

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

**AGENDA DATE:** August 30, 2022 (for Consent Agenda)

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Ben Fyffe, (915) 212-1766

**DISTRICT(S) AFFECTED:** 8

**STRATEGIC GOAL:**

Goal 3: Promote the Visual Image of El Paso

Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural & Educational Environments

**SUBJECT:**

Resolution to authorize the City Manager to execute a Sponsorship Agreement between the City of El Paso and *CommUNITY en Accion* (a Texas NonProfit Organization) wherein, *CommUNITY en Accion* will sponsor name plaques and granite for *Treacherous Crossing Public Art Project*, an installation at the El Paso Museum of History, for the amount of \$35,000.00, and to make any budget transfers required to ensure that the funds are properly expended for such purpose and to execute any related documents or amendments to carry out this purpose.

**BACKGROUND / DISCUSSION:**

Community En Accion committed \$35,000 in raised funds to augment *Treacherous Crossing*, the companion memorial to the Men of Company E. The bulk of funds were used to clad the concrete base in granite.

**PRIOR COUNCIL ACTION:**

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

Council periodically considers donations to municipal departments

**AMOUNT AND SOURCE OF FUNDING:**

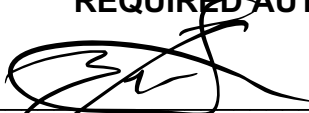
\$35,000 in donated funds

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES \_\_\_ NO**

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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(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 is authorized to execute a Sponsorship Agreement between the City of El Paso and *CommUNITY en Accion* (a Texas NonProfit Organization) wherein, *CommUNITY en Accion* will sponsor name plaques and granite for *Treacherous Crossing Public Art Project*, an installation at the El Paso Museum of History, for the amount of \$35,000.00, and to make any budget transfers required to ensure that the funds are properly expended for such purpose and to execute any related documents or amendments to carry out this purpose.

**APPROVED** this \_\_\_\_ day of August, 2022.

**THE CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leeser, Mayor


**ATTEST:**

\_\_\_\_\_  
Laura D. Prine, City Clerk

**APPROVED AS TO FORM:**

*Danielle Escontrias*  
Danielle Escontrias  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Ben Fyffe, Managing Director  
Cultural Affairs and Recreation



obligation other than the obligations set forth in this Agreement. The CITY also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind Contractor to any obligation other than the obligations set forth in this Agreement.

## 2.0 Scope of Services

2.1 Contractor hereby agrees to make sponsorship payment to the City as follows for use by the City in support of *Treacherous Crossing* Public Art Piece:

2.1.1 Contractor shall pay to the City the amount of \$35,000.00 by September 30, 2022.

2.2 The City accepts sponsorship of \$35,000.00. In consideration for such sponsorship payment, the City agrees that Contractor shall be a non-exclusive sponsor of *Treacherous Crossing* Public Art Project, through the Museums and Cultural Affairs Department (“MCAD”). Public Art Program shall provide acknowledgment in all local advertising mediums and public relations aspects of the Exhibition, including but not limited to television stations, radio, newspaper, and any other print and electronic media as available. The City will prominently acknowledge the Contractors support as provided under this Section in any Exhibition signage. The credit line will appear as follows: “*Lead Sponsor: CommUNITY en Accion*” or “*Sponsored by CommUNITY en Accion*”.

## 3.0 Notices.

3.1 All notices under this Agreement shall be in writing and delivered either by personal delivery or by United States certified mail, return receipt requested. Such notices shall be deemed given when received by such party's designated representative.

CITY: City of El Paso  
Attn.: City Manager  
300 N. Campbell St, 2<sup>nd</sup> Floor  
El Paso, TX 79901

COPY TO: Museums and Cultural Affairs Department  
Attention: Director  
400 W. San Antonio Avenue, Ste. A  
El Paso, TX 79901

CONTRACTOR: Silvia Acosta  
Attn.: CEA Board Chair  
617 W. Franklin Avenue  
El Paso, Texas 79901

#### **4.0 Oral Representations.**

4.1 No oral representations of any officer, agent, or employee of City of El Paso, Contractor, shall affect or modify any obligations of either party under this Agreement. The City Manager for the City of El Paso is authorized to enter into amendments to this agreement that do not affect the budget of the City of El Paso.

#### **5.0 Assignment.**

5.1 Neither this Agreement may be assigned by either party without prior written approval of the other party.

#### **6.0 Governmental Function and Immunity.**

6.1 Governmental Function. The parties expressly agree that, in all things relating to this Agreement, the City enters into this Agreement for the purpose of performing a governmental function and is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the City, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

6.2 Sovereign Immunity. The City reserves, and does not waive, its rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

#### **7.0 INDEMNITY.**

**7.1 AS A CONDITION OF THIS AGREEMENT, CONTRACTOR OR ITS INSURER SHALL INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE,) INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF**

**NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. WITHOUT MODIFYING THE CONDITIONS PRECEDENT FOR PRESERVING DEFENSES, ASSERTING CLAIMS OR ENFORCING ANY LEGAL LIABILITY, AGAINST THE CITY AS REQUIRED BY THE CITY CHARTER OR ANY LAW, THE CITY SHALL PROMPTLY FORWARD TO CONTRACTOR EVERY DEMAND, NOTICE, SUMMONS OR OTHER PROCESS RECEIVED BY THE CITY IN ANY CLAIM OR LEGAL PROCEEDING CONTEMPLATED HEREIN. CONTRACTOR SHALL 1) INVESTIGATE OR CAUSE THE INVESTIGATION OF ACCIDENTS OR OCCURRENCES INVOLVING SUCH INJURIES OR DAMAGES; 2) NEGOTIATE OR CAUSE TO BE NEGOTIATED THE CLAIM AS CONTRACTOR MAY DEEM EXPEDIENT; AND 3) DEFEND OR CAUSE TO BE DEFENDED ON BEHALF OF THE CITY ALL SUITS FOR DAMAGES EVEN IF GROUNDLESS, FALSE OR FRAUDULENT, BROUGHT BECAUSE OF SUCH INJURIES OR DAMAGES. CONTRACTOR SHALL PAY ALL JUDGMENTS IN ACTIONS DEFENDED BY CONTRACTOR PURSUANT TO THIS SECTION ALONG WITH ALL ATTORNEYS' FEES AND COSTS INCURRED BY THE CITY INCLUDING INTEREST ACCRUING TO THE DATE OF PAYMENT BY CONTRACTOR, AND PREMIUMS ON ANY APPEAL BONDS. THE CITY, AT ITS ELECTION SHALL HAVE THE RIGHT TO PARTICIPATE IN ANY SUCH NEGOTIATIONS OR LEGAL PROCEEDINGS TO THE EXTENT OF ITS INTEREST. THE CITY SHALL NOT BE RESPONSIBLE FOR ANY LOSS OF OR DAMAGE TO CONTRACTOR'S PROPERTY FROM ANY CAUSE.**

## **8.0 Applicable Law:**

8.1 The validity, interpretation, performance, and enforcement of this Agreement and any Program Agreement shall be governed by the laws of the State of Texas, along with applicable provisions of the federal law, the El Paso City Code and any Ordinance of the City.

## **9.0 Complete Agreement.**

9.1 This Agreement, together with the Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

## **10.0 Severability.**

10.1 All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

## **11.0 Headings.**

11.1 The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

## **12.0 Compliance.**

12.1 Contractor shall comply with all applicable federal, state, and/or local rules and regulations during the performance of this Agreement.

## **13.0 Warranty of Capacity to Execute Contract.**

13.1 The person signing this Agreement on behalf of Contractor warrants that he/she has the authority to do so and to bind Contractor to this Agreement and all the terms and conditions contained herein.

*(Signatures on the following page)*

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF EL PASO:**

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Claudia A. Garcia, Interim Director  
Purchasing & Strategic Sourcing Department

**APPROVED AS TO FORM:**

*Danielle Escontrias*  
\_\_\_\_\_  
Danielle Escontrias  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Ben Fyffe, Managing Director  
Cultural Affairs and Recreation

**CONTRACTOR:**

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Name: Silvia Acosta  
Title: CEA Board Chair



## ATTACHMENT “A”

In consideration for the sponsorship payment, the City will provide the following benefits to the Contractor under the following terms:

- Provided that Contractor executes a standard use agreement for the use of Museum facilities, the City will allow the Contractor to host a reception at the Museum during the Exhibition. Contractor must select a date from the available dates provided by MCAD.
- The City will include the Contractor’s name in the Museums donor wall.
- The City will acknowledge the Contractor in the Museum’s Member Magazine.
- The City will acknowledge the Contractor in all press releases for the Exhibition.
- The City will acknowledge the Contractor in any social media posts on Facebook related to the Exhibition.
- The City will acknowledge the Contractor in the Museum’s Website.
- The City will provide the Contractor with a complimentary copy of the Exhibition Catalogue.
- The City will provide a group of up to 25 people selected by the Contractor a private tour of the Exhibition and the Museum’s permanent collection.

Contractor acknowledges and agrees that the City will only be obligated to provide the benefits to the contractor described under this Sponsorship Agreement during the term of the Sponsorship Agreement. It is the Contractors responsibility to coordinate with MCAD staff the dates available for the Contractor to avail itself of the benefits under this Sponsorship Agreement.