

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

**DEPARTMENT:** Museums and Cultural Affairs (El Paso Museum of Art)  
**AGENDA DATE:** June 11, 2013  
**CONTACT PERSON NAME AND PHONE NUMBER:** Sean McGlynn, Director, MCAD (915) 541-4896  
Michael Tomor, Ph.D., Director (915) 532-1707  
Kristen Hamilton, Assistant City Attorney (915) 541-4832  
**DISTRICT(S) AFFECTED:** ALL

**SUBJECT:**

APPROVE authority of the City Manager to sign an Interlocal Agreement between the City of El Paso – Museums and Cultural Affairs Department (El Paso Museum of Art) and Texas Tech University to house a School of Architecture library collection at the Algur H. Meadows library of the El Paso Museum of Art and for the library collection to become a resource for students of Texas Tech and the entire El Paso community. The agreement between the parties will provide mutual benefit to both entities/those persons served by each entity, and serves a governmental purpose, providing expanded art museum library services to the community at large.

**BACKGROUND / DISCUSSION:**

Through a grant from the Institute of Museums and Library Services, the El Paso Museum of Art opened its Algur H. Meadows Library to the public in May of 2013. The Museum of Art wishes to diversify its offerings and services to the community and to college level students. Texas Tech University desires to work with the Art Museum to carry out various offsite community offerings to its student population by engaging with Museum of Art to increase accessibility to its core curriculum to the greater El Paso community.

**SELECTION SUMMARY:**

The El Paso Museum of Art and Texas Tech University desire to work together to carry out various functions for providing space in the Museum of Art Library for material owned by Texas Tech University, to increase accessibility to the Museum of Art Library, and to share costs.

**PRIOR COUNCIL ACTION:**

None

**AMOUNT AND SOURCE OF FUNDING:**

There will be no cost to the El Paso Museum of Art or City of El Paso. All collections are purchased and owned by Texas Tech University and all staffing oversight is managed by Texas Tech University College of Architecture.

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**BOARD / COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:** Sean McGlynn  
Name

Signature

Date

5/29/13

CITY CLERK DEPT.  
2013 JUN -3 PM 2:35

# RESOLUTION

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

That the City Manager be authorized to sign the Interlocal Agreement between the City of El Paso, and Texas Tech University, a Texas institution of Higher Education, acting through its College of Architecture ("TEXAS TECH") to work together to carry out various functions for providing space in the Museum of Art Library for materials owned by TEXAS TECH, to increase accessibility to the Museum of Art Library, and to share costs of its operation.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2013.

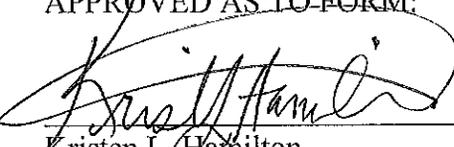
CITY OF EL PASO:

\_\_\_\_\_  
John F. Cook, Mayor

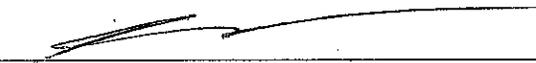
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kristen L. Hamilton  
Assistant City Attorney

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
Sean P. McGlynn, Director  
Museums and Cultural Affairs Department

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )            **INTERLOCAL AGREEMENT**

This Agreement entered on the date last entered below by and between the City of El Paso, a municipal corporation situated in El Paso County, Texas, hereinafter referred to as "CITY", and TEXAS TECH UNIVERSITY, a Texas institution of Higher Education, acting through its College of Architecture, and hereinafter referred to as "TEXAS TECH."

**WHEREAS**, Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, including the CITY and TEXAS TECH, to contract with each other to perform governmental functions and services, and

**WHEREAS**, the CITY and TEXAS TECH believe that a cooperative agreement between the parties will provide a mutual benefit to both entities/those persons served by each entity, and serves a governmental purpose, providing additional and expanded library services at the Museum of Art; and

**WHEREAS**, the CITY and TEXAS TECH desire to work together to carry out various functions for providing space in the Museum of Art Library for materials owned by TEXAS TECH, to increase accessibility to the Museum of Art Library, and to share costs of its operation as described hereinafter.

**1.0     CONTRACTUAL RELATIONSHIP.**

1.1     The parties to this Agreement are governmental entities that are entering into this contract pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Agreement, to include but not be limited to landlord-tenant, employer-employee, or principal-agent. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

1.2     TEXAS TECH acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the CITY to any obligation other than the obligations set forth in this Agreement. The CITY also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind TEXAS TECH to any obligation other than the obligations set forth in this Agreement.

**2.0     SCOPE OF SERVICES.**

2.1     The parties acknowledge and expressly agree that, in all things relating to this Agreement, the City and Texas are performing governmental functions, as defined by the Texas Torts Claims Act. The parties hereby agree that the City and TEXAS TECH enter into this Agreement as governmental entities for the purpose of performing a governmental function.

## 2.2 Responsibilities of TEXAS TECH:

2.2.1 TEXAS TECH will house 3,000 architecture books and 12 current periodical subscriptions in the El Paso Museum of Art (EPMA) Algur H. Meadows Library ("Museum Library").

- a. The TEXAS TECH book collection and periodicals will be part of the current non-lending library collection, and they will be interspersed with the current collection in the main reading room.
- b. TEXAS TECH book collection will be located at the library in the EPMA, will remain property of TEXAS TECH (each book will be inscribed as such), but will be cataloged and integrated with the Museum Library collection, but not with the El Paso Public Library Library System.
- c. TEXAS TECH periodicals will remain current and procurement will be the responsibility of TEXAS TECH. Back issues will be located in the main reading room. Periodicals will be non-circulating.
- d. The Director of the TEXAS TECH El Paso Program will oversee all new acquisition proposals made by faculty.
- e. TEXAS TECH will purchase security barcodes and a security gate for all TEXAS TECH books
- f. TEXAS TECH will purchase materials, supplies, book cases and shelves necessary to expand Museum Library space to contain the TEXAS TECH book collection and periodicals.

### 2.2.2 Staff and Hours

- a. TEXAS TECH will provide the Museum Library with a half-time staff member (20 hours per work week). The staff member will divide his time equally between assisting TEXAS TECH students in TEXAS TECH's writing lab and assisting with cataloging, and assisting with functions needed to maintain the Museum Library, however the staff member is not an employee of the City. The City shall provide no compensation in any manner for this staffing. The TEXAS TECH staff is an employee of TEXAS TECH and as such will report to the Director of the TEXAS TECH. He/She will coordinate standard working hours with TEXAS TECH and with the Museum Library Librarian. TEXAS TECH staff librarian will manage the TEXAS TECH collection under the same guidelines, care and collection management of the EPMA collection, with the exception of OCLC data base integration.
- b. TEXAS TECH will provide the Museum Library with an additional quarter-time student worker (10 hours) during the Fall and Spring Semesters as scheduled by

TEXAS TECH. The employed student worker will allow the Museum Library to work in tandem with other staff to provide necessary resources to the TEXAS TECH students during the course of the school year and will manage the TEXAS TECH library collection. This person is not an employee of the City and the City shall provide no compensation for such employment.

- c. The TEXAS TECH director will coordinate with the Museum Staff for use of the Auditorium for TEXAS TECH/EPMA lecture programs.

## 2.3 El Paso Museum of Art Responsibilities

2.3.1 The EPMA will house a collection of no more than 3,000 books owned by TEXAS TECH and care for those assets under the same condition and Collection Care and Management Policies established for the Museum Library holdings.

2.3.2 In the absence of scheduled TEXAS TECH staff, the El Paso Museum of Art librarian will manage the TEXAS TECH collection under the same guidelines, care and collection management of the EPMA collection, with the exception of OCLC data base integration. A secondary data base will be maintained in the Museum Library by the TEXAS TECH part time staff that outlines all books owned by TEXAS TECH and located at the Museum Library.

2.3.3 In partnership with TEXAS TECH, access to public lectures paid for and sponsored by TEXAS TECH that have relevance to the El Paso Museum of Art and its mission to educate the public about the art of Europe, Mexico, and the United States, can be presented in partnership with the El Paso Museum of Art in the El Paso Energy Auditorium, as long as they are free of charge and open to the public.

2.3 Access: Upon integration of the TEXAS TECH book collection and periodicals to the Algur H. Meadows Library, all items will be accessible to the general public.

## 3.0 TERM.

3.1 This Agreement shall become effective on the date of approval of the last signatory to the Agreement and shall be effective for a term of one (1) year, which will renew automatically for up to 4 one-year renewal terms, unless CITY or TEXAS TECH gives notice to the other party on or before the end of the then current term that it does not wish to renew the Agreement. In the event one party gives notice to not renew, the obligations of the parties will remain in place until the close of the Spring semester of the term during which a party has given notice not to renew the Agreement.

## 4.0 GOVERNMENTAL FUNCTION AND IMMUNITY.

4.1 Governmental Function. The CITY and TEXAS TECH expressly agree that, in all things relating to this Agreement, the parties enter into this Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort

Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

4.2 Sovereign Immunity. The CITY and TEXAS TECH reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

### **Risk Allocation:**

## **5.0 RISK ALLOCATION – LIMITATION OF LIABILITY**

5.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

5.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish, emotional distress and attorneys fees- as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein.

5.1.2 Intentional Risk Allocation. The CITY and TEXAS TECH each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

5.1.3 No Indemnification. The Parties expressly agree that, except as provided herein, neither Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

5.1.4. Fines and Penalties. Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

## 6.0 GENERAL PROVISIONS

6.1 Compliance with Laws. In the performance of their obligations under this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

6.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the CITY.

6.3 Venue. The parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in the El Paso County, Texas.

6.4 Current Revenues. Pursuant to Section 791.001(d)(3), Texas Government Code, each party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party.

6.5 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

6.6 Amendment; Assignability. This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party.

6.7 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Agreement, a provision which preserves the intention of the unenforceable provision, but which complies with the law.

6.8 Section Headings. The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

6.9 Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

6.10 Notices. Any notice, demand, request, consent or approval that either party may or is required to provide to the other, shall be in writing and either personally delivered or sent via United States Postal Service certified mail return receipt requested, addressed to the other party at the following addresses provided below:

CITY: City of El Paso  
Attention: Office of the City Manager  
300 N. Campbell  
El Paso, Texas 79901

TEXAS TECH: Procurement Services  
P.O. Box 41094  
Lubbock, Texas 79409

Changes may be made to the above addresses and addressees through timely written notice provided to the other party.

6.11 Execution and Counterparts. This Agreement may be executed in any number of counterparts; each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

6.12 Complete Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and this Agreement, together with any Attachment(s) attached hereto, constitutes the entire agreement between 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.

6.13 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of each party warrants that he/she has the authority to do so and to bind each party to this Agreement and all the terms and conditions contained herein.

*(signatures follow on next page)*

IN WITNESS WHEREOF, the parties have executed this Agreement in the City of El Paso to be effective on the date last entered below.

THE CITY OF EL PASO

\_\_\_\_\_  
Joyce A. Wilson, City Manager

Date: \_\_\_\_\_

TEXAS TECH UNIVERSITY COLLEGE  
OF ARCHITECTURE

\_\_\_\_\_  
Jennifer Adling, Managing Director  
Procurement Services

Date: \_\_\_\_\_

Approved as to Form

  
\_\_\_\_\_  
Kristen L. Hamilton

Assistant City Attorney

Approved as to Content

  
\_\_\_\_\_

Sean P. McGlynn, Director  
Museums and Cultural Affairs