

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

AGENDA DATE: February 15, 2022 (Consent)

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

DISTRICT(S) AFFECTED: All

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

SUBJECT:

That the City Manager be authorized to sign a Foundation Agreement between the City of El Paso and the El Paso Museum of Art Foundation ("Foundation") regarding the Foundation's financial support of the El Paso Museum of Art ("EPMA") and the responsibilities of each Party to work collaboratively to sustain, enhance and improve the EPMA.

BACKGROUND / DISCUSSION:

Agreement formalizes a twenty-two year working relationship between the City and the El Paso Museum of Art Foundation (EPMAF), a standalone, 501(c)3 non-profit formed to support the work of the El Paso Museum of Art. The agreement codifies the roles, responsibilities and expectations of each party.

PRIOR COUNCIL ACTION:

Council has previously approved similar agreements with other non-profit support organizations for the El Paso Museum of Archaeology and the El Paso Museum of History.

AMOUNT AND SOURCE OF FUNDING:

Agreement codifies disbursements of funds raised by EPMAF to the City to support Museum programming and exhibitions.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

*****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 a Foundation Agreement between the City of El Paso and the El Paso Museum of Art Foundation (“Foundation”) regarding the Foundation’s financial support of the El Paso Museum of Art (“EPMA”) and the responsibilities of each Party to work collaboratively to sustain, enhance and improve the EPMA.

Dated this _____ day of _____ 2022.

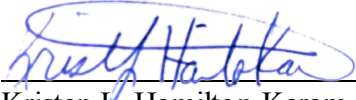
CITY OF EL PASO:

Oscar Leeser, Mayor

ATTEST:


Laura Prine
City Clerk

APPROVED AS TO FORM:



Kristen L. Hamilton-Karam
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Ben Fyffe, Managing Director
Cultural Affairs and Recreation

FOUNDATION AGREEMENT
EPMA Foundation

THIS FOUNDATION AGREEMENT (this “Agreement”) is entered into on February ___, 2022 (the “Effective Date”) by and between the CITY OF EL PASO, a home rule municipal corporation (the “City”), and EL PASO MUSEUM OF ART FOUNDATION, a Texas non-profit corporation (the “Foundation”).

WHEREAS, the City owns, annually budgets for and operates the El Paso Museum of Art (“EPMA”);

WHEREAS, the Foundation is a tax-exempt organization that was established in 1998 to support EPMA and its exhibitions, programs and outreach through annual disbursements from income generated on its permanent endowment;

WHEREAS, the City and the Foundation wish to work collaboratively and to cooperate with one another now and into the future to improve, enhance, and sustain the role of EPMA as a premier center for local, regional, national, and international art and artists; and

WHEREAS, the City and the Foundation desire to enter into this Agreement to delineate their respective roles and responsibilities with respect to EPMA.

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

1. Term. Unless terminated sooner as provided in this Agreement, the term of this Agreement shall be for a period of 10 years from the Effective Date (the “Term”).
2. Foundation Role. The Foundation agrees to:
 - (a) Fundraise and increase its endowment for the benefit of EPMA;
 - (b) Undertake a strategic planning process to increase awareness of the Foundation and EPMA and to increase giving to the Foundation;
 - (c) Increase donations to EPMA for the purpose of supplementing costs of programs, exhibitions, and events and for acquisition, conservation/preservation, education, and interpretation or exhibitions and emergent opportunities not otherwise included in the EPMA budget; It being understood and agreed, however, that the Museum of Art Foundation, while agreeing to serve as a resource for encouraging and enhancing funding opportunities, will itself not contract for services, goods, or products with respect to, or in furtherance of, the EPMA without consultation with the EPMA;
 - (d) Prepare an annual budget of anticipated contributions (the “Contributions Budget”) to EPMA;

(e) Ensure that any information on the EPMA webpage or media regarding the Foundation is current and correct, and submit requests for changes in writing to the EPMA Director.

(f) Maintain its books and records in accordance with Texas law and prepare financial statements in accordance with Generally Accepted Accounting Principals (GAAP), as applied to the not-for-profit sector. So long as the City and the Foundation are parties to that certain Restricted Funds Management Agreement dated August 25, 2009 (the “Restricted Funds Agreement”), at any time and as often as the City may deem necessary, upon reasonable notice and during regular business hours, the Foundation shall make all of its records available to the City or any authorized representative for inspection, and shall permit the City or any of its authorized representatives to audit, examine, review and make copies;

(g) Allow the City to designate one non-voting member to the Foundation Board. The non-voting member shall be the then-serving Managing Director of the Museums and Cultural Affairs Department for the City (the “MCAD Director”) or a person with expertise in the arts, NGO fundraising, or NGO governance; and

(h) Allow the then-serving Director of EPMA (the “EPMA Director”) to serve as a voting *ex-officio* member of the Foundation Board.

3. City Role. The City (including but not limited to the City acting through EPMA) agrees to:

(a) Acknowledge the Foundation as the premier enterprise that raises funds for acquisition, conservation/preservation and education and interpretation for EPMA;

(b) Subject to applicable laws and policies, collaboratively promote Foundation events and activities that support EPMA;

(c) Allow the Foundation to use EPMA free of rental fees up to five times per calendar year provided that (i) the Foundation coordinates with EPMA for available dates, (ii) the Foundation complies with all venue regulations, including insurance requirements, and (iii) the use is for events that help the Foundation maximize grants and challenge grants from private sources and donors;

(d) Allow the Foundation, subject to availability, to use office space to hold board meetings and donor meetings at One Arts Festival Plaza as approved by the Director;

(e) Coordinate and host semi-annual meetings with all El Paso museums to discuss programs, exhibitions, and events;

(f) Actively engaging (to the extent appropriate within the City's hiring policies and procedures) the Foundation Board (along with other stakeholders) anytime a replacement EPMA Director is to be hired;

(g) Provide the Foundation with any reasonably requested public documentation that satisfies a donor regarding the appropriate use of such donor's bequest or gift in accordance with the Public Information Act;

(h) Grant the Foundation a limited license to use EPMA logo along with its Foundation logo for purposes of continuity and association between the Foundation and EPMA upon approval by EPMA Director and the MCAD Director, subject to City policies and procedures; and

(i) To the extent allowed by law, facilitate processes which enable the most beneficial use of donations to enhance EPMA and its mission in the El Paso region.

4. Joint Role. The Foundation and the City (including but not limited to the City acting through EPMA) agree to conduct regularly scheduled meetings that include the Foundation chair, the MCAD Director, and EPMA Director for the purpose of:

(a) Discussing and understanding EPMA's priorities for exhibitions, programs, and initiatives and for acquisition, conservation/preservation, education, and interpretation or exhibitions and emergent opportunities not otherwise included in EPMA budget;

(b) Discussing and understanding EPMA's priorities for community centered and scholarly programing;

(c) Discussing, understanding, and coordinating (i) fundraising efforts in support of EPMA priorities, (ii) fundraising plans for the upcoming fiscal year, and (iii) the Foundation's fund raising efforts;

(d) Reviewing and discussing the Contributions Budget;

(e) Discussing and understanding the City's plans and directions for operating EPMA and EPMA facilities;

(f) Planning and coordinating EPMA's annual communication plan promoting the importance of EPMA; and

(g) Periodically reviewing and evaluating the effectiveness of the City's and the Foundation's relationship under this Agreement.

5. Termination.

(a) Either party may terminate this Agreement at any time upon a 30 calendar day advance written notice to the other party.

(b) This Agreement will automatically terminate upon the dissolution of the Foundation or EPMA.

(c) Unless the Agreement is terminated sooner as provided above or the parties amend the Agreement in advance, this Agreement will terminate upon the expiration of this Agreement as provided in Section 1 above.

6. Donations. Donations made from the Foundation to EPMA will be in the form of monetary donations to be spent in accordance with donor instructions or, absent such instructions, in accordance with the identified needs and priorities of EPMA. The Foundation acknowledges and agrees that it does not have the authority to bind the City or EPMA to any obligations. Moreover, the Foundation will not contract for services, goods, or products with respect to, or in furtherance of, EPMA without the consent of EPMA. Likewise, the City acknowledges and agrees that it does not have the authority to bind the Foundation to any obligations, nor with the City contract for services, goods, or products with respect to, or in furtherance of, the Foundation without the consent of the Foundation. Non-monetary donations made from the Foundation to EPMA must be approved by EPMA Director or any other person designated by the City Manager. Any non-monetary donations from the Foundation must not impose on, or require from, the City additional responsibilities. The Foundation acknowledges that any donations that impose additional responsibilities on the City or EPMA must be approved by the City through a separate contract in accordance with City policies and procedures. The Foundation acknowledges that the City must follow all applicable state, federal, and local laws regarding the expenditure of any funds received by the City. Notwithstanding anything to the contrary in this Agreement, any funds used or disbursed under the Restricted Funds Agreement shall remain subject to that agreement and this Agreement shall not be construed to amend that agreement in any respect.

7. Principal Representatives of the Parties. In order to make more efficient future communications between the Parties with respect to this Agreement and to best assure maximum coordination and communications between the Parties and the work being performed pursuant to this Agreement, the Parties agree as to the importance of the Parties designating principal representatives. Such principal representatives for the respective Parties are as follows:

(a) For the City and the EPMA:

Museums and Cultural Affairs Department
Attn: Managing Director
400 W. San Antonio, Suite A
El Paso, TX 79901
(915) 212-1783

as such designation may be changed in the future by Notice given by the City (for itself and upon behalf of the EPMA) to the Foundation in accordance with Section 8 below.

(b) For The Museum of Art Foundation:

El Paso Museum of Art Foundation
Attn: Board Chair
1 Arts Festival Plaza
El Paso, Texas 79901

as such designation may be changed in the future by Notice given by the Foundation to the City (for itself and upon behalf of the EPMA) in accordance with Section 8 below.

8. Notices. With respect to any notice required, permitted, or with respect to this 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, addressed to: (i) the City or the EPMA at the address given for the principal representative of the City and the EPMA in Section 7(a) above; or (ii) the Foundation at the address given for the principal representative for the principal representative of the Foundation in Section 7(b) above.

9. Modification of this Agreement. This Agreement may be modified only by written instrument executed by the Parties.

10. Assignment. The parties may not assign any obligations or rights under this Agreement without the express written consent of the other party.

11. Compliance with Laws. The Foundation will comply with the Charitable Solicitations Ordinance of the City of El Paso with regard to its fund-raising activities and meet all applicable state and federal laws and regulations governing charitable solicitations by non-profit organizations.

12. No Joint Enterprise. This Agreement does not create any joint enterprise between the parties.

13. Independent Contractors. The City and the Foundation 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 Foundation 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.

14. 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.

15. 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.

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

IN WITNESS THEREOF, the Parties have executed this Agreement as of the Effective Date.


ATTEST:

CITY OF EL PASO:

Laura Prine
City Clerk

Oscar Leeser
Mayor

APPROVED AS TO FORM:



Kristen L. Hamilton-Karam
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Ben Fyffe, Managing Director
Cultural Affairs and Recreation

EL PASO MUSEUM OF ART FOUNDATION

By: _____
Name: _____
Title: _____