

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

DEPARTMENT: Mayor and Council

AGENDA DATE: 01.21.2020

CONTACT PERSON NAME AND PHONE NUMBER: Representative Cassandra Hernandez 212.0003
Representative Alessandra Anello 212.0002

DISTRICT(S) AFFECTED: 3 and 2

STRATEGIC GOAL:

Goal 2 - Set the Standard for a Safe and Secure City

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.**

Approve a resolution for the use of District 3 and District 2 discretionary funds to support the El Paso Municipal Police Officers' Association Memorial.

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 Fallen Police Officers Memorial serves the municipal purpose of honoring the fallen heroes of the El Paso Police law enforcement. The use of these discretionary funds would go towards the restoration or rebuilding of this memorial.

PRIOR COUNCIL ACTION:

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

No

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?

N/A

*****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 Council declares that the expenditure of District 3 discretionary funds in an amount not to exceed \$2,500.00 and the expenditure of District 2 discretionary funds in an amount not to exceed \$1,000 to support the El Paso Municipal Police Officers' Association Memorial for the restoration, rebuild, and/or enhancement of the Fallen Police Officers Memorial serves the municipal purpose of honoring the fallen heroes of the City of El Paso and fostering community pride, which benefit the community to perpetuate the memory of El Paso Police law enforcement officers who have paid the ultimate sacrifice while serving their communities and is authorized; 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 any related agreements and amendments to such agreements.

APPROVED this _____ day of _____, 2020.

THE CITY OF EL PASO:

Dee Margo, Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

This Agreement (the “**Agreement**”) is entered this _____, 2020 (the “**Effective Date**”) and is between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (the “**City**”) and the El Paso Municipal Police Officers Association, a Texas non-profit organization (the “**Association**”).

WHEREAS, the City of El Paso, through various departments and programs, encourages the development of public and private art and the integration of arts into the architecture of municipal structures and public places; and

WHEREAS, the Association currently owns and maintains a Fallen Police Officers Memorial currently located at 11055 Loma Del Norte Dr., El Paso, TX 79934 (the “**Memorial**”);

WHEREAS, the Memorial serves the municipal purpose of promoting the visual image of El Paso in accordance with the City’s strategic goal 3 as well as promoting the arts and honoring the fallen heroes of the City of El Paso and fostering community pride;

WHEREAS, on May 30, 2017 the City Council authorized the expenditure of \$10,000 of District 4 discretionary funds for the restoration and rebuilding of the fallen Police Officers Memorial;

WHEREAS, on _____, 2020, the City Council authorized the expenditure of \$1,000 of District 2 discretionary funds and \$2,500 of District 3 discretionary funds for the restoration and rebuilding of the Memorial;

WHEREAS, City Council, through the May 30, 2017 and _____, 2020 City Council resolutions, found a municipal purpose for the expenditure of municipal funds for the restoration and rebuilding of the Memorial.

The parties agree as follows:

1. **FUNDS.**
 - A. The City will provide monetary support to the Association in the total amount of \$13,500 made available from Districts, 2, 3, and 4. The Association will submit an invoice to the City of El Paso and the City will disburse the amounts requested by the Association, provided the amounts requested do not exceed a total of \$13,500.

2. **SCOPE OF WORK.**
 - A. The Association will use the funds provided by the City under this Agreement for the restoration, rebuilding, and enhancing of the Association’s Memorial. The

Association will comply with all of the following in relation to the restoration, rebuilding, and enhancing of the Associations Memorial. Failure to comply with any of the following constitutes a material breach of this Agreement:

1. The Association will restore, rebuild, and/or enhance the Memorial (the “**Project**”).
2. Prior to commencing any work, the Association will obtain the approval of the City regarding the design of the Project for any memorial on City property.
3. The Association must complete Project within 10 years from the Effective Date.
4. The Association must ensure that the Memorial remains open to the general public free of charge for a minimum period of 5 years following the completion of the Project (“**Display Term**”).
5. The Association may work with the City to relocate the Memorial to a location mutually agreed by the City and the Association, provided that such location is a location that is open to the public free of charge. The Association will coordinate the design of the Project with the City’s design of any facilities where the Memorial may be relocated. Nothing in this Agreement obligates the Association to relocate the Memorial.
6. The Association will be responsible for any expenses or funds required for the completion of this Project that exceed the funds provided under this Agreement. Notwithstanding anything to the contrary, nothing in this Agreement obligates or prohibits the City from allocating additional funds to the Project.
7. The Association will submit yearly reports to the City of El Paso regarding the status of the Project and how City funds have been expended on the Project.
8. The Association will provide the City with proof of the completion of the Project.
9. The Association is responsible for procuring all contracts necessary for the completion of the Project and will ensure that the Memorial is free from any liens following the completion of the Project. Upon request from the City, the Association will provide the City with proof of all releases of liens. If the Association decides that the City should take over the Project, then the City and the Association may amend this Agreement as the parties determine necessary to complete the Project.
10. The Association must ensure that the Memorial is not inflammatory nor offensive or dangerous to the community and visitors.

3. TERM.

- A. This Agreement commences on the Effective Date and ends at the completion of the Display Term.

4. **INDEMNIFICATION.**

A. AS A CONDITION OF THE GRANTING OF THIS AGREEMENT, THE ASSOCIATION AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FROM ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONSTRUCTION AND MANAGEMENT OF THE MEMORIAL. 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 will promptly forward to the Association every demand, note, summons or other process received by the City in any claim or legal proceeding contemplated herein. The Association will 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 the Association may deem expedient; and 3) defend or case 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. The Association will pay all judgments in actions defended by the Association pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by the Association, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Association's property from any cause. FURTHER, the ASSOCIATION RELEASES THE CITY FROM ANY CLAIMS RELATED TO PROPERTY DAMAGE OR PROPERTY LOSS SUSTAINED BY THE ASSOCIATION IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT. THE ASSOCIATION IS RESPONSIBLE FOR ALL DAMAGES CAUSED BY THE ASSOCIATION TO CITY PROPERTY. IF THE ASSOCIATION DAMAGES ANY CITY PROPERTY, THEN THE CITY WILL REPAIR SUCH DAMAGE TO THE CITY'S STANDARDS AND THE CITY WILL SEND AN INVOICE TO THE ASSOCIATION FOR THE FULL COSTS OF THE REPAIRS. THE ASSOCIATION WILL PAY IN FULL ANY INVOICE SENT BY THE CITY UNDER THIS SECTION WITHIN 30 CALENDAR DAYS OF RECEIPT.

5. **TERMINATION.**

A. This Agreement may be terminated as provided in this Section.

1. **TERMINATION FOR CONVENIENCE.** Either party may terminate this Agreement for any reason by sending a written notice to the non-terminating party at least 15 calendar days before termination. If either party terminates this Agreement under this provision, then the Association will return to the City, within 30 calendar days of termination, all unexpended funds.
2. **TERMINATION BY EITHER PARTY FOR CAUSE.** Either party may terminate this Agreement if one party fails to fulfill the obligations set out in this Agreement. Before terminating this Agreement pursuant to this provision the terminating party will provide written notice of intent to terminate enumerating the failures for which the termination is being sought and provide at least 30 calendar days to the non-terminating party to cure such failure. If the City terminates this Agreement pursuant to this provision, then the Association will refund to the City, within 30 calendar days of termination, all the funds disbursed by the City to the Association under this Agreement.

B. **TERMINATION NOT A RELEASE.** Termination by either party is not a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party is not relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

C. **TERMINATION BY THE ASSOCIATION.** If the Association decides not to perform the Project, the Association may return all funds received from the City under this Agreement and terminate this Agreement. The Agreement terminates upon the full refund of the funds by the Association.

8. **GENERAL PROVISIONS.**

A. **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.

B. **INDEPENDENT CONTRACTOR RELATIONSHIP.** This Agreement does not create an employee-employer relationship between the Association and the City. As such, the City is not subject to the liabilities or obligations the Association obtains under the performance of this Agreement.

C. **TIME IS OF THE ESSENCE.** The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.

- Agreement. If applicable, then the Association will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- K. **AUDITING RECORDS FOR THE SPECIFIC PROJECT.** The Association will allow the City to inspect and copy all records pertaining to the Work provided in this Agreement.
- L. **CONTRACTING INFORMATION.** The Association must preserve all contracting information related to this Agreement as provided by the records retention schedule requirements applicable to the City for the duration of this Agreement. The Association will promptly provide the City any contracting information related to this Agreement that is in the custody or possession of the Association on request of the City. On completion of this Agreement, the Association will either provide at no cost to the City all contracting information related to this Agreement that is in the custody or possession of the Association or preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the City.
- M. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.
- N. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Association, and the Association'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.
- O. **THIRD-PARTY BENEFICIARIES.** There are no third party beneficiaries for this Agreement.
- P. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- Q. **REPRESENTATIONS AND WARRANTIES.** The Association warrants to the City that the Association has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.

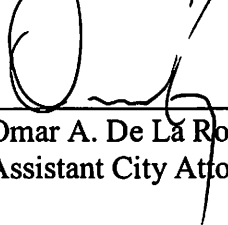
R. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the _____ day of _____, 2020.

CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

[The Association's signature begins on the following page]

ASSOCIATION:

Mike Short
President, El Paso Municipal Police Officers
Association