

**CITY OF EL PASO, TEXAS
AGENDA ITEM
AGENDA SUMMARY FORM**

DEPARTMENT: Mayor & Council

AGENDA DATE: 10/24/2023

CONTACT PERSON NAME AND PHONE NUMBER: Henry Rivera 212-0007

DISTRICT(S) AFFECTED: 7

STRATEGIC GOAL: 4

SUBJECT:

Discussion and action that the City Council declares that the expenditure of District 7 discretionary funds, in an amount not to exceed \$1000, to Books are Gems for use towards the purchase of books and serves a municipal purpose of providing educational and cultural activities to the residents of the City of El Paso, which benefits the community and instills community pride and that the City Manager be authorized to effectuate any budget transfer necessary to ensure that the funds are properly expended for such purpose and to execute the agreement and any amendments to such agreement that do not affect the City's approved budget.

BACKGROUND / DISCUSSION:

The intention of this item is to donate District 7 discretionary funds to a non-profit organization in District 7.

PRIOR COUNCIL ACTION:

Yes 09/14/2021

AMOUNT AND SOURCE OF FUNDING:

District 7 Discretionary Funds

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

RESOLUTION

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

That the City Council declares that the expenditure of District 7 discretionary funds, in an amount not to exceed \$1000, to Books are Gems for use towards the purchase of books and serves a municipal purpose of providing educational and cultural activities to the residents of the City of El Paso, which benefits the community and instills community pride.

That the City Manager be authorized to effectuate any budget transfer necessary to ensure that the funds are properly expended for such purpose and to execute any related agreements and amendments to such agreements.

APPROVED this _____ day of October 2023.


THE CITY OF EL PASO:

Oscar Leaser, Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

This Agreement (“**Agreement**”) is made on _____, 2023 (“**Effective Date**”) and is between the City of El Paso, a municipal corporation under the laws of the State of Texas (the “**City**”) and Books are Gems, a (“**Recipient**”).

WHEREAS, The City is committed to enhancing El Paso’s Quality of Life through recreational, cultural and educational environments; and

WHEREAS, Books are GEMS is a 501(c)(3) nonprofit organization whose mission is to inspire children and empower El Paso families through literacy, in an effort to increase literacy rates in El Paso County; and

WHEREAS, the City Council has authorized the expenditure of \$1,000 of discretionary funds from District 7 to pay towards the purchase of new books and serves a municipal purpose of providing educational and cultural activities to the residents of the City of El Paso, which benefits the community and instills community pride.

The parties agree as follows:

1. **Funding Amount**. Provided the Recipient complies with all obligations under this Agreement, the City will provide funds to the Recipient in an amount up to \$1,000 (“**Program Fund**”). Notwithstanding anything to the contrary, the Recipient may only receive Program Fund disbursements for expenses considered to be “Allowable Expenses”. For purposes of this Agreement, the term “**Allowable Expenses**” means any expenses eligible for reimbursement under the Program Budget and Program Scope. The City may withhold Program Fund disbursements from the Recipient if the Department director reasonably believes that the Recipient (1) has not complied with all obligations under this Agreement, (2) the Recipient has breached any representations and warranties under this Agreement, (3) the submitted expenditures are not in accordance to the approved Program Budget as provided in this Agreement, (4) the expenses are not considered Allowable Expenses, (5) the expenses have not been incurred, and/or (6) the proof of expenses provided by the Recipient are not adequate to confirm that the expenditure meets the requirements of this Agreement. Recipient acknowledges and agrees that the City will not make a reimbursement to the Recipient for expenses that are or will be reimbursed by another funding source, including but not limited to another federal, state, local government or nonprofit agency.
2. **Program Scope**. Recipient will comply with all the requirements and deadlines described in Attachment “A” attached to this Agreement (the “**Program Scope**”). Notwithstanding anything to the contrary, the Recipient will be responsible for repaying the City any funds that the Recipient expends in violation of any provisions under this Agreement.

3. **Term.** Unless terminated sooner as allowed under this Agreement, this Agreement commences on the Effective Date and terminates 365 calendar days from the Effective date.
4. **Budget.** The Recipient will adhere to the program budget attached to this Agreement as Attachment “B” (the “**Program Budget**”), and made a part hereof for all purposes. Unless allowed in the Program Scope, the Recipient will obtain the advance approval of the City Manager for any changes to the Program Budget, such changes including but not limited to increases in budget, decreases in budget, and changes in budget category amounts.
5. **Insurance.** The Recipient will comply with all of the following insurance requirements for the full term of this Agreement. Any gaps in insurance coverage are considered a breach of the requirements of this Agreement.
 - a. Commercial Liability Insurance. The Recipient will procure Commercial Liability Insurance in the minimum amounts of \$250,000 per occurrence for bodily injury or wrongful death and \$250,000 for property damage. The Recipient will ensure that the liability insurance provides coverage for premises liability, operations liability, products and completed operations liability, personal and advertising injury, contractual liability, broad form property damage liability, and independent contractor liability. If the Recipient is performing services near any railroad or streetcar track, then the Recipient will provide liability insurance that provides railroad protective liability insurance in the amount of \$250,000 Bodily Injury/\$250,000 Property Damage Liability per occurrence
 - b. Workers Compensation Insurance. If required by law, the Recipient will procure workers compensation insurance as required by law.
 - c. With the exception of the workers compensation insurance, the Recipient will add the City as an additional insured to the all insurance policies required under this Agreement.
 - d. The Recipient will procure all insurances with an endorsement that requires notification to the additional insured prior to any changes or cancellations in coverage.
 - e. The Recipient will obtain prior approval of the City for any deductibles.
 - f. The Recipient will procure all insurances from businesses authorized to do business in Texas. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. The City may reject an issuer of an insurance policy in the City’s sole discretion.
 - g. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees.
 - h. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

- i. Prior to starting any activities under this Agreement, the Recipient will provide the City proof of compliance with all insurance requirements in this Agreement. Proof provided by the Recipient to the City must be in the form of a certificate of insurance accompanied by all endorsements. Following a written request by the City, the Recipient will provide the City a complete copy of all insurance policies required under this Agreement.
6. **Indemnification.** TO THE EXTENT ALLOWED BY LAW AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE RECIPIENT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES FROM ALL CLAIMS OF PROPERTY DAMAGE, PROPERTY LOSS, PERSONAL INJURY, DEATH, ILLNESS, INTELLECTUAL PROPERTY RIGHT INFRINGEMENT, REGULATORY COMPLIANCE ARISING FROM THE RECIPIENTS AND/OR THE RECIPIENT'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, OR LICENSEES ACTIONS OR OMISSIONS. THE OBLIGATION UNDER THIS SECTION REMAINS IN EFFECT FOR ALL CLAIMS ARISING DURING THE TERM OF THIS AGREEMENT.
7. **Release.** To the extent allowed by law, the Recipient releases the City and the City's officers, officials, and employees from all claims of property damage, property loss, injury, or death sustained by the Recipient while performing any activities related to this Agreement.
8. **Damage to City Property.** The Recipient will pay the costs of repairing any damages to City property if any city property is used caused by the Recipient or the Recipient's contractors, subcontractors, or agents. The Recipient will make payment for any damages within 30 calendar days of receiving an invoice from the City.
9. **Termination.**
 - a. Non-Appropriation of Funds by the City. If the City fails to appropriate sufficient funds to carry out the obligations of the City under this Agreement, then the City may terminate this Agreement upon 30 calendar day notice to the Recipient.
 - b. For Cause. Either party may terminate this Agreement for cause following a 30 calendar day opportunity to cure. For purposes of this Agreement "for cause" means a failure of a party to perform any obligations under this Agreement or breach of any representations and warranties made under this Agreement. If the City terminates this Agreement for cause, then the Recipient will pay the City the damages resulting from the termination for cause, which may include paying back all funds disbursed by the City to the Recipient, if appropriate.
 - c. Termination by Recipient. The Recipient may terminate this Agreement by sending to the City written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated.

However, if the City determines in the case of partial termination that the reduced or modified portion of the Program Funds Amount will not accomplish the purposes for which the federal award was made, the City may terminate the Program Fund in its entirety.

- d. Termination for convenience. The City may terminate this Agreement for any reason upon advance written notice to the Recipient. The City will allow the Recipient 15 calendar days from the date of receipt of the termination notice to stop all services under this Agreement. The Recipient will cease all services under the Agreement by the end of the 15 calendar day period allowed under the termination notice. Upon termination, the Recipient will submit a final statement of Allowable Expenses incurred up to the end of the 15 calendar day period specified in the termination notice along with proof of such expenses. Recipient will be entitled to any Allowable Expenses incurred up to the end of the 15 calendar day period specified in the termination notice provided that Recipient submits all proof and documents required under this Agreement and the Recipient is in compliance with all requirements under this Agreement.
10. **Audit and Inspections.** Recipient will keep all records related to this Agreement for the term of this Agreement. Until termination of this Agreement, Recipient will allow the City to inspect all records reasonably related to this Agreement within seven (7) calendar days from request in order to make audits, examinations, excerpts, and transcripts. The Recipient will provide copies to the requesting party of any records requested at the Recipient's expense. The Recipient will comply with any additional audit requirements listed on the Program Scope.
 11. **Liability for Funds.** The Recipient will repay to the City any funds that the Recipient accepts or disburses under this Agreement in violation of this Agreement.
 12. **Monitoring.** The Recipient will allow the City reasonable access to inspect the Recipient's Offices and facilities subject of this Agreement to ensure compliance with any applicable local, state, and federal requirements. The City will provide the Recipient reasonable notice prior to a visit. Following a visit the City may provide the Recipient with a report regarding the findings of the visit. If the City provides the Recipient with a report, then the Recipient will correct any findings and provide a written response to the City addressing the City's findings. The City shall have a right to access to monitor or request copying, mailing or electronic transmission of Recipient's records that are related to this Agreement. Monitoring reports will include a written report to Recipient documenting findings and concerns that will require a written response to the City. An acceptable response must be received by the City within **seven (7) days** from the Recipient's receipt of the monitoring report or audit review letter. Failure of the Recipient to take all actions necessary to resolve and close monitoring or audit findings within **thirty (30) days** of the monitoring report or audit review letter shall be considered breach of this Contract. The City Manager may grant additional time beyond the original due date provided by compliance staff to comply with

the terms of this Agreement. Additional time beyond the original due date can only be granted for reasons the City Manager may judge to be extenuating circumstances.

13. **Reversion of Assets.** The Recipient will transfer to the City any funds at hand at the time of expiration or termination of this Agreement. The Recipient will transfer such funds within 10 calendar days of the expiration or termination of the Agreement.
14. **Representations and Warranties.** The Recipient represents and warrants that the Recipient is in good legal standing with the laws of the Recipient's state of incorporation, the Recipient is legally authorized to perform business in Texas, and the person's signing the Agreement on behalf of the Recipient are authorized to sign this Agreement. If Recipient is doing business under an assumed name, a copy of the "Assumed Name Certificate" filed with the El Paso County Clerk shall be submitted to the City prior to the execution of this agreement. The Recipient represents that the Recipient has not had any allegations or cases made against the Recipient related to fraud or bribery including at a criminal, civil, or administrative level.
15. **Additional Requirements.** The Attachments listed on this section and the laws and requirements referenced in the Attachments are incorporated into this Agreement in full and are considered to be an essential part of this Agreement. The Recipient will comply with all laws referenced in the Attachments as well as all the requirements listed in the Attachments incorporated to this Agreement. If there are any conflicts between any Attachment and this Agreement, then the most stringent requirement governs. Further, the parties may exercise any rights afforded under the laws referenced in the Attachments. All laws required under the Attachments to be included as part of this Agreement are incorporated and are considered to be part of this Agreement.
 - a. Attachment "A" - Program Scope
 - b. Attachment "B" - Program Budget
16. **Copyrights, Licenses, and Patents.** If this Contract results in a copyrightable material, the City's approval must be obtained to copyright the work. Additionally, the City reserves a royalty free along with a nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes. Any discovery or invention arising out of or developed in the course of the services aided by this Agreement shall be promptly and fully reported to the City for a determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.
17. **General Provisions.**
 - a. **Subcontracting.** Unless allowed under the Program Scope, the Recipient may not subcontract any activities under this Agreement without the prior written consent of the City.

- b. Definitions/Recitals. A defined term under this Agreement appears in **bold face** print when first defined. All Recitals in this Agreement are incorporated into and made a part of this Agreement.
- c. Discrimination Prohibited. Recipient shall comply with all laws prohibiting discrimination as further specified in Program Scope and the applicable local, state and federal requirements. Recipient must file the assurance required under City of El Paso Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Agreement. Recipient covenants that during the term of this Agreement, the Recipient, its associates, officers, board or committee members, and/or employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Agreement and that none of its paid personnel shall be employees of the City or have any contractual relationship with the City.
- d. Compliance with Laws. Recipient will comply with all applicable laws while performing activities under this Agreement. Recipient will obtain all licenses and pay all fees or other charges that may be required to perform the activities under this Agreement, if applicable.
- e. Recipient's Composition. Recipient shall notify the City in writing within thirty (30) calendar days in the event of any change in Recipient's ownership, organization, control and management, and non-profit tax status. Recipient shall, at least annually, submit to the City a list of its current membership and board of directors with their appropriate titles. The City reserves the right to terminate this Agreement if the composition of the Recipient's organization changes in a manner that would make the Recipient ineligible for funds under program requirements.
- f. Independent Contractor Relationship. Nothing in this Agreement creates and employer employee relationship between the parties. The City is not subject to any obligations or liabilities of the Recipient incurred in the performance of this Agreement.
- g. Confidentiality. The City will handle all release of information obtained under this Agreement as required under the Texas Public Information Act. The Recipient agrees to the release of this Agreement pursuant to a request made under the Texas Public Information Act. This clause survives the completion or termination of this Agreement.
- h. Successors and Assigns. This Agreement is binding on the City and the Recipient, and the Recipient's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- i. Venue. This Agreement is entered in the City and County of El Paso, Texas. Venue for any dispute pertaining this Agreement is in El Paso County, Texas.
- j. Governing Law. This Agreement is governed by Texas law.

[Signature page for the City of El Paso]

CITY OF EL PASO:

Cary Westin
Interim City Manager

APPROVED AS TO FORM:

Leslie B. Jean-Pierre
Assistant City Attorney

Acknowledgment

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2023,
by **Cary Westin**, as **Interim City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

[Signature page for Recipient]

RECIPIENT:

Name: Emma Acosta
Title: Executive Director

Acknowledgment

THE STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2023,
by Emma Acosta, as Executive Director of Books are Gems.

Notary Public, State of Texas

My commission expires:

ATTACHMENT “A”

Program Scope

Books Are Gems will distribute 200 – 500 new books purchased through the donated funds to children or parents of children in the El Paso Community during their current programs for children. The books will be distributed every Monday, Wednesday, or Friday from 11 a.m. – 5 p.m. or until all the new books are distributed.

Books are Gems will provide an accounting to the City of El Paso documenting how the donated funds were used. Books are Gems will also provide a report of how the books were distributed, or how many children or families were benefited to ensure that the municipal benefit is met.

ATTACHMENT “B”
Program Budget

\$1,000 Donation

\$1000	200-500 books at about \$2.00-\$5.00 per book
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