

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

**DEPARTMENT:** Museums & Cultural Affairs

**AGENDA DATE:** December 8, 2020

**CONTACT PERSON/PHONE:** Ben Fyffe, 212-1766

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL: 4:** Enhance El Paso's Quality of Life Through Recreational, Cultural and Educational Environments.

**SUBJECT:** Approve a resolution that the City Manager be authorized to sign an Agreement Regarding Mutual Cooperation (the "Agreement") with the El Paso Community Foundation and authorized to sign amendments to the Agreement provided that such amendments to do not obligate the City to any financial responsibility.

**BACKGROUND / DISCUSSION:** The agreement formalizes a thirteen-year partnership between the City of El Paso Museums & Cultural Affairs Department (MCAD) and the El Paso Community Foundation (EPCF) on collaborative initiatives and cultural programming, including Chalk the Block to allow for specific crediting of efforts, reimbursements of approved expenses and roles.

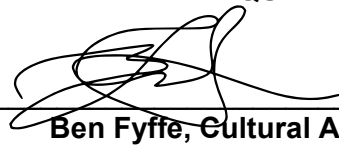
**PRIOR COUNCIL ACTION:** Council routinely authorizes cooperation agreements and memoranda of understanding with outside agencies.

**AMOUNT AND SOURCE OF FUNDING:** Funding approved annually by Council in department budget during the budget process.

**BOARD / COMMISSION ACTION:** N/A

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

**DEPARTMENT HEAD:**



Ben Fyffe, Cultural Affairs and Recreation Director

## RESOLUTION

**WHEREAS**, the Museum and Cultural Affairs Departments is a department of the City of El Paso; and

**WHEREAS**, the El Paso Community Foundation is a 501 (c)(3) non-profit corporation located in the City of El Paso; and

**WHEREAS**, the parties wish to enter into an agreement to establish a cooperative relationship for cultural programing initiatives and projects and preapproved reimbursement of expenses; and

**WHEREAS**, the agreement serves the City’s strategic goal of promoting the visual image of the City of El Paso.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

1. That the City Manager be authorized to sign an Agreement Regarding Mutual Cooperation (the “Agreement”) with the El Paso Community Foundation.
2. That the City Manager be authorized to sign amendments to the Agreement provided that such amendments to do not obligate the City to any financial responsibility.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_ 2020.

*(Signatures on the following page)*

**CITY OF EL PASO**

\_\_\_\_\_  
Dee Margo, Mayor


**ATTEST:**

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

**APPROVED AS TO FORM:**

*Russell Abeln*  
\_\_\_\_\_  
Russell T. Abeln  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

## AGREEMENT REGARDING MUTUAL COOPERATION

**THIS AGREEMENT REGARDING MUTUAL COOPERATION** (this “Agreement”) is entered into on \_\_\_\_\_, 2020 (the “Effective Date”) by and between the CITY OF EL PASO, a home rule municipality (the “City”), and EL PASO COMMUNITY FOUNDATION (the “EPCF”), a non-profit 501(c)(3) corporation in El Paso, Texas (collectively, the “Parties”).

**WHEREAS**, the Museum and Cultural Affairs Department (MCAD or the “Department”) is a department of the City;

**WHEREAS**, the EPCF desires to cooperate with MCAD, to support the Department’s efforts to provide cultural programing initiatives and projects to the El Paso community.

**WHEREAS**, in order to better accomplish the goals listed above, it will be beneficial for: the MCAD to provide certain services to the EPCF and EPCF to provide certain services to MCAD and for the parties to reimburse one another for expenses as further specified in this Agreement;

**NOW, THEREFORE**, MCAD and the EPCF agree as follows:

**1. Initial Term and Automatic Renewals.** Unless terminated sooner as provided in this Agreement, the term of this Agreement shall be for a period of five (5) years from the Effective Date (the “Term”).

**2. Definition of “Community”.** For purposes of this Agreement, the word Community shall mean the municipal city limits of the City of El Paso

**3. Agreements by the EPCF.** Until the expiration of the Term of this Agreement or the earlier termination of thereof, the EPCF hereby agrees to use commercially reasonable efforts to:

- a. Coordinate with MCAD to promote cultural programing initiatives and projects.
- b. Provide a not-for-profit vehicle for gifts from private and other donors for the benefit cultural programing initiatives and projects.
- c. Work with MCAD staff on annual priorities for Community outreach.
- d. To the extent allowed by law, reimburse MCAD for cultural programing initiatives and project expenses preapproved in writing by the President of EPCF.

Notwithstanding any of the foregoing to the contrary, in no event shall the EPCF required to take any action or refrain from taking any action that may, in the EPCF’s sole discretion, cause the EPCF to be in violation of applicable Internal Revenue Code rules or regulations or other applicable law.

4. **Agreements of the City and MCAD.** Until the expiration of the Term of this Agreement or the earlier termination thereof, MCAD agrees to use commercially reasonable efforts to:

- a. Allow the EPCF to use any creative design, logos, photography or other intellectual property and business or branding, which may be owned by MCAD or its agents or assignees for purposes of continuity and association between MCAD and the EPCF; and
- b. To the extent allowed by law, reimburse EPCF for cultural programming initiative and project expenses preapproved in writing by the Director of MCAD.

5. **Recognition of Joint Efforts.** During the term of this Agreement, the City and the EPCF agree to acknowledge the joint efforts of each other during presentations to third parties. Additionally, for all projects wherein the City and the EPCF are working together under this Agreement, printed and online materials shall contain a reference to such relationship with language such as “presented jointly by MCAD and EPCF” or such other language as the parties may reasonably agree to in writing.

6. **Termination and Amendments.**

- a. Either Party may terminate this Agreement at any time upon thirty (30) calendar days’ advance written notice to the other Party.
- b. Unless the Agreement is terminated sooner as provided above, or the Parties amend the Agreement in advance of termination, this Agreement will terminate upon the expiration of the Term as may be automatically renewed in accordance with Section 1 above.
- c. This Agreement may be amended or extended by the written authority of the City Manager.

7. **Disputes and Cure Rights.** The EPCF and the City agree to use good faith efforts to resolve any breaches of this Agreement or any disputes regarding the subject matter and transactions contemplated by this Agreement through mediation or other non-binding alternate dispute resolution processes before exercising the termination rights set forth in Section 3 so long as the City is not required to incur any financial obligation for participation in mediation or other non-binding alternate dispute resolution processes. If the Parties’ good faith efforts to resolve any breaches of this Agreement or any disputes regarding the subject matter and transactions contemplated by this Agreement through mediation or other non-binding alternate dispute resolution processes shall be unsuccessful after a period of thirty (30) days, the Parties agree that the sole remedy therefor shall be to exercise the termination rights set forth in Section 3.

8. **Notices.** With respect to any notice required or permitted to be given in connection with 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 at the address given for the principal representative of the City listed below.

To the City: The City of El Paso  
Attn: City Manager  
P. O. Box 1890  
El Paso, Texas 79950-1890

With Copy to: Museums and Cultural Affairs Department  
Attention: Director  
400 W. San Antonio Ave. Ste. A  
El Paso, Texas 79901

EPCF: El Paso Community Foundation  
Attn: President  
333 N. Oregon, 2<sup>nd</sup> Fl.  
El Paso, Texas 79901

**9. Modification of this Agreement.** This Agreement may be modified only by written agreement 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. No Joint Enterprise.** This Agreement does not create any joint enterprise between the Parties.

**12. Independent Contractors.** The City and the EPCF 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 EPCF 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.

**13. 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.

**14. 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.

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

**16. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be constitute one and the same agreement.

Delivery of an executed counterpart to this Agreement by .pdf attachment through electronic mail or other electronic means shall be effective as an original.

**17. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

**18. Severability.** If a court of competent jurisdiction finds any term of this Agreement to be illegal, invalid, or unenforceable, such term shall be excluded to the extent of such illegality, invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the illegal, invalid or unenforceable term shall be deemed replaced by a term that is legal, valid and enforceable and that comes closest to expressing the intention of such illegal, invalid or unenforceable term.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2020.

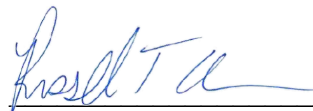
**CITY OF EL PASO:**

\_\_\_\_\_  
Tomás González  
City Manager

**ATTEST:**

\_\_\_\_\_  
Laura Prine  
City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Russell T. Abeln  
Assistant City Attorney

**APPROVED AS TO CONTENT:**



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

*(Signatures continue on next page.)*

**EL PASO COMMUNITY  
FOUNDATION:**



Printed Name: Richard Eric Pearson

Title: President / CEO

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS §

§

COUNTY OF EL PASO §

This instrument was acknowledged before me on this 19th day of November, 2020,  
by Richard E. Pearson, as President/CEO of El Paso Community Foundation.

  
\_\_\_\_\_  
Notary Public, in and for the State of Texas

My commission expires:

07/28/2023

