

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

**AGENDA DATE:** February 28, 2023 (for Regular Agenda)

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

**DISTRICT(S) AFFECTED:** 8

**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 the Restricted Funds Management Agreement by and between the City of El Paso and the El Paso Museum of Art Foundation, under which the Foundation will commission, design, and construct, and finance installation of the Star Ceiling Sculpture by El Paso artist Leo Villareal using City special revenue fund accounts as endowed funds for the benefit of the El Paso Museum of Art at no cost to the City.

**BACKGROUND / DISCUSSION:**

The El Paso Museum of Art Foundation (EPMAF), a 501(c)3 support entity for the El Paso Museum of Art has pledged to raise \$6 million for the creation of "Star Ceiling," an original artwork by internationally-renowned artist Leo Villareal to be installed on the southern portion of EPMA property bounding Henry Trost Court. The amended agreement will allow EPMAF to utilize City's restricted Roderick Fund and Harvey Fund towards commission after raising \$3 million. Both funds may be used for acquisition of new artwork.

**PRIOR COUNCIL ACTION:**

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

Council approved agreement to receive the artwork on November 23, 2021.

**AMOUNT AND SOURCE OF FUNDING:**

\$775,481 in restricted funds held by the El Paso Museum of Art Foundation

**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

### NOW THEREFORE, 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 Restricted Funds Management Agreement entered on August 25, 2009 by and between the City of El Paso and the El Paso Museum of Art Foundation (the "Foundation"), under which the Foundation will commission, design, construct, and finance installation of the Star Ceiling Sculpture by El Paso artist Leo Villareal, and the City of El Paso will contribute (\$775,481) towards the project after the Foundation has raised the first \$3 million dollars for the project.

**APPROVED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2023.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Oscar Leoser  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

*Danielle Escontrias*  
Danielle Escontrias  
Assistant City Attorney

**APPROVED AS TO CONSENT:**

  
Ben Fyffe, Managing Director  
Cultural Affairs and Recreation

STATE OF TEXAS )  
)  
)  
)  
COUNTY OF EL PASO )

**FIRST AMENDMENT TO  
RESTRICTED FUNDS MANAGEMENT  
AGREEMENT WITH THE EL PASO  
ART MUSEUM FOUNDATION**

This First Amendment to the Restricted Funds Management Agreement (this “***Amendment***”) is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the **City of El Paso**, a municipal corporation, (“***City***”) and the **El Paso Museum of Art Foundation** (“***Foundation***”).

**RECITALS**

**WHEREAS**, on August 25, 2009, the City entered into an Agreement (hereinafter “***Original Agreement***”), with the Foundation regarding the transfer, management, and investment of certain restricted funds, including the Olga Roderick Fund (the “***Roderick Fund***”) and the Katharine White Harvey Fund (the “***Harvey Fund***” and together with the Roderick Fund, the “***Restricted Funds***”); and

**WHEREAS**, the Foundation has commissioned a \$6 million light sculpture installation to be known as the Star Ceiling (the “***Sculpture***”) by El Paso-born artist Leo Villareal;

**WHEREAS**, the Sculpture is a site-specific artwork that will be installed on south entrance plaza (the “***South Plaza***”) of the El Paso Museum of Art (“***Museum***”) and will encourage connection, communication, and community; and

**WHEREAS**, the Foundation, in support of the Museum pledges and promises to exercise its reasonable best efforts to raise funds sufficient to (i) provide finances to renovate the South Plaza, (ii) commission, design, construct and finance the installation of the Sculpture, and (iii) permanently maintain the Sculpture (collectively, the “***Project***”); and

**WHEREAS**, the Foundation has established a permanent fund with the Paso del Norte Community Foundation entitled the “Star Ceiling Fund” and all donations to the Star Ceiling Fund will be used to pay for and support the Project; and

**WHEREAS**, the City and the Foundation desire to amend the Original Agreement to permit the corpus from the Restricted Funds to be expended on the Project in accordance with the terms and conditions set forth in this Amendment; and

**WHEREAS**, the City and the Foundation acknowledge and agree that the Project is a work of art for the Museum, is for the public benefit, and the expenditure of the Restricted Funds on the Project is in accordance with the original donors’ intent; and

**WHEREAS**, the parties desire to enter into the following amendment to allow for expenditure of the corpus of the funds as provided herein for the renovation of the South Plaza and commission, design, construct and finance installation of the Star Ceiling Sculpture by El Paso artist Leo Villareal for benefit of the Museum, which serves the municipal purpose of providing cultural and educational opportunities for the residents of, and visitors to the City.

**FOR THESE REASONS, AND IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THE ORIGINAL AGREEMENT AND THIS FIRST AMENDMENT, THE PARTIES AGREE AS FOLLOWS:**

1. That Paragraph 1(c) of the Original Agreement is amended to read as follows:
  - (c) Beginning on the effective date of this Amendment, the Foundation agrees to manage and invest said funds in a manner consistent with the Investment Policy of the City of El Paso (the "***Investment Policy***") attached hereto as **Exhibit "B"** and incorporated herein by reference. The preservation and safety of corpus shall be the foremost objectives of any investments related to the restricted funds and income or interest revenue shall be allocated in accordance with the Investment Policy and accounted for in quarterly investment activity reports and other reports to the City, as required under Section 2, however, funds can be removed from Investment status, and spent in compliance with Paragraphs 1(d)(i) and 1(e)(i). The City's Investment Policy is available to the Foundation and the general public through the City's website and is updated annually.
2. That Paragraph 1(d)(i) of the Original Agreement is amended to read as follows:
  - (i) except as otherwise provided in this Paragraph 1(d)(i), the corpus of the Roderick Fund shall not be expended or disbursed from the Foundation's accounts for any other purpose other than for investment purposes as described in this Agreement and in accordance with the City's Investment Policy. Once the Foundation has raised \$3 million in gifts, grants, written pledges, donations, and contributions, including in-kind contributions (collectively, the "***Initial Funding***"), in support of the Project, the Managing Director of Cultural Affairs and Recreation (the "***Managing Director***") will authorize the Foundation to disburse corpus from the Roderick Fund for expenditure by the Foundation on the Project. Under no circumstances shall corpus from the Roderick Fund be expended on operational expenses of the Museum.
3. That Paragraph 1(e)(i). of the Original Agreement is hereby amended to read as follows:
  - (i) except as otherwise provided in this Paragraph 1(e)(i), the corpus of the Harvey Fund shall not be expended or disbursed from the Foundation's accounts for any other purpose other than for investment purposes as described in this Agreement and in accordance with the City's Investment Policy. Once the Foundation has raised the Initial Funding in support of the Project, the Managing Director will authorize the Foundation to disburse the corpus from the Harvey Fund for expenditure by the Foundation on the Project. Under no circumstances shall corpus from the Harvey Fund be expended on operational expenses of the Museum.
4. The Foundation must substantially complete the renovation of the South Plaza and the installation of the Sculpture on or before June 30, 2025 (the "***Project Completion Date***"); *provided, however*, if the renovation of the South Plaza and the installation of the Sculpture has

commenced by the Project Completion Date and the Foundation is pursuing such renovation and installation with reasonable diligence, then the Project Completion Date will be extended automatically for so long as the Foundation continues to pursue such renovation and installation with reasonable diligence (with the extended Project Completion Date referred to as the “**Extended Project Completion Date**”). If the renovation of the South Plaza and the installation of the Sculpture are not completed by the Project Completion Date or the Extended Project Completion Date, as the case may be, the City, by written notice to the Foundation, may terminate and rescind this Amendment and proceed with other improvements to the South Plaza as it determines appropriate. If the City terminates this Amendment by written notice to the Foundation, then the Foundation must return any expended or allocated Restricted Funds to the respective Restricted Funds.

5. This First Amendment shall not take effect until signed by the authorized representative of the City of El Paso.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF EL PASO, TEXAS**

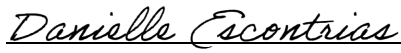
**EL PASO MUSEUM OF ART  
FOUNDATION**

By: \_\_\_\_\_  
Tommy Gonzalez  
City Manager

By:  \_\_\_\_\_  
Name: Sereka Barlow  
Title: Chief Executive Officer

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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

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

APPROVED AS TO CONTENT:

 \_\_\_\_\_  
Robert Cortinas  
Chief Financial Officer