

RESOLUTION

WHEREAS, the Plaza Classic Film Festival, a community event that will be held from August 6 through August 16, 2009, will allow the citizens in El Paso the opportunity for recreational entertainment and the enjoyment of a community activity in the historic Plaza Theater;

WHEREAS, this event will serve functions and purposes similar to activities promoted and presented by several City departments, to include art education and movie entertainment, and will promote the City's tourism efforts and enable the public to utilize the historic Plaza Theater for events with an affordable admission fee;

WHEREAS, as the City Council has found that the presentation of the Plaza Classic Film Festival in the City is of the same type of activity generally presented or promoted by the City within its established programs, the Council finds that the provision of funding towards the presentation of this Event, constitutes an important public purpose or benefit to the City and citizens of El Paso for which the City is willing to expend discretionary funds from Districts 1, 2, 7 and 8 in the total amount of \$3,500; and

WHEREAS, Ordinance No. 16015 authorizes the City Manager to enter into all necessary agreements relating to the expenditure of discretionary funds.

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

That the City Council declares that the expenditure of discretionary funds from Districts 1, 2, 7 and 8 in the total amount of \$3,500 to support the Plaza Classic Film Festival to be held from August 6, through 16, 2009 serves a municipal purpose and is authorized.

Dated this 19th day of May 2009.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

APPROVED AS TO FORM:

Richarda Duffy Momsen
City Clerk

Elaine S. Hengen
Senior Assistant City Attorney

STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

This Agreement is entered into by and between The City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “City,” and the El Paso Community Foundation, hereinafter referred to as “Contractor.”

WITNESSETH

WHEREAS, Contractor is planning to present the Plaza Film Festival, a community event that will be held from August 6 through 16, 2009.

WHEREAS, the Plaza Film Festival will allow the citizens in El Paso the opportunity for recreational entertainment and the enjoyment of a community activity in the historic Plaza Theater;

WHEREAS, Contractor has inadequate funding available to fully pay the costs of the event;

WHEREAS, this Event will serve functions and purposes similar to activities promoted and presented by several City departments, to include art education and movie entertainment, and will promote the City’s tourism efforts and enable the public to utilize the historic Plaza Theater for events with an affordable admission fee; and

WHEREAS, as the City Council has found that the presentation of the Plaza Film Festival in the City is of the same type of activity generally presented or promoted by the City within its established programs, the Council finds that the provision of funding towards the presentation of this Event, constitutes an important public purpose or benefit to the City and citizens of El Paso for which the City is willing to expend the funds designated in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto do mutually agree as follows:

1. **DURATION AND SCOPE.** Contractor agrees to present the Plaza Film Festival from August 6 through 16, 2009 (“Event”) and to permit members of the community to attend and participate in the Event at an affordable admission fee. In promoting the Event, Contractor shall recognize that the City of El Paso has contributed funding for the Event, and specifically acknowledge the City’s contribution at the showing of one of the films during the Event.

2. **CONSIDERATION.** The City shall provide monetary support to the Event in a combined total of \$3,500.00 to Contractor available from the discretionary funds as follows: \$1,000.00 from City Council Representative District 1; \$1,000.00 from City Council Representative District 2; \$500.00 from City Council Representative District 7; and \$1,000.00 from City Council Representative District 8 to be used towards the necessary expenses in conjunction with the

presentation of the Event. Such funds shall be paid by the City to the Contractor within 30 days of the effective date of this agreement.

In the event that Contractor does not hold the Plaza Film Festival, Contractor shall return to the City all of the funding provided under this Agreement not later than August 31, 2008.

3. **LEGAL RELATIONSHIP.** Nothing in this Agreement shall be construed as creating a legal relationship of co-sponsorship or responsibility for the Contractor and any organization involved in the presentation of the Event. Contractor is an independent contractor, and nothing herein shall be construed as creating the relationship of employer and employee or principal and agent between the parties.

4. **INDEMNIFICATION.** As a condition of the granting of this Agreement, **CONTRACTOR 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 ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE EVENT.** 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 Contractor every demand, note, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor 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 Contractor may deem expedient; and 3) defend or cause 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. Contractor will pay all judgments in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, 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 Contractor's property from any cause.

5. **SAFETY.** Contractor shall comply with all applicable laws, ordinances and regulations.

6. **DISCRIMINATION.** Contractor, its officers, agents, servants, employees, volunteers and third parties will not discriminate on account of race, color, religion, sex or national origin, nor will it permit or allow any discrimination in the work done pursuant to this Agreement.

7. **NON-RELIGIOUS ACTIVITIES.** Contractor will conduct the Event, insofar as it may involve the City of El Paso, in a manner that is exclusively non-religious in nature and scope; there will be no religious services, proselytizing, instruction, or any other religious influences in connection with the group insofar as it may involve the City of El Paso. Contractor shall not represent that the City of El Paso is in support of or in favor of any religious services, proselytizing, instruction, or any other religious influences.

8. **HANDICAPPED ACCESSIBILITY STANDARDS.** Contractor agrees, that in the performance of this Agreement, that it will comply with the Americans with Disabilities Act (“ADA”), as may be required by law. Contractor, if required, must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.

9. **COMPLIANCE WITH LAWS.** Contractor shall comply with all applicable federal, state and local laws and regulations; all City ordinances and all codes and regulations. Failure to do so in any manner which materially impairs the quality of performance hereunder or affects the administration of the funds provided hereunder shall constitute a material breach of this Agreement.

10. **TERMINATION.** Either party may terminate this Agreement by sending written notice to the other if the other is in default in a matter of serious importance to the aggrieved party. In the event that this Agreement is terminated prior to the holding of the Event, the Contractor shall return any funding paid to Contractor to the City within 20 days of such termination.

11. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

12. **NOTICES.** All notices and communications under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Services, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

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

With a copy to Carmen Arrieta-Candelaria
Chief Financial Officer
2 Civic Center Plaza
El Paso, Texas 79901-1196

CONTRACTOR: El Paso Community Foundation
Attn: Eric Pearson
PO Box 272
El Paso, Texas 79943-0272

13. **ENTIRE AGREEMENT.** This Agreement constitutes and expresses the entire agreement of the parties hereto in reference to any of the matters herein provided for or herein discussed or mentioned in reference to the providing of such services, all promises, representatives, and understandings relative hereto being herein merged.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the _____ day of July 2009.

THE CITY OF EL PASO

Joyce Wilson
City Manager

APPROVED AS TO FORM:

Elaine S. Hengen
Senior Assistant City Attorney

CONTRACTOR:

El Paso Community Foundation

Written name and title of authorized signature:
