on the Internet and receive Internet Ticket fulfillment as provided for in this Agreement (the "EZ Ticket Program"). The EZ Ticket Program shall be available for City's access Tuesday through Friday, 11am to 8pm and Saturday from 11am to 5:30pm; not available on Sunday and Monday.

(ii) Donate to the City two (2) adult admission tickets to the Park ("Tickets") through the EZ Ticket Program for every dog or cat that is adopted. Each adopting family may receive a maximum of two (2) Tickets during the Donation Period.

(b) During the Donation Period, City will:

(i) subject to the terms contained in Section 4 below, obtain and maintain the internet capability to order Tickets from Sea World's Website. "Sea World's Website" shall mean the internet address operated by Sea World as ABAPEZTicket.com., and any replacement website operated by Sea World to service this Agreement.

(ii) collect and enter first/last names, email address and/or phone number of consenting adopting party and the adopted pet ID # into EZ Ticket Program.

(iii) for every dog or animal adopted, provide a maximum of two (2) Tickets to the adopting party. In the event that the adopting family declines the Tickets, City is not authorized to otherwise print and distribute the Tickets. City shall inform each consenting adopting party that receives Tickets that Sea World may contact the adopting party for purposes of confirming the adoption of a pet from City and for providing additional Sea World/animal related information.

(c) During the Donation Period City may promote the Program on City's home webpage.

3. CITY ELIGIBILITY REQUIREMENTS. By entering into this Donation Agreement, City hereby represents and warrants the following:

(b) It maintains an animal care services facility with regular operating hours where the general public can view and interact with dogs and cats eligible for adoption.

(c) It maintains a spay neuter program for its adoptive animals and all adopted animals are spayed/neutered prior to leaving the City's facility.

(d) To the extent they may apply to the City, it is in compliance with all applicable state charitable solicitation registration laws.

(e) It is in compliance with all applicable laws and regulations relating to animal care, control and adoption.

4. EZ TICKET PROGRAM REQUIREMENTS

(a) All Tickets printed by City from Sea World's Website which are subsequently lost, misplaced, physically destroyed, stolen, forged or altered without authorization or otherwise disposed of in a manner not authorized, and all Tickets printed from Sea World's Website without authorization or through the unauthorized use of Shelter's Password (as defined in paragraph 4(c)) (collectively, "Invalid Tickets"), shall be the sole responsibility of City and City's customers. Sea World shall have no obligation to mitigate its damages or for any other reason to refuse admittance on any Invalid Ticket to a member of the public. The provisions of this paragraph 4(a) shall survive the expiration or earlier termination of this Agreement.

(b) City shall be solely responsible for controlling the access of City's employees and volunteers to Sea World's Website, including without limitation assigning log-in IDs and passwords to such persons, suspending and resetting log-in IDs, and setting such persons' access time. City shall be responsible for maintaining accurate records of all Ticket orders placed on Sea World's Website through the use of log-in IDs and passwords issued by Sea World.

(c) Sea World, at its cost, shall set up a ticketing account for City on Sea World's Website accessible through a secure password and log-in protocol distributed to City (collectively, "City's Password"). Sea World shall provide, and City shall comply with, Sea World's minimum system and browser requirements. Sea World shall not provide Internet, PC, printer, or equipment support.

(d) To the extent allowed by law, City shall maintain as confidential any non-public information relating to Sea World which is disclosed to City by Sea World, including, without limitation, any and all information relating to the operation of the EZ Ticket Program.

(e) City shall obtain and maintain printer capability that allows City to print from Sea World's Website and deliver to the adopting party a bar-coded Ticket. The form and content of the Ticket shall be decided by Sea World in Sea World's sole and absolute discretion.

(f) City shall not sell Tickets or distribute them in any other manner except as expressly authorized herein.

(g) during the Term, it will do nothing that would diminish, tarnish, injure, or damage Sea World's reputation and goodwill or cause any contempt, scandal, ridicule, or disrepute to be visited upon Sea World.

(h) City shall provide Sea World with a designated person at a specific City e-mail address who is to be provided with City's Password for submitting orders under this Agreement (the "Account Manager"). City shall be wholly responsible for controlling access to the EZ Ticket Program by the Account Manager and all other persons utilizing City's Password.

5. TRADEMARKS.

(a) The trademarks, trade names, logos, designs, product identification and artwork relating to the Sea World and its parks and their attractions (collectively, the "Sea World Trademarks") shall remain the property of Sea World or its parent or affiliate. Any and all rights in Sea World Trademarks under trademark or copyright law or other proprietary rights shall inure to the benefit of and be the exclusive property of such owner. Sea World grants to City the right to use the above in connection with publicizing and promoting the Program; provided, however, that said right is non-exclusive, non-assignable and non-transferable. **Notwithstanding the foregoing, all proposed uses by City of any Sea World Trademarks or other references to the Park, including but not limited to promotions for this Program, shall be subject to review by and prior written approval of Sea World (which approval shall be deemed refused if Sea World does not respond to such proposed use within ten (10) days of Sea World's receipt of same).** The rights granted herein shall terminate immediately upon the termination or expiration of this Agreement. Upon the termination or expiration of this Agreement, City shall: (i) immediately cease utilization of the Sea World Trademarks for any purpose; and (ii) promptly return or destroy all originals and copies of the other Sea World Trademarks (whether in printed, electronic, recorded, and/or other tangible form); and (iii) discard or destroy all copies thereof. City's obligations to protect Sea World's Trademarks shall survive the termination or expiration of this Agreement.

(b) The trademarks, trade names, logos, designs, product identification and artwork relating to the City and their attractions (collectively, the "City Trademarks") shall remain the property of City. Any and all rights in the City Trademarks under trademark or copyright law or other proprietary rights shall inure to the benefit of and be the exclusive property of such owner. City grants to Sea World the right to use the above in connection with publicizing and promoting the Program; provided, however, that said right is non-exclusive, non-assignable and non-transferable. The rights granted herein shall terminate immediately upon the termination or expiration of this Agreement. Upon the termination or expiration of this Agreement, Sea World shall: (i) immediately cease utilization of the City Trademarks for any purpose; and (ii) promptly return or destroy all originals and copies of the other City Trademarks (whether in printed, electronic, recorded, and/or other tangible form); and (iii) discard or destroy all copies thereof. Sea World's obligations to protect the City's Trademarks shall survive the termination or expiration of this Agreement.

6. **TERM.** Unless terminated earlier by either Party pursuant to the terms of this Agreement, the initial term of this Agreement shall be for the period commencing as of the Effective Date and ending upon the expiration of the Donation Period (the "**Term**").

7. **ACCOUNTING.** During the term hereof, and for a period of at least two (2) years following the termination of this Agreement, City shall maintain such books and records (collectively, "Records") as are necessary to substantiate that (i) all representations and warranties made by City in this Agreement are true and correct in all respects and (ii) all applications for Tickets submitted to Sea World hereunder were valid and proper. All Records shall be maintained in accordance with United States generally accepted accounting principles consistently applied. Sea World and/or its representative shall have the right at any time during normal business hours, upon twenty-four (24) hours notice, to examine said Records. The provisions of this paragraph 7 shall survive the expiration or earlier termination of this Agreement. City shall maintain complete and accurate records containing all information required for verification of the dogs and cats adopted pursuant to the Program. Authorized representatives of Sea World shall have the right to examine copy, and audit these records, by appointment, during normal business hours. No provision of this agreement shall be construed to require City to disclose to Sea World any information which would violate any applicable federal, state or local privacy laws.

8. **NO JOINT VENTURE.** The Parties do not intend that anything in this Agreement or in its performance is to be construed to create an employer-employee relationship, partnership, agency, joint venture, joint employer or franchise relationship between the Parties. All activities set forth in this Agreement will be performed by Sea World and City as independent parties. Neither Party shall be liable for any debts, accounts, obligations, or other liabilities of the other Party, its agents, or employees. Neither Party shall have any authority to obligate or bind the other Party in any manner. Under no circumstances will any employee of either Party be deemed or construed to be an employee or agent of the other Party. Each Party shall refrain from making any explicit or implied representation or statement that could be construed or understood to state or imply that there is a joint venture, partnership, or agency. Each Party, when and if asked, will explicitly state that there is no joint venture, partnership, or agency relationship. Each Party will ensure that its agents comply with the terms of this Agreement.

9. **NOTICES.** All notices requests, demands and other communication hereunder shall be in writing and deemed duly given (a) when delivered in person, or (b) in the case of overnight courier services one business day after delivery to the overnight courier service with payment provided for, or (c) when received if by certified mail, return receipt requested, addressed as follows:

If to Sea World:
Sea World of Texas LLC
10500 Sea World Drive
San Antonio, Texas 78251
Attn: Brian Carter

If to City:
City of San Antonio
P.O. Box 83996
San Antonio, Texas 78283-3966
Attn: Animal Care Services Department

with a mandatory copy of all default and termination notices to:

SeaWorld Parks & Entertainment, Inc.
9205 South Park Center Loop
Suite 400
Orlando, FL 32819
Attn: General Counsel

or to such other address as either Party may provide in writing to the other in accordance with the terms of this Paragraph.

10. **TERMINATION:** Either party shall have the right to terminate this Agreement for any reason or for no reason upon twenty-four (24) hours written notice to the other.

11. Sea World covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, (collectively "claims"), made upon the CITY arising from (i) any injury occurring on Sea World's premises and relating to Sea World's activities under this Agreement, and (ii) any breach of this Agreement by Sea World including any acts or omissions of Sea World, any agent, officer, director, representative, employee, consultant or subcontractor of Sea World, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. City shall be liable for any and all causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage arising from any injury occurring on the City's premises.

IN THE EVENT Sea World AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Sea World shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or Sea World known to Sea World related to or arising out of Sea World's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Sea World's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving Sea World of any of its obligations under this paragraph.

12. INSURANCE.

Prior to the commencement this Agreement, Sea World shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Animal Care Services Department, which shall be clearly labeled "Sea World Happy Tail Program" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Animal Care Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

Sea World's financial integrity is of interest to the City; therefore, subject to Sea World's right to maintain reasonable deductibles in such amounts as are approved by the City, Sea World shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Sea World's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII) in the following types and for an amount not less than the amount listed below:

| TYPE | AMOUNTS |
|--|---|
| Broad form Commercial General Liability Insurance to include coverage for the following: Premises operations Products/completed operations Personal Injury Contractual Liability | For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage |

Sea World agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Sea World herein, and provide a certificate of insurance and endorsement that names the Sea World and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Sea World shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Sea World shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Animal Care Services Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

Sea World agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Sea World shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Sea World's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the City may have upon Sea World's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Sea World to stop work hereunder, and/or withhold any payment(s) which become due to Sea World hereunder until Sea World demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Sea World may be held responsible for payments of damages to persons or property resulting from Sea World's or its subcontractors' performance of the work covered under this Agreement.

It is agreed that Sea World's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

Sea World and any Subcontractors are responsible for all damage to their own equipment and/or property.

13. **ASSIGNMENT.** City shall not assign its rights and/or obligations or delegate its duties under this Agreement without the prior written consent of Sea World.

14. **MISCELLANEOUS.** When applicable, this Agreement is subject to and incorporates the provisions of statutory law and the implementing regulations for commercial co-venturers, charitable sales promotions, or other similar programs, that are in effect in each of the States of the United States, as amended, from time to time. This Agreement will become binding when signed by the Parties and its terms will be interpreted, construed and governed by the laws of the State of Texas and such laws of the United States as may be applicable.

Agreed to and Accepted by:

Agreed to and Accepted by:

CITY OF SAN ANTONIO

[INSERT SEA WORLD ENTITY]

By: _____

By: _____

Signature-Authorized Representative

Signature-Authorized Representative

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____