

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

DEPARTMENT: MUSEUM OF ART

CITY CLERK DEPT.

AGENDA DATE: NOVEMBER 28, 2006 / Consent Agenda

06 NOV 17 AM 11:22

CONTACT PERSON/PHONE: MICHAEL A. TOMOR, PH.D.

DISTRICT(S) AFFECTED: ALL

SUBJECT:

THAT the City Council finds that the fee reductions described hereinabove and in the El Paso Museum of Art Facility Rental Policy dated October 3, 2006, constitute an important public purpose or benefit to the City and citizens of El Paso for which the City is willing to utilize City resources and provide services in order to directly support the mission of the El Paso Museum of Art and advance the spirit of the public education and public service program aspect of the mission of the El Paso Museum of Art.

BACKGROUND / DISCUSSION:

This policy is for the purposes of establishing guidelines and fees for individuals and entities' use of the El Paso Museum of Art facilities, and revoking the Resolution adopting the Rental Policy for the Museum of Art previously approved by City Council on 9/15/98.

PRIOR COUNCIL ACTION:

10/03/06 Rental Policy approved by City Council.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) _____

FINANCE: (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

11/17/06

RESOLUTION

CITY CLERK DEPT.
06 NOV 17 AM 11:22

WHEREAS, on October 3, 2006, the City Council passed a Resolution approving the Facility Rental Policy regarding the El Paso Museum of Art (the “Museum”); and

WHEREAS, the offering of a one-time reduced fee event per City fiscal year to arts agencies that are funded or have been funded during two of the three years preceding the current year, supports groups whose initiatives are specifically tied to the elevation of arts in the community and therefore directly furthers the mission of the Museum; and

WHEREAS, the offering of free rental for space normally rented for events, as well as free security, audio-visual equipment/operator, and Museum staff fees for events held by the El Paso Museum of Art Foundation for the sole purpose of supporting and promoting exhibits and special Museum events, fundraising or presenting educational programs benefiting the Museum, directly furthers the mission of the Museum; and

WHEREAS, El Paso Museum of Art Foundation events shall not displace paying customer events; and

WHEREAS, the Museum shares a public mission with other non-profit entities to provide education programs not otherwise offered by for-profit businesses, so that a twenty percent (20%) rental fee reduction for non-profit entities that do not qualify under the preceding two recitals, for those agencies that provide unique and specialized education and public service programs to the community, furthers the spirit of the mission of the Museum; and

WHEREAS, the rental agreements between the Museum and individuals or entities desiring to rent Museum space and facilities will be in substantial conformity with the Special Events Use Agreement form attached hereto as Exhibit “A”.

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

THAT the City Council finds that the fee reductions described hereinabove and in the El Paso Museum of Art Facility Rental Policy dated October 3, 2006, constitute an important public purpose or benefit to the City and citizens of El Paso for which the City is willing to utilize City resources and provide services in order to directly support the mission of the El Paso Museum of Art and advance the spirit of the public education and public service program aspect of the mission of the El Paso Museum of Art.

PASSED AND APPROVED this _____ day of _____, 2006.

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:



Yolanda Alameda, Director
Museums and Cultural Affairs Department

EXHIBIT "A"

CITY CLERK DEPT.

06 NOV 17 AM 11:23

STATE OF TEXAS §
COUNTY OF EL PASO §

SPECIAL EVENTS USE AGREEMENT

This Special Events Use Agreement (hereinafter "Agreement") is made and entered into on this day of , 20 , by and between the City of El Paso, a municipal corporation (hereinafter "CITY") and (hereinafter "APPLICANT").

WITNESSETH:

WHEREAS, APPLICANT desires to use a portion of the El Paso Museum of Art, located at One Arts Festival Plaza, El Paso, Texas (hereinafter "Museum") for on (hereinafter "Event"), and thus, enters into this Agreement with the CITY; and

WHEREAS, APPLICANT'S use of the facilities serves the public purpose of promoting public and private programs to further the development and public awareness of arts and cultural affairs in the community, as well as enhancing the public's access to high quality works of art;

NOW, THEREFORE, for and in consideration of the following mutual covenants of this Agreement, and other good and valuable consideration, the APPLICANT and CITY agree that the CITY hereby grants to APPLICANT a non-assignable right for APPLICANT to use a portion of the Museum. The use of the Museum by APPLICANT for said Event includes the located on the floor of the Museum, including the adjacent areas within the structure and access to the bathroom facilities.

1. USE OF PROPERTY

1.1 APPLICANT understands and agrees to keep the Museum in good repair and condition during the term of this Agreement. Further, APPLICANT understands and agrees to reimburse the CITY for the cost of any repair to the Museum occasioned by damage arising from the Event, as determined to be reasonably necessary in the judgment of the Director of the Museum.

1.2 APPLICANT understands and warrants that it will not slide nor drag furniture, equipment or other materials connected with said Event across the floor of the Museum. Furniture, equipment or other materials with casters may be rolled across the floor with prior approval of the Director of the Museum or her designee. It is expressly understood and agreed that the cost of any damage to the Museum floor during the Event, including set-up or take-down, caused by sliding or dragging of furniture, equipment or other materials will be reimbursed by the APPLICANT to the CITY, within fifteen (15) days written notice from the CITY to the APPLICANT.

2. DURATION AND SCOPE

2.1 The CITY agrees that APPLICANT may use the Museum from .m. through .m. for the specific purpose of the Event. APPLICANT agrees that the Museum will be vacated and that all equipment and other items connected with the Event shall be removed from the Museum no later than .m. on . In the event that the APPLICANT fails to vacate the Museum and remove all equipment and other items connected with the Event as specified in this Agreement, the CITY may, at its option and within its sole discretion, either extend the time for removal or remove said materials and charge the cost thereof to the APPLICANT. The APPLICANT agrees to pay all reasonable cost(s) incident to such removal by the CITY.

2.2 APPLICANT agrees to conduct its Event on _____, in accordance with the Agreement between APPLICANT and the CITY.

3. **CONSIDERATION.** As consideration for the use of the Museum for said Event, the APPLICANT shall pay the CITY the sum of _____ AND _____ /100 DOLLARS (\$) on or by _____. Failure to make such payment will result in cancellation of this Agreement.

4. **INDEMNIFICATION.** APPLICANT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE ACTS OR OMISSIONS OF THE APPLICANT, ITS INVITEES, AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, LICENSEES, REPRESENTATIVES OR ANY OTHER THIRD PARTY. APPLICANT FURTHER EXPRESSLY AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE ACTS OR OMISSIONS OF THE CITY, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE, GROSS NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE OR GROSS NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS. APPLICANT EXPRESSLY AGREES TO INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES TO PROPERTY OR CLAIMS FOR PERSONAL INJURY OR DEATH ARISING OUT OF OR RELATING IN ANY WAY TO THE OCCUPANCY OR USE OF THE MUSEUM BY APPLICANT, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS.

5. **TERMS AND CONDITIONS:**

5.1 **CATERING.** If food is to be served at said Event, it must be catered. Further, food or other refreshments will be restricted to the reception area of the Museum only.

5.1.1 Use of any type of fire or flame for food or refreshment preparation and/or service is prohibited.

5.1.2 APPLICANT is hereby granted permission to serve alcoholic beverages as a part of the event.

5.1.2.1 APPLICANT understands and agrees that it shall provide liability insurance coverage for serving alcohol, in an amount no less than \$1,000,000.00 for the term of this Agreement. Said policy is in addition to the insurance requirements set out in Section 5.5 below in this Agreement.

5.1.2.2 APPLICANT further agrees to obtain an insurance policy that includes the CITY as an additional named insured on the policy relating to the service of alcohol. A copy of the insurance policy, or certificate of insurance, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required by this Agreement for service of alcohol, shall be furnished to the Director of the Museum on or by _____. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Agreement.

5.2 **SMOKING.** No smoking will be permitted within the Museum during said Event, as required by Chapter 9.50, El Paso Municipal Code. Violators will be reported to the Fire Department and/or Police Department for potential prosecution.

5.3 **SECURITY.** The CITY will provide security guard and event staff service during said Event, including set-up and take down of equipment and other items connected with the Event.

APPLICANT understands and agrees to pay the cost for the security guard and event staff at the current City rates, which shall be in addition to the rental fee. The cost for guard and event staff is currently estimated to be AND /100 DOLLARS (\$). Payment for the guard and event staff to be used at said Event shall be due from APPLICANT within thirty (30) days upon receipt of invoice from the City.

5.4 NUMBER OF ATTENDEES. APPLICANT understands and agrees that, by order of the Fire Marshal, the number of attendees for said Event shall not exceed five hundred (500), without prior written approval by the Fire Marshal. APPLICANT further understands and agrees that if the number of people present during the Event exceeds five hundred (500) or such other number authorized by the Fire Marshal, the Event will be terminated and all attendees will be instructed to leave. Failure to leave will result in criminal prosecution.

5.4.1 APPLICANT understands and agrees that if it violates any condition imposed by the Fire Marshal, the Event will be terminated and all attendees will be instructed to leave. Failure to leave will result in criminal prosecution.

5.4.2 APPLICANT further understands and warrants that it will ensure compliance with any and all orders and/or directives of the Fire Marshal or security guards relating to fire or other matters of safety.

5.4.3 APPLICANT understands and acknowledges that it shall pay directly to the Fire Department any fees or charges for the attendance of Fire Inspectors at said Event that the Fire Marshall requires or deems necessary to ensure safety and compliance during the Event. Such fees or charges shall be in addition to rental fees and charges paid to the Museum, as set forth in this Agreement.

5.5 INSURANCE. APPLICANT understands and warrants that it shall provide liability insurance coverage in no less than the following amounts: \$250,000 per individual per occurrence for personal injury; \$500,000 per occurrence for personal injury for more than one person; \$100,000 for property damage (including damage to the rented premises) for the term of this Agreement.

5.5.1 APPLICANT agrees to obtain an insurance policy that includes the CITY, as owner of the premises used to conduct the Event, as an additional named insured. A copy of the insurance policy, or certificate, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required by the Agreement, shall be furnished to the Director of the Museum on or by . Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Agreement.

5.5.2 APPLICANT hereby states and warrants that any entity providing services to APPLICANT during said EVENT fully comply with all workers' compensation requirements in the State of Texas. As an alternative to providing the workers' compensation insurance coverage as described above, APPLICANT may, at its option, elect to be covered by liability insurance obtained by the CITY for events at the Museum by paying to the CITY the prorated share of the premium for such insurance. Such prorated premium shall be at the following rates: events with 1-500 attendees -- \$52.80 per day. Coverage for an additional named insured, if requested, will require an additional fee of \$50.00 each. In the event APPLICANT elects to obtain the CITY-provided coverage, payment shall be made with and in addition to the fees described in Section 3 and Section 5.3 of this Agreement.

5.6 SAFETY. APPLICANT shall comply with all applicable laws, ordinances and regulations and shall encourage its participants in the Event to comply with all applicable laws, ordinances and regulations. APPLICANT shall exercise every precaution for the safety of public and private property and persons.

5.7 DISCRIMINATION. APPLICANT, 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. Admission to the Museum for the Event covered by this Agreement shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

5.8 NON-RELIGIOUS ACTIVITIES. APPLICANT will conduct its Event, insofar as it may involve the CITY, 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 Event insofar as it may involve the CITY. There will be no religious discrimination in terms of employment or benefits provided in the conducting of the Event insofar as it may involve the CITY. APPLICANT shall not represent that the CITY is in support of or in favor of any religious services, proselytizing, instruction, or any other religious influences in connection with the Event.

5.9 LIABILITY. APPLICANT expressly warrants and understands that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. APPLICANT further expressly warrants and understands 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 governmental function.

5.9.1 The CITY will not be liable to APPLICANT, nor any person claiming rights for incidental, consequential, special, punitive or exemplary damages of any kind, whether based on tort, contract or other theory of recovery, including but not limited to lost profits, loss of business, injury to property, mental anguish, emotional distress, negligence, and any other expenses or economic damages, as a result of breach of any term of this Agreement, regardless of whether the CITY was advised, had other reason to know, or in fact knew of the possibility thereof.

5.9.2 In no event shall the CITY's aggregate liability to APPLICANT, including any person or persons whose claim or claims are based on or derived from a right or rights claimed by APPLICANT, with respect to any and all claims at any and all times arising from or related to the subject matter of this Agreement, whether in contract, tort or any other cause of action, whether based on statute or common law, exceed the amount of consideration actually paid by the APPLICANT to the CITY under the terms of this Agreement.

5.10 CLEAN UP. APPLICANT agrees that it will remove from the Museum and contiguous areas all trash and litter generated by the Event. APPLICANT will clean up litter and/or trash and place the same in the Museum trash receptacles on site.

6. **COMPLIANCE WITH LAWS**. APPLICANT 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 that materially impairs the quality of performance hereunder or affects the administration of the funds provided hereunder shall constitute a material breach of this Agreement.

7. **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.

8. **EFFECTIVENESS**. This Agreement shall be effective as of the date the CITY delivers this Agreement to APPLICANT. All proposals, negotiations, notices and representations with reference to matters covered by this Agreement are merged in this instrument, and no amendment or modification thereof shall be valid unless evidence in writing is signed by both parties.

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

9. **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 executed this Agreement on the _____ day of _____, 20____.

THE CITY OF EL PASO

APPLICANT:

Printed Name: _____
Title: _____

APPROVED AS TO CONTENT:

Michael A. Tomor, Ph.D. - Director
El Paso Museum of Art

Form Agreement Approved by
Josette Flores, Assistant City Attorney