

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

**AGENDA DATE:** May 11, 2021  
**PUBLIC HEARING DATE:**

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

**DISTRICT(S) AFFECTED:** 8

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

**SUBGOAL:** 4.2 Create innovative recreational, educational and cultural programs

**SUBJECT:**

**APPROVE** a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? **Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

Authorize City Manager, or designee, to execute the first amendment to the Plaza Theatre Closeout Agreement with the El Paso Community Foundation, Plaza Theatre Corporation, PT Annex, LLC and The Tom Lea Institute in El Paso, Texas.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

The Plaza Theatre Closeout Agreement was approved by City Council December 15, 2009 to memorialize the understandings between the City of El Paso and the El Paso Community Foundation, Plaza Theatre Corporation, and PT Annex, LLC related to the Plaza Theatre Performing Arts Centre project. This first amendment to that agreement addresses a change in ownership of movie posters on loan, and on display in theatre. There is not cost impact to the City of El Paso.

**PRIOR COUNCIL ACTION:**

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

Yes, the original agreement dated December 15, 2009

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

No funding is needed.

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?  YES  NO**

**PRIMARY DEPARTMENT:** Museums and Cultural Affairs

**SECONDARY DEPARTMENT:** Destination El Paso

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

**DEPARTMENT HEAD:**

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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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 be authorized to sign the First Amendment to the Plaza Theatre Closeout Agreement, by and between the City of El Paso and the El Paso Community Foundation, addressing the change of ownership of movie posters that are on loan and display in the Plaza Theatre since 2006.

**Dated** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.


**CITY OF EL PASO:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Karla Muñoz  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Ben Fyffe, Director  
Museums and Cultural Affairs

## FIRST AMENDMENT TO PLAZA THEATRE CLOSEOUT AGREEMENT

This FIRST AMENDMENT TO PLAZA THEATRE CLOSEOUT AGREEMENT (the "*First Amendment*"), is made and entered into by and between (i) **THE CITY OF EL PASO** (the "*City*"), (ii) **EL PASO COMMUNITY FOUNDATION, EL PASO THEATRE CORPORATION**, and **PT ANNEX, LLC** (collectively referred to as the "*Donors*"), and (iii) **THE TOM LEA INSTITUTE IN EL PASO, TEXAS**, a Texas non-profit Internal Revenue Code Section 501(c)(3) corporation (the "*Tom Lea Institute*"). Each of the City, the Donors, and the Tom Lea Institute is also referred to herein as a "*Party*" and collectively as the "*Parties*". The Effective Date shall be the date hereinafter provided (immediately prior to the signature spaces hereto) (the "*Effective Date*").

### RECITALS

**WHEREAS**, the City and the Donors previously entered into one certain Plaza Theatre Closeout Agreement, dated upon or about December 15, 2009 (the "*Original Agreement*"), which Original Agreement addressed many matters related to the historic Plaza Theatre and the related Centre Annex (collectively, the "*Plaza Theatre Facility*") – among which matters was the placement of certain framed historic and commemorative posters in the Valencia Gallery to the Plaza Theatre Facility, which posters (the "*Loaned Posters*") were then (i.e., as of the December 15, 2009 effective date of the Original Agreement) owned by Cynthia Farah Haines ("*C. Haines*") and then placed by C. Haines on revocable loan to the City for demonstration at the Plaza Theatre Facility (all as shown upon the attached excerpt from Exhibit E to the Original Agreement – such attached except being Exhibit A to this First Amendment); and

**WHEREAS**, the Loaned Posters continue, as of the Effective Date, to be on loan for demonstration in the Plaza Theatre Facility; and

**WHEREAS**, ownership of the Loaned Posters has been recently transferred by C. Haines to the Tom Lea Institute, whereby following such transfer the Tom Lea Institute became owner of the Loaned Posters, which ownership continues as of the Effective Date; and

**WHEREAS**, it is the desire and intention of the Parties to, in accordance with this First Amendment, (i) commemorate the present ownership of the Loaned Posters by the Tom Lea Institute, (ii) confirm the present agreement by the Tom Lea Institute to continue the revocable loan by it (as the present owner of the Loaned Posters) of the Loaned Posters for display in the Plaza Theatre Facility, and (iii) confirm other hereinprovided agreements concerning these and related matters.

**NOW, THEREFORE**, in recognition of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge by the Parties, the Parties agree as follows:



**ARTICLE I  
ADOPTION OF RECITALS**

The above stated Recitals are incorporated herein by reference, are hereby made a part of this First Amendment, and shall be as effective as if repeated verbatim.

**ARTICLE II  
AMENDMENTS TO THE ORIGINAL AGREEMENT**

By agreement of the Parties, the Original Agreement is hereby amended as follows:

1. Any and all references to C. Haines being the owner of the Loaned Posters are hereby replaced to reflect that the present owner of the Loaned Posters is the Tom Lea Institute.
2. The Tom Lea Institute hereby agrees, and the City hereby concurs in such agreement, that the Loaned Posters shall continue to be loaned by the Tom Lea Institute to the City for display at the Plaza Theatre Facility, such agreement being revocable by either the Tom Lea Institute or the City upon not less than thirty (30) days written notice from one of such Parties to the other such Party.
3. The Donors hereby confirm that, if and to the extent that, any framing or related matters associated with the Loaned Posters was previously supplied, or paid for, by the Donors, such framing or related matters are the property of the Tom Lea Institute with no consideration therefor being due or owing by the Tom Lea Institute to the Donors.

**ARTICLE III  
GENERAL PROVISIONS**

1. **Binding Effect; Assignment.** This First Amendment and all of the provisions hereof shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
2. **Headings and Captions.** The document headings and captions contained herein are for ease of reference only and shall not affect the meaning or interpretation of this First Amendment.
3. **Counterparts.** This First Amendment may be executed in one or more counterparts, all of which taken together shall constitute one instrument. For purposes of this First Amendment, a facsimile or other electronic copy of any signed counterpart shall be given the same force and effect as an original signed counterpart.
4. **Amendments.** No amendment of any provision of this First Amendment shall be valid unless the same shall be in writing and signed by each of the Parties hereto.

5. **Original Agreement, as Amended by this First Amendment.** Except as set forth in this First Amendment, the Original Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this First Amendment and the Original Agreement or any earlier amendment, the terms of this First Amendment will prevail.

*(Signatures follow on next page.)*




IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their duly authorized representatives, effective upon the \_\_\_ day of \_\_\_\_\_, 202\_\_ (the "Effective Date").

**CITY:**

**CITY OF EL PASO**

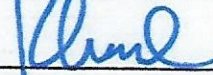
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

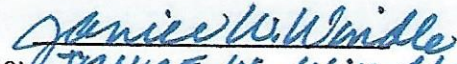
  
Name: Karla Muñoz  
Assistant City Attorney

**DONORS:**

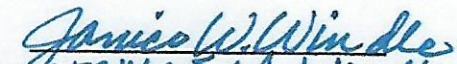
**EL PASO COMMUNITY FOUNDATION**

By:   
Name: Richard Eric Pearson  
Its: President/CEO  
Date: \_\_\_\_\_

**EL PASO THEATRE CORPORATION**

By:   
Name: JANICE W. Windle  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**PT ANNEX, LLC**

By:   
Name: JANICE W. Windle  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**TOM LEA INSTITUTE:**

**THE TOM LEA INSTITUTE OF EL PASO, TEXAS**

By: Holly Cobb  
Name: Holly Cobb  
Its: \_\_\_\_\_  
Date: March 5, 2021

**CONSENT WITHOUT BECOMING A PARTY TO THIS FIRST AMENDMENT:**

Cynthia Farah Haines  
**CYNTHIA FARAH HAINES**



## EXHIBIT A

### Loaned Posters (Excerpt from Exhibit E of Original Agreement)

Plaza Theatre El Paso, TX  
Exhibit E Furniture / Art / Misc. Equipment - Front of house public areas and offices

<u>ITEM</u>	<u>QTY.</u>
<u>Valencia Gallery</u>	
"El Paso Stampede" poster cards (8" x 12"), linen-backed and framed with UV glass (loan- C. Haines)	5
"El Paso Stampede" various sized posters, linen-backed and framed with UV glass (loan -C. Haines)	3
Large "El Paso" movie poster, linen-backed and framed with UV glass (loan- C. Haines)	1
"El Paso" poster cards (8" x 12"), linen-backed and framed with UV glass (loan-C. Haines)	5
Large "The El Paso Kid" movie poster, linen-backed and framed with UV glass (loan- C. Haines)	1
"The El Paso Kid" poster card (8" x 12"), linen-backed and framed with UV glass (loan- C. Haines)	1
Very large "The Wonderful Country" movie poster, linen-backed and framed with UV glass (loan- C. Haines)	1
"The Wonderful Country" poster cards (8" x 12"), linen-backed and framed with UV glass (loan- C. Haines)	6
Medium size "The Wonderful Country" movie poster, linen-backed and framed with UV glass (loan- C. Haines)	1
Very large "The Brave Bulls" movie poster, linen-backed and framed with UV glass (loan- C. Haines)	1
Large "The Brave Bulls" poster, linen-backed and framed with UV glass (loan- C. Haines)	1
"The Brave Bulls" poster cards (8" x 12"), linen-backed and framed with UV glass (loan- C. Haines)	8
Small "Follow Thru" movie poster, linen-backed and framed with UV glass (loan- C. Haines)	1
"Follow Thru" poster card (8" x 12"), linen-backed and framed with UV glass (loan- C. Haines)	1
Promotional photos for "Follow Thru", linen-backed and framed with UV glass (loan- C. Haines)	3