

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

DEPARTMENT: Museums and Cultural Affairs Department

AGENDA DATE: 01/23/07

CONTACT PERSON/PHONE: Yolanda Alameda, 541-4896

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to approve and sign the attached Challenge Grant Agreement between the City of El Paso and the El Paso Opera Company for operational funding in one-to-one matching funds of up to FIFTY THOUSAND AND NO/DOLLARS (\$50,000.00) to support the organizational stability of the El Paso Opera Company, sole local entity offering an essential art form to the community. The support will assist the El Paso Opera Company maintain itself as a viable opera entity that continues to provide crucial programming to the community, including educational outreach for local children and youth and to provide community partnership support to help meet the goals of the City's Museums and Cultural Affairs Department (MCAD), to be funded through the general fund.

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 City of El Paso Museums and Cultural Affairs Department (MCAD) supports the organizational stability of El Paso's arts and cultural assets, to cultivate organizational growth and professional development that promotes tourism and the convention and hotel industry for various public purposes. MCAD provides the El Paso Opera Company, sole local entity offering an essential art form to the community, funding to maintain itself as a viable opera entity capable of continuing to provide essential programming to the community.

PRIOR COUNCIL ACTION

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

City Council approved Funding Guidelines for Museums and Cultural Affairs Department (MCAD) on 1/19/07 to provide funding for the following categories: Operational Support Program (OSP), Project Support Program (PSP), Community Arts Program (CAP), as well as management and technical assistance through the Arts Development and Enrichment Program (ADEP). The Arts Development and Enrichment Program (ADEP) responds to the needs of local artists and cultural organizations and encourage creativity through management and technical assistance, including mentoring, workshops and consultations as well as funding individual and/or organizational programs and special initiatives thus building artistic and administrative capacity.

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?

\$50,000 General Fund Account

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____

FINANCE: (if required) _____

DEPARTMENT HEAD: _____

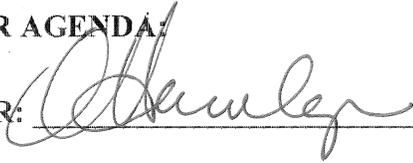
(Example: if RCA is initiated by Purchasing, client department should sign also)

CITY CLERK DEPT.
07 JAN 18 PM 2:26

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER:



DATE:

1-18-07

RESOLUTION

WHEREAS, Texas statute allows for revenue to be used to promote tourism and the convention and hotel industry for various public purposes, including the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama and other arts related to the presentation, performance, execution, and exhibition of these major arts forms; and

WHEREAS, the available funding in this case would not come from municipal hotel occupancy taxes, but rather from the general fund;

WHEREAS, the El Paso Opera Company is the sole local entity offering that particular art form to the community and seeks funding to maintain itself as a viable opera entity capable of continuing to provide the above-listed benefits to the community; and

WHEREAS, the City desires to support the organizational stability of El Paso's arts and cultural assets and to cultivate organizational growth and professional development.

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

That the City Manager be authorized to approve and sign the attached Challenge Grant Agreement between the City of El Paso to the El Paso Opera Company for the City's grants of one-to-one matching funds of up to FIFTY THOUSAND AND NO/DOLLARS (\$50,000.00), for operational support purposes in furtherance of the public purpose stated herein and to provide community partnership support to help meet the goals of the City's Museums and Cultural Affairs Department (MCAD), to be funded through the general fund.

ADOPTED this _____ day of _____, 2007.

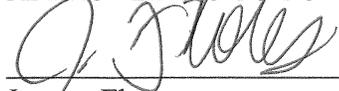
CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

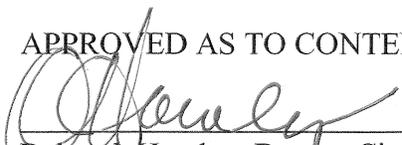
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Deborah Hamlyn, Deputy City
Manager, Quality of Life

CITY CLERK DEPT.
07 JAN 18 PM 2:26

CITY CLERK DEPT.

07 JAN 18 PM 2:26

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

CHALLENGE GRANT AGREEMENT

This Challenge Grant Agreement (“Contract”) is made this _____ day of January, 2007, by and between the **CITY OF EL PASO**, a Texas municipality, hereinafter referred to as the “City,” and **EL PASO OPERA COMPANY**, an IRS Section 501 (c)(3) nonprofit arts organization, hereinafter referred to as the “Grantee.”

WHEREAS, the City desires to provide its local citizens with a variety of high quality cultural programs; and

WHEREAS, the City desires to respond to the needs and encourage the creativity of local artists and cultural organizations; and

WHEREAS, the City desires to respond to the cultural needs of the community and to promote the development of arts; and

WHEREAS, the City desires to encourage artistic interchanges and cooperative ventures that bring together distinct communities and organizations, and in so doing, reflect the diversity of the City’s cultural heritage; and

WHEREAS, the City Council has approved and adopted a budget for the fiscal year beginning September 1, 2006, and ending August 31, 2007;

NOW, THEREFORE, the City and the Grantee do hereby mutually agree as follows:

1. The City hereby appropriates a one-to-one matching grant of up to FIFTY THOUSAND DOLLARS AND NO/100 (\$50,000.00) in funding from the City’s General Fund to provide the Grantee with **OPERATIONAL SUPPORT** to perform the services hereinafter described.

2. The Grantee hereby certifies that it will utilize the funds provided by the City for operational purposes in order to maintain itself as a viable opera company. Grantee agrees that no portion of the funds shall be used to retire any existing indebtedness of Grantee. Grantee agrees that the operational expenses covered by the grant amount shall be used to provide a future benefit to the City. Grantee may not use this funding for any non-operational purpose without the prior written consent of the City's Museums and Cultural Affairs Department ("MCAD").

3. The funding provided through this Contract is conditioned upon Grantee fulfilling the following objectives:

- a. Grantee must create a viable plan to retire its existing debt prior to January 23, 2007, and must suspend all opera productions until the debt has been retired;
- b. Grantee will not use the \$50,000.00 to retire any portion of Grantee's existing \$37,000.00 debt, and shall raise separate funds for that purpose;
- c. Prior to January 23, 2007, Grantee must restructure itself with the appropriate staff, with approved job descriptions and specific performance measures;
- d. Prior to January 23, 2007, Grantee must adopt a business plan with specific goals for fundraising and grant making;
- e. Prior to January 23, 2007, Grantee must approve a new, creative marketing plan that includes coordination with SMG to secure new markets, including, but not limited to Ft. Bliss, Las Cruces, New Mexico, and Ciudad Juarez, Mexico.

Failure to achieve any of the above listed objectives shall result in a reduction in funding to the Grantee by 25% for each of 3a, 3c, 3d, or 3e in this Paragraph, and by 100% for 3b. Fulfillment of these objectives and execution of any plan or required action indicated in the objectives shall be listed in a report accompanying any invoices submitted to MCAD pursuant to this Contract.

4. Grantee agrees to comply with the following:

- a. Complete and forward to MCAD an acceptable final report and numbered invoice dated no earlier than the completion of the final report, including all receipts that document actual expenditures for the (i) total award of funds, and (ii) the cash match amount so that the City may determine its one-to-one cash match contribution, not later than September 15, 2007. The funds noted hereinabove in Paragraph 3b, which are raised by Grantee shall be the basis for the one-to-one match provided by the City up to FIFTY THOUSAND

DOLLARS AND NO/100 (\$50,000.00). Receipts should consist of one of the following: (i) supporting documentation such as invoices to substantiate the request. (Invoices shall include the name of the person or vendor, date, purpose of expenditure and check number, which paid the expenditure. Invoices should also be stamped as "paid" to ensure they are not paid more than once.) The City requires applicable bank statements as described below; or (iii) photocopy of applicable bank statements that reference the checks paid. The City of El Paso must ensure that funds have been expended prior to reimbursing the grantee. Grantee will submit one signed original and one (1) copy of each such report.

- b. Abide by the most recently adopted MCAD Funding Program Guidelines as adopted by City Council, a copy of which is on file in the MCAD office.

5. The Grantee shall keep complete and accurate books and records indicating when, how, by whom, and for what purposes the funds received under this Contract are spent by the Grantee, and the Grantee shall make such books and records available to the City for examination upon request. All funds disbursed under this Contract shall be handled by the Grantee in accordance with the standards of the American Institute of Certified Public Accountants, which include provisions for sound fiscal practices and fiscal reporting. In addition, the Grantee shall furnish the City at its request with balance sheets and statements of operation, which accurately account for the expenditure of Contract funds, and a written narrative report reflecting the same. The City reserves the right to audit the books and records of the Grantee, upon reasonable notice to the Grantee and during regular working hours, in order to ensure fiscal and programmatic compliance with the assurances in this Contract.

If any serious discrepancy should appear in such reports or statements, the City shall notify the Grantee. If such discrepancy is not rectified to the satisfaction of the City within 30 days, the City may withhold all or part of the funds from the Grantee. "Serious discrepancy" shall mean violation of an existing statute or ordinance or an expenditure of Contract funds for a purpose, which is not authorized by this Contract. **Should the City determine that any**

provision of this Contract has been violated; the City may terminate this Contract immediately. Written notice of termination will be sent to the Grantee.

6. The term of this Contract shall run from the date of execution and shall terminate August 31, 2007.

7. Once the Contract is executed, Grantee is required to submit an invoice for up to 50% of the contract amount, listing the operational expenses, objectives fulfillment status (see Paragraph 3), and/or actual services performed. Alternately, if the organization's program of activity has not begun, Grantee is required to list the producing or coordinating activities related to the program on the invoice.

8. Once the Grantee has submitted the optional mid-year report, along with expenditures and a summary of activities by **March 15, 2007** on the forms provided by MCAD along with an invoice requesting payment of up to 45% of the contract amount and invoice, the City shall compensate the GRANTEE IN THE AMOUNT OF TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS AND NO/100 (\$22,500.00). The first installment (50% of the total award) will be payable upon acceptable completion and submission of an invoice and the second optional installment will be payable upon acceptable completion of the mid-year report (one original and one copy) and copies of receipts representing at least 45% of total award amount, due on March 15, 2007, for the period ending February 28, 2007. The third installment (the remaining 5% of the total award) -- or the entire compensation amount, if no initial invoice and mid-year report have been submitted -- will be payable upon submission of the invoice and final report due on September 15, 2007, based on the entire fiscal year activity as provided in Paragraph 4. The final report form is available from the MCAD. Total compensation will be no more than FIFTY THOUSAND DOLLARS AND NO/100 (\$50,000.00). The City shall make

all payments in accordance with its fiscal year and usual accounting procedures. The Grantee shall provide a numbered and dated invoice and one original and one copy of the final report accompanied by complete, detailed receipts documenting expenditure of the total award and cash match.

9. Any remaining compensation forthcoming under this Contract from the City will be payable upon submission of the final report and invoice due on September 15, 2007, based on the entire fiscal year activity. This form is available from the MCAD. Payment shall be authorized only after the project has been completed and the final report and invoice for the contracted amount have been received by the MCAD and the City Comptroller processes the invoice.

10. The Grantee shall include in **ALL** printed programs, posters, and flyers the following credit line: **“WITH THE SUPPORT OF THE CITY OF EL PASO MUSEUMS AND CULTURAL AFFAIRS DEPARTMENT AND THE TEXAS COMMISSION ON THE ARTS”** (when applicable.) **The credit line should be prominent, readable and equitable in size to other supporter/sponsor acknowledgments.** For all visual arts projects or events, the credit line must also be included on invitations and exhibition announcements. Any additional printed credit is optional. In the case of public artworks (i.e. murals, outdoor sculpture) the credit line shall be included in invitations and as part of the work or as part of a permanent plaque or sign to be affixed to the artwork. Visual arts projects must also include the credit line in the invitations for such events. The **City** logo may **NOT** be used in any printed materials but the MCAD logo may be used. The MCAD staff will be available to review layouts of printed materials prior to printing, and Grantee is encouraged to confer with the MCAD staff prior to printing in order to avoid any conflicts and ensure that contractual obligations outlined

herein are complied with. When no printed program is used, VERBAL CREDIT SHALL BE GIVEN PRIOR TO EACH PRESENTATION. Copies of such printing and program materials as prepared for all activities must be forwarded to the MCAD, as part of the mid-year report and the final report. **Failure to comply with this provision will constitute a breach of contract and result in the immediate cancellation of award.**

11. Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and the Grantee, and the Grantee shall be deemed at all times to be an Independent Grantee. The City shall not be subject to any obligations or liabilities incurred by the Grantee in the performance of the services described in this Contract unless otherwise herein authorized.

12. In order to provide members of the **CITY OF EL PASO MCAD BOARD AND STAFF** an opportunity to evaluate the caliber of funded events, **THE GRANTEE SHALL SEND TO THE MCAD, IN A TIMELY MANNER, A SCHEDULE OF EVENTS AND OTHER PERTINENT INFORMATION ABOUT ALL FUNDED EVENTS, PRIOR TO THE EVENTS.**

13. **GRANTEE AGREES TO INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS AND SERVANTS HARMLESS FROM ANY CLAIMS FOR INJURY, DEATH, LOSS OR DAMAGE OF ANY KIND OR CHARACTER, AND BY WHOMSOEVER SUFFERED OR ASSERTED OCCASIONED BY OR IN CONNECTION WITH ANY SERVICES PERFORMED BY GRANTEE UNDER THIS CONTRACT, EITHER WHILE ITS SERVICES ARE IN PROGRESS OR AS A RESULT OF SERVICES PERFORMED BY IT.**

14. Grantee shall promptly, before engaging in the Project, provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000) per person, and Five Hundred Thousand Dollars (\$500,000) for two or more persons in any one accident, and in addition, shall provide property liability insurance in a minimum sum of One Hundred Thousand Dollars (\$100,000) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

15. For the purpose of determining place of agreement and law governing same, this Contract is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas, and venue shall lie in El Paso County.

16. This Contract may be modified by the parties by written amendment and mutual agreement of the parties hereto. Should either party wish to modify this Contract, the party shall give thirty (30) days' written notice to the other party as follows:

CITY: City of El Paso
Attention: Office of the City Manager
2 Civic Center Plaza
10th Floor
El Paso, Texas 79901-1196

COPY TO: Museums and Cultural Affairs Department
2 Civic Center Plaza
6th Floor
El Paso, Texas 79901-1196

GRANTEE: El Paso Opera Company
Attn: Mr. Prentice Loftin
310 North Mesa, Suite 601
El Paso, Texas 79901

17. This Contract may be terminated in whole or in part by the City by giving thirty (30) days written notice of termination to the Grantee, and specifying the extent to which performance under the Contract is terminated. Such right of termination is in addition to and not in lieu of rights of the City set forth in Paragraph 20, herein.

18. This Contract supersedes any prior agreement between the parties hereto and constitutes and expresses the whole agreement of the parties hereto in reference to the services provided by the Grantee for the City and in reference to any of the matters or things herein provided for or herein before discussed or mentioned in reference to such services, all promises, representations, and understandings relative thereto being herein merged.

19. The Grantee shall comply with all applicable federal, state, and local laws and regulations, including City ordinances, as outlined in the current MCAD Funding Guidelines, including the following: Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; Age Discrimination in Employment Act of 1975 (42 U.S.C. §§ 6101 et seq.), as amended; Section 504 of the Rehabilitation Act of 1973 (24 U.S.C. § 794), as amended; the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101-12213), as amended; Drug Free Workplace Act of 1988 (41 U.S.C. §§ 702 et seq.), as amended; U.S. Debarment regulations (45 C.F.R. Part 1154); Federal Debt Status (OMB Circular A-129); Native American Graves Protection and Reparation Act of 1990 (25 U.S.C. 3001 et seq.), as amended; Texas Tax Code, Section 351.101, regulating expenditure of hotel/motel tax revenues and the **City of El Paso Ordinance #9779**, regarding Accessibility.

To the extent that a portion of the funding is provided by the Texas Commission on the Arts, for administration by the City, the Grantee must also comply with the following as required by the Texas Commission on the Arts: the **Equity Plan** (Texas Government Code

Section 444.024) regarding the equitable allocation of financial assistance and services to recipients who reflect the geographical, cultural, and ethnic diversity of the state's population; the **Obscenity Clause** (Texas Government Code Section 444.021(b)) which prohibits the Commission and its grantees from knowingly fostering, encouraging, promoting or funding any project, production, workshop and/or program which includes obscene material as defined in Texas Penal Code Section 43.21, and **Section 5(m) and Section 7(g) of the National Foundation on the Arts and Humanities Act of 1965** (20 U.S.C. §§ 954, 956), as amended, and the U.S. Department of Labor Wage and Hour standards ensuring that (1) all professional performers and related or supporting professional personnel . . . employed on projects . . . will be paid . . . not less than the prevailing minimum compensation for persons employed on similar activities; and (2) no part of any product or production . . . will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employee.

20. Failure to comply with all provisions outlined in this Contract or the current Funding Program Guidelines may constitute a breach of contract as well as an inability to qualify for future City funding. Financial penalties for breach of contract will be assigned and may include but not be limited to the withholding of payments or immediate cancellation of the Contract.

(signatures appear on the following page)

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO

Joyce A. Wilson
City Manager

GRANTEE:

Signature: _____

Printed Name: _____

Title: Authorized Official/Chairman of the Board

Signature: _____

Print Name: _____

Title: Project/Executive Director

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Yolanda R. Alameda, Director
Museums and Cultural Affairs Department