

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

DEPARTMENT: Library
AGENDA DATE: February 14, 2012 (Consent)
CONTACT PERSON NAME AND PHONE NUMBER: Dionne Mack 543-5413
DISTRICT(S) AFFECTED: All Districts

SUBJECT: Resolution

That the City Manager be authorized to sign a License Agreement by and between the City of El Paso and the El Paso Public Library Foundation.

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 License Agreement will establish, define, and coordinate a mutually beneficial relationship to grant a license to the Foundation for the use of the Library Logo, to provide funding and financial support to the El Paso Public Library, and authorizing the Foundation to use space in the library for the furtherance of the Library's mission. The Agreement does not create a relationship of employer and employee between the City and the Foundation or its officers, agents, employees and members. The City will not be subject to any obligations or liabilities incurred by the Foundation.

PRIOR COUNCIL ACTION:

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

An agreement was signed on August 3, 1999 between the City of El Paso and the El Paso Public Library Association establishing and defining the relationship and allowing the Association to use library space while it endeavored to foster and coordinate public interest and support for the Library.

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

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign a License Agreement (the "Agreement") by and between the City of El Paso (the "City") and the El Paso Public Library Foundation (the "Foundation"), to establish, define, and coordinate a mutually beneficial relationship to grant a license to the Foundation for the use of the Library Logo, to provide funding and financial support to the El Paso Public Library, and authorizing the foundation to use space in the library for purposes outlined in the agreement.

ADOPTED this ___ day of _____, 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Kristen L. Hamilton
Assistant City Attorney

APPROVED AS TO CONTENT:



Dionne L. Mack, Director
El Paso Public Library

AGREEMENT

THIS AGREEMENT (the "Agreement") made this ____ day of _____ 2012 (the "Effective Date"), by and between the CITY OF EL PASO, a municipal corporation (the "City"), and the EL PASO PUBLIC LIBRARY FOUNDATION, a non-profit corporation under section 501(c)(3) of the Internal Revenue Code (the "Foundation").

RECITALS

WHEREAS, the City owns and operates the El Paso Public Library (the "Library"), whose mission includes that the "Library is committed to serving our diverse community through full access to information, cultural enrichment, and lifelong learning";

WHEREAS, the Foundation is a non-profit corporation whose purpose is to provide funding support to the El Paso Public Library; and

WHEREAS, the City and the Foundation desire to enter into this Agreement to establish, define, and coordinate a mutually beneficial relationship to insure the above purposes, including to provide financial support to the El Paso Public Library.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows.

I. FOUNDATION USE OF LIBRARY FACILITIES

1. **CONTRACTUAL RELATIONSHIP:** Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and the Foundation or Foundation's officers, agents, employees and members, and the Foundation and Foundation's officers, agents, employees, and members shall be deemed at all times to be an independent contractor. The City shall not be subject to any obligations or liabilities incurred by the Foundation or Foundation's officers, agents, employees and members in the performance of the Services.

2. **SCOPE OF SERVICES:**

2.1 **LICENSE:** The City grants a non-exclusive license to the Foundation and places fiscal responsibility in the Foundation in connection with the Foundation's fundraising activities under the City's name and the Library Logo in furtherance of the Mission and the Foundation's primary purpose. The City shall not require the Foundation to pay to the City a fee for the use of the City's name or the Library Logo, as due consideration will be given through the Foundation's services.

2.2 FOUNDATION:

2.2.1 The Foundation shall provide fundraising services to the City for the fulfillment of the Mission through Foundation-Sponsored Events, fund raising activities, bequests, donations and grants from public and private entities. Any funding provided by the Foundation pursuant to this Agreement shall be in accordance with City approved Library plans and budget. Foundation agrees to manage and invest said funds in a manner consistent with the Investment Policy of the City of El Paso, as amended from time to time (the "Investment Policy") attached hereto as **Exhibit "A"** and incorporated herein by reference. The preservation and safety of principal shall be the foremost objectives of any investments related to the 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 this Agreement. The City's Investment Policy is available to the Foundation and the general public through the City's website and is updated annually.

2.2.2 All funds raised by the Foundation shall be used for the betterment of the Library for the fulfillment of the Mission to include, but not be limited to capital improvements, collection acquisition, educational programs, promotion of reading and literacy, and technology for the Library; provided however that the foundation may use a maximum of 95% of the funds for the sole purpose of funding and paying for the reasonable expenses for the operation of the Foundation's fundraising activities under this Agreement ("Expenses"). The Foundation shall disclose to all donors the portion of any donation that will be used for its Expenses. The Expenses shall be accounted for, and the accounting shall be provided to the City as outlined herein. The Expenses shall not exceed the amount of \$50,000 during the course and term of this Agreement.

2.2.2 The Foundation shall coordinate all Foundation activities that will take place at the Library with the Director of the El Paso Public Library ("Director").

2.2.3 The Foundation shall establish, implement and maintain a comprehensive plan and for its fund raising activities.

2.2.4 The Foundation shall coordinate and obtain approval of the Director prior to any promotions involving the Library and use of the Library logo.

2.2.5 The Foundation shall carry general commercial liability insurance in a minimum amount of \$500,000/1,000,000, which shall name the City as an additional insured for all Foundation activities and events which occur on Library grounds and for all Foundation activities or events which are co-sponsored by the City.

2.2.6 THE FOUNDATION 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 INCLUDING NEGLIGENCE BY THE CITY, ITS EMPLOYEES OR AGENTS, AND BY WHOMSOEVER SUFFERED OR ASSERTED OCCASIONED BY OR IN CONNECTION WITH ANY SERVICES

PERFORMED BY CONTRACTOR UNDER THIS CONTRACT, EITHER WHILE ITS SERVICES ARE IN PROGRESS OR AS A RESULT OF SERVICES PERFORMED BY IT.

2.2.7 BOND AND INSURANCE. The FOUNDATION shall notify the CITY of the individuals who will be signatories on its account(s) where funds subject to this agreement are held. The FOUNDATION shall ensure that the signatories are bonded in an amount of not less than 100% of the market value of the assets of the funds in the FOUNDATION that are conveyed to, received, held in trust, or managed by the FOUNDATION on behalf of the CITY once said assets exceed \$10,000.00 in value. The premiums payable on such bonds shall be payable from the funds of the FOUNDATION. Further, the FOUNDATION shall obtain and maintain directors' and officers' liability insurance in a reasonable and appropriate amount as determined by the FOUNDATION Board. The FOUNDATION shall annually provide the CITY, by and through the Department, documentation of its compliance with this Section no later than ninety (90) days after the execution of this Agreement and annually thereafter.

2.2.8 The Foundation shall not utilize the Library facilities or its events for purposes inconsistent with this agreement or the City's policies on the use of the facilities.

2.2.9 The Foundation shall provide the City with copies of its Articles of Incorporation, By-laws, all correspondence from State or Federal agencies pertaining to the tax status of the Foundation, financial statements, and other documents requested by the City.

2.2.10 Approval of the Foundation's use of the Library's facilities, grounds, activities, date and times must be obtained from the Director, at least (30) days in advance of any event and must be in compliance with the Facility Rental Policy adopted by the City Council for the City of El Paso ("Facility Rental Policy"). The Foundation shall be responsible for all costs of any such events, including, without limitation, the cost of additional or overtime Library staff or resources authorized by the Director. The Foundation shall reimburse the City within (30) days following receipt of any invoice for such costs. This Article shall not restrict the Foundation from supporting, promoting, or servicing other events conducted by the Library (hereinafter referred to as a "Library Event").

2.2.11 During the term of this Agreement, the Foundation shall have the duty to review and make recommendations to the City Council for the City of El Paso (the "City Council"), through the Library, on the naming of Libraries or Library Spaces as proficed in the policy adopted by resolution of the City Council.

2.2.12 Prior to acceptance of funds designated for a specific Library purpose, the Foundation shall obtain written approval from the City in accordance with the City's policy for accepting donations. The Foundation shall make proper documentation and accounting for funds received that are designated for a specific purpose.

2.3 CITY, THROUGH THE LIBRARY:

2.3.1 During the term of this agreement, the Library shall provide existing available suitable space in Library facilities for Foundation meetings in compliance with the Facility Rental Policy. The Library shall also permit the Foundation to use the Main Library address as its Registered Office.

2.3.2 The City shall provide reasonable staff support to provide for photocopying and distribution of Foundation agendas and minutes for Foundation Meetings.

2.3.3 During the term of this Agreement, the Foundation may be permitted use of Library facilities and grounds during or after normal public hours, for the benefit or support of Foundation activities at no cost for the rental fee, subject to the costs outlined in Paragraph 2.2.10.

3. **CONSIDERATION**

In exchange for the City services provided pursuant to this Agreement, Contractor shall provide the services described in this Agreement at no additional cost to the City.

4. **REPORTING REQUIREMENTS**

4.1 Semiannually, the Foundation shall provide to the City's Chief Financial Officer ("CFO"), with a copy to the Director, investment activity and contributions reports and reports on disbursements, Expenses and income revenue generated and allocated with respect to this Agreement.

4.2 The Foundation agrees to maintain records that will provide accurate, current, separate, and complete accounting of the status of all funds and further agrees that maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting principles.

4.3 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 pertaining to this Agreement available to the City or any of its authorized representatives for inspection, and shall permit the City or any of its authorized representatives to audit, examine, review, and make copies of same.

4.4 The Foundation agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials with respect to the restricted funds which are the subject matter of this Agreement in accordance with the following City retention schedule: five (5) years

5. **TERM**

The term of this Agreement shall be for a period of five (5) years from the Effective Date. This Agreement will automatically renew every five years thereafter subject to the termination clause for up to three additional terms or until the Expenses retained by the foundation equal \$50,000.00.

6. **TERMINATION**

This Agreement shall automatically terminate, without further action, upon the dissolution of the Library or the Foundation or when either ceases to exist for the above mentioned purposes. Additionally, this Agreement can be terminated by either party, with or without cause, upon thirty (30) days written notice to the other party. Upon termination of this Agreement, all remaining funds held by the Foundation will revert to the Library once outstanding Foundation debts are paid.

7. **COMPLIANCE WITH LAWS**

The Foundation must at all times remain in compliance with the Charitable Solicitations Ordinance of the City of El Paso, with regard to its fund raising activities and meet all applicable state laws and regulations governing charitable solicitations by non-profit organizations. With respect to all of its activities, the Foundation shall comply with all applicable local ordinances and with all applicable state and federal laws and regulations.

8. **ASSIGNMENT**

The Foundation or its individual members may not assign the rights granted in this Agreement without first obtaining written consent from the City.

9. **MISCELLANEOUS PROVISIONS.**

9.1 This Agreement is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

9.2 Failure by any Party hereto on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights and the rights granted hereunder are in addition to those available under law and equity.

9.3 All covenants or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as though such invalid covenant or provision were not contained herein.

9.4 The captions of the various sections of this Agreement are for convenience of reference only and shall not alter the terms and conditions of this Agreement.

9.5 The Parties may not assign the obligations or rights under this Agreement to any person or person or entity without the prior written consent of the other Party.

9.6 The Parties hereto are each independent contractors. No partnership, joint venture, or joint enterprise is intended to be created by this Agreement, nor any principal, agent, or employer/employee relationship. No Party hereto has, and no Party hereto shall attempt to assert, the authority to make commitments for or to bind any other Party to any obligation.

9.7 No amendment or modification to this Agreement or any provision of this Agreement shall be effective unless in writing of equal dignity hereto.

9.8 No provision in this Agreement that purports to impose an obligation or restriction not permitted by applicable law shall be enforceable.

9.9 Complete Agreement. This Agreement, together with the Attachment(s) attached hereto, constitutes the entire agreement among the Parties relating to the terms and conditions of the Agreement. The Parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a Party hereto. This Agreement shall not be construed against or unfavorably to any Party because of such Party's involvement in the preparation or drafting of this Agreement.

9.10 Notices. Unless otherwise stated hereinabove, all notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other Party at the address prescribed herein or at such other address as the receiving Party may have theretofore provided by written notice to the sending Party.

The initial addresses of the Parties, which one Party may change by giving written notice of its changed address to the other Party, are as follows:

CITY: City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901-1196

FOUNDATION: El Paso Public Library Foundatio
Attention Jennifer Dayoub
501 North Oregon
El Paso Texas 79901

9.11 The person signing this Agreement on behalf of Contractor warrants that he/she has the authority to do so and to bind the Contractor to this Agreement and all the terms and conditions contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date first written above.

ADOPTED this ____ day of _____, 2012.

THE CITY OF EL PASO

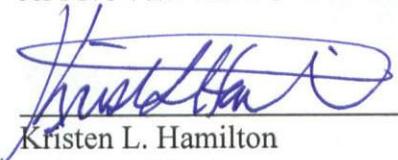
Joyce A. Wilson
City Manager

EL PASO PUBLIC LIBRARY
FOUNDATION



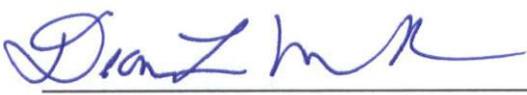
Jennifer Dayoub, President
Board of Directors

APPROVED AS TO CONTENT:



Kristen L. Hamilton
Assistant City Attorney

APPROVED AS TO FORM:



Dionne L. Mack, Director
El Paso Public Library