

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

DEPARTMENT: MCAD/CITY DEVELOPMENT-RE SERVICES

AGENDA DATE: November 27, 2012

CONTACT PERSON/PHONE: Jane Tomchik – 541-4897

DISTRICT(S) AFFECTED: 4

SUBJECT:

A resolution authorizing the City Manager to sign a one year agreement by and between the City of El Paso and The El Paso Archaeological Society for use of meeting and storage space at 4301 Transmountain Road in exchange for the provision of financial support and assistance to The El Paso Archaeological Museum.

BACKGROUND / DISCUSSION: This is an annual contract for the use of adjacent meeting and storage space used by both the El Paso Archaeological Society and the El Paso Archaeological Museum at 4301 Transmountain Road. The EPAS has been the supporting organization for the museum since its opening in September 1976. In exchange for use of the space, the Society will provide docents upon request and publish a monthly newsletter.

PRIOR COUNCIL ACTION:

Council has approved this lease in 2006 -2010.

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:



(Example: if RCA 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 an Agreement by and between the City of El Paso (the "City") and the El Paso Archaeological Society, Inc. ("EPAS"), in exchange for EPAS' financial support and assistance to the Museum and to assist the Museum Director in achieving the aims and purposes of the Museum, to include but not be limited to providing docents when requested, publish a monthly newsletter that will be made available at the Museum, and give the Museum 20% of all proceeds received from any and all general fundraising events conducted at the Museum by EPAS, the City agrees to provide EPAS a meeting space to conduct its weekly meetings, monthly board meetings and monthly public meetings and permitting EPAS the utility of the Museum laboratory area including storage of their materials for a period of one year.

PASSED AND APPROVED this _____ day of _____, 2012.

CITY OF EL PASO

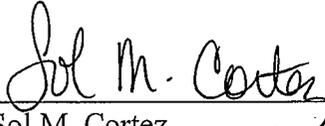
ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Sol M. Cortez
Assistant City Attorney



Sean P. McGlynn, Director
Museums & Cultural Affairs Department

APPROVED AS TO CONTENT:



Mathew McElroy
City Development

STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

WHEREAS, this Agreement is entered into and effective as of the _____ day of _____, 2012 by and between the City of El Paso (the "City") and the El Paso Archaeological Society, Inc. ("EPAS").

WHEREAS, the City maintains and operates the City of El Paso Museum of Archaeology ("Museum"), which is devoted to displays and education in the fields of anthropology and archaeology; and

WHEREAS, EPAS is a nonprofit Texas corporation devoted to research and education in anthropology, archaeology, and related subjects, and to assisting in the maintenance and betterment of local museums, among other purposes; and

WHEREAS, it is to the mutual advantage of the City and EPAS to enter into this Agreement, as Council finds that the value of the services provided by EPAS are equal to or exceed the value of the customary fee for the use of the designated space,

NOW, THEREFORE, it is mutually agreed by and between the City and the EPAS as follows:

1. Consideration: The EPAS agrees to provide financial support and assistance to the Museum and to assist the Museum Director in achieving the aims and purposes of the Museum, to include but not be limited to the following:

- a. Provide docents when requested.
- b. Publish a monthly newsletter that will be made available at the Museum.
- c. Give the Museum 20% of all proceeds received from any and all general fundraising events conducted at the Museum by EPAS.

2. Use of Premises: In exchange for EPAS' support of the Museum, the City agrees to provide EPAS a meeting space to conduct its weekly meetings, monthly board meetings and monthly public meetings at times mutually agreed upon by EPAS and the Director of the Museums and Cultural Affairs Department or a designee, and in compliance with the City's adopted facility use policy. The City will also allow EPAS to utilize the Museum laboratory area including storage of their materials (the "Premises"), however, the Museum will have exclusive use of Storage Room D.

2.1 EPAS shall maintain the Premises and keep it free from waste or nuisance throughout the term of this Agreement, and must keep the Premises in as good a state of repair and condition as existed when the City delivered possession to EPAS.

2.2 The City shall have the right to enter the Premises at any time, without notice to EPAS.

3. EPAS shall provide public liability insurance for bodily injuries/death growing out of any one accident or other cause for which the EPAS may be responsible in a minimum of \$250,000.00 for each person and \$500,000.00 for each single occurrence; and in addition shall provide a minimum sum of \$100,000.00 for each single occurrence for injury to or destruction of property.

3.1 EPAS is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent groups, alleged or asserted by any individual, in connection with the performance of this Agreement.

3.2 EPAS shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and groups, its officers, agents, servants or employees.

3.3 EPAS shall not utilize the Museum until EPAS files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk and the Museum. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk and the Museum. Failure to keep the policy in full force and effect throughout the term of this Agreement shall be grounds for cancellation of this Agreement.

3.4 EPAS OR EPAS'S INSURANCE PROVIDER 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.

4. Term: This Agreement shall remain in force for one year from the date executed by both parties. This Agreement may be terminated by either party, with or without cause, upon 90 days written notice to the other party. This Agreement may be extended for a one year term upon

mutual agreement by the both parties. The City Manager is authorized to exercise the one year extension on behalf of the City.

5. It is understood and agreed that this Agreement contemplates the rendition of valuable services to the City by the EPAS in consideration for a license by the City to the EPAS for occupancy and use of portions of Museum premises, it being understood, however, that nothing herein shall constitute either party the agent of the other, or any type of a joint venture arrangement. Employees and agents of one party shall not be deemed for any purpose employees and agents of the other party, provided that this shall not preclude the City through the Museum Director from furnishing assistance to the EPAS in proper and necessary use of the premises and sanitary services which assistance and services it is agreed will be furnished for the benefit of the EPAS.

6. Notices. Any notices required under this Contract shall be sufficient if sent by certified mail, return receipt requested, to the parties. 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
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
1st Floor
El Paso, Texas 79901-1196

And

City Development
2 Civic Center Plaza
5th Floor
El Paso, Texas 79901-1196

EPAS: El Paso Archaeological Society
Attention: Second Vice President Fernando Arias
P.O. Box 4345
El Paso, Texas 79914-4345

or to such other addresses as the parties may indicate to each other in writing.

7. Assignment. This Agreement is for exclusive benefit of the parties, and cannot be assigned, directly or indirectly, without the consent of the other party.

8. Law Governing Contract. The validity, construction and effect of this Contract shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

9. Entire Agreement. This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

10. Severability. The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

11. Authorization to Enter Agreement. The individual signing this Agreement acknowledges that he or she is authorized to do so and said individual further warrants that he or she is authorized to commit and bind the party to the terms and conditions of this Agreement.

12. Texas Tort Claims Act. EPAS expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. Partner further expressly agrees that every act or omission of the City that in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

13. Survival. Each party shall remain obligated to the other under all clauses of this agreement that expressly or by their nature extend beyond the expiration or termination of this agreement, including but not limited to the indemnification provisions hereof.

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

IN WITNESS WHEREOF, the EPAS has caused the execution of this Agreement by authority of its Board of Directors and the City through its proper officers on this _____ day of _____, 2012.

(signatures to follow on next page)

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Sol M. Cortez
Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:

Sean P. McGlynn
Sean P. McGlynn, Director
Museums & Cultural Affairs Department

APPROVED AS TO CONTENT:

Mathew McElroy
Mathew McElroy
City Development Director

EL PASO ARCHAEOLOGICAL
SOCIETY, INC.

Fernando Arias
Francisco Arias
Second Vice President