

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

DEPARTMENT: Planning and Economic Development
AGENDA DATE: December 7, 2010
CONTACT PERSON/PHONE: Kathy Dodson, PhD, Director 541-4670
DISTRICT(S) AFFECTED: All

SUBJECT:

Discussion and action regarding a Resolution that the City Manager be authorized to sign an Economic Development Grant Agreement by and between the City of El Paso ("City") and the El Paso Community Foundation ("Community Foundation") for the development of a nonprofit project to be located in downtown El Paso in association with Artspace Projects, Inc. (All Districts)
[Economic Development, Kathryn B. Dodson, (915) 541-4872]

BACKGROUND / DISCUSSION:

The City of El Paso and the Community Foundation (the "Parties") will enter an agreement to provide affordable, live/work units for artists by renovating an existing downtown building. Other communities have utilized projects associated with the renovation and expansion of existing buildings for purposes of providing affordable, live/work units for artists and their families; and the development of such projects serves to create and enhance the cultural and historical heritage of the communities in which they are located. Projects have also served as significant catalysts for other private sector investments and efforts which serve to improve the surrounding area.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

From contingency:

- \$75,000.00 due upon delivery of preliminary analysis of candidate building/sites with respect to cost, availability and other factors, which is expected to be delivered the first quarter of 2011; and
- \$75,000.00 due upon delivery of final report determining building location and size which is expected to be delivered by August 31, 2011; and
- \$200,000.00 due upon delivery of preliminary Project Design and Financing Modeling, which is expected to be delivered the first quarter of 2012.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____
Department Head

RESOLUTION

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

That the City Manager be authorized to sign an Economic Development Grant Agreement by and between the City of El Paso ("City") and the El Paso Community Foundation ("Community Foundation") for the development of a nonprofit project to be located in downtown El Paso in association with Artspace Projects, Inc.

ADOPTED THIS _____ DAY OF DECEMBER 2010.

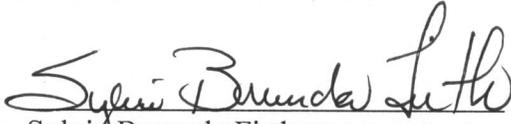
THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Kathy Dodson
Director, Planning & Economic Development

ECONOMIC DEVELOPMENT GRANT AGREEMENT

THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT (the “Agreement”), dated as of December _____, 2010, is made and entered into by and between the CITY OF EL PASO, TEXAS, a Texas municipal corporation (the “City”), and EL PASO COMMUNITY FOUNDATION, a Texas nonprofit corporation (the “Community Foundation”).

RECITALS

WHEREAS, the Community Foundation is a 501 (c)(3) corporation and as such is eligible to receive grants from the City for the public purpose of development and diversification of the economy of the State, elimination of unemployment or expansion of commerce in the State in accordance with §380.002 Texas Local Government Code;

WHEREAS, the City and the Community Foundation (individually, a “Party”; and collectively, the “Parties”) recognize and acknowledge the importance of the arts with respect to the quality of life of the community and with respect to economic benefits derived from the arts; and

WHEREAS, the Parties have observed and studied the success and economic development benefits of other communities’ projects devoted to providing affordable, live/work units for artists and the derivative developments of entire neighborhoods associated with such efforts; and

WHEREAS, other communities have utilized projects associated with the renovation and expansion of existing buildings for purposes of (i) providing affordable, live/work units for artists and their families, (ii) furthering local businesses which cater to such artists and families, (iii) developing and preserving a diverse population of people who want to live in such a thriving community; and (iv) providing jobs associated with the construction and related activities of renovation and expansion of such existing buildings; and

WHEREAS, the development of such projects can create collaboration among such artist residents, as well as collaboration between such artist residents and other local, national and international artists; and

WHEREAS, such projects can serve to create and enhance the cultural and historical heritage of the communities in which they are located; and

WHEREAS, such projects have in other communities served as significant catalysts for other private sector investments and efforts which serve to improve areas surrounding or proximate to such projects; and

WHEREAS, in other communities such improvement of surrounding or proximate areas has been so significant as to dramatically raise the values of such surrounding or proximate areas as to, absent a nonprofit involvement in the project buildings, make it too costly for the artist

residents to continue their residencies and work in the project buildings, so that the very economic success associated with the artist residents project can sometimes (without involvement of a nonprofit entity) effectively doom the future of artist residents being able to continue living and working in the project area; and

WHEREAS, the Parties have, for some time now, been mutually pursuing the possibility of the development of a nonprofit project (the “Project”) to be located in downtown El Paso, which Project would make available to qualifying artists (i) residences and studio/work spaces and (ii) possible gallery spaces and common area spaces, all in furtherance of such residents’ pursuit of their respective artistic endeavors; and

WHEREAS, as a part of the study having been performed by the Parties, it is believed that such artists who would be residents in such a Project must, at a minimum (i) meet the income qualifications associated with a low-income housing project pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”); and (ii) have a demonstrated passion for, and commitment to, their respective arts; and

WHEREAS, the Parties have already initiated and completed some initial steps in studying the Project and evaluating certain aspects associated with the Project’s feasibility, in association with consultation services provided by Artspace Projects, Inc. (“Artspace”), a Minnesota nonprofit corporation and publicly-supported charity under Section 501(c)(3) of the Internal Revenue Code and one of the nation’s leading nonprofit real estate developer for the arts; and

WHEREAS, such initial studies associated with respect to the proposed Project have been completed and preliminarily indicate that the Project is feasible; and

WHEREAS, the cost of these initial studies undertaken by the Parties with advisory services provided by Artspace have been shared equally between the Parties; and

WHEREAS, the City Council of the City of El Paso has determined that a public purpose will be served by the Project to create more affordable housing options in downtown El Paso and will meet downtown revitalization goals thereby providing for diversification and development of the economy, elimination of unemployment and development and expansion of commerce; and

WHEREAS, the Parties now desire and intend to agree among themselves as to how further steps can be taken, in association with the advisory and other services of Artspace, for further evaluating and possibly pursuing furtherance of the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties hereto do hereby agree as follows:

ARTICLE I
AGREEMENTS BY THE PARTIES

Section 1.1 Generally. It is acknowledged and agreed between the Parties that success or failure of the Project will necessarily require: (i) the continuing cooperation of, and the general continuing consensus among, both the Parties; and (ii) the retention of qualified, experienced advisors (including, without limitation, Artspace) for purposes of further studying, planning, evaluating and implementing the Project. In furtherance of such, with respect to the Project:

- a. The Parties will: (i) fully share information among themselves with respect to the Project; and (ii) reasonably cooperate with one another with respect to studying, planning, evaluating, and implementing the Project.

- b. The Parties will, among themselves, share equally (i) the costs described in Section 1.2 of this Agreement, and (ii) as otherwise hereafter agreed between the Parties from time-to-time, additional costs of studying, planning, and possibly implementing the Project. No Party can, however, obligate the other Party for costs without the mutual written consent of both Parties. Payments by the City to the Community Foundation with respect to the City's portion of the costs described in Section 1.2 of this Agreement (the City's portion of such costs aggregating \$350,000.00), shall be made by the City to the Community Foundation as follows:
 - (1) \$75,000.00 due upon delivery of preliminary analysis of candidate building/sites with respect to cost, availability and other factors, which is expected to be delivered the first quarter of 2011; and
 - (2) \$75,000.00 due upon delivery of final report determining building location and size which is expected to be delivered by August 31, 2011; and
 - (3) \$200,000.00 due upon delivery of preliminary Project Design and Financing Modeling, which is expected to be delivered the first quarter of 2012.

- c. With respect to studying, planning, and implementing the Project: (i) the City will fund its share of costs associated with the Project as specified herein; (ii) the Community Foundation will contract with Artspace and other advisors; and (iii) Artspace will, in turn, retain and contract with other advisors (including, by way of example only and without limitation, architects) needed or desired with respect to the Project.

- d. Although the City itself is not retaining Artspace: (i) the City interposes no objection to the retention of Artspace by the Community Foundation; (ii) the City shall have, without becoming a party thereto, approved the form of any such written agreement between Artspace and the Community Foundation; and (iii) the City understands and agrees that the Community Foundation's retention of

Artspace is in furtherance of this Agreement and is partially in reliance upon the City's obligations pursuant to this Agreement.

Section 1.2 Next Steps in the Process with Respect to the Project. The Parties agree that the next agreed steps in the process (with related estimated costs therefor where now known, the City's portion of which now known costs being described in Section 1.1.b. above) with respect to the Project are as follows.

- a. **Creation of Oversight Committee.** The Parties agree that in order to work collaboratively they need to establish a core oversight committee (the "Oversight Committee") to guide the process and provide input to Artspace in order to create a Project to meet the goals and serve the public purpose identified by the City. Within thirty (30) days from the effective date of this Agreement, each Party hereto will designate _____ individuals to serve upon the core Oversight Committee, such individuals to thereafter set meeting dates for such Oversight Committee, etc. Each Party's respective contribution towards the Project is expressly contingent upon the creation of the Oversight Committee and such contributing Party's ability to have input into the process, site selection, etc.
- b. Determining Project Location and Size (anticipated to take an additional 6 - 12 months and to cost \$150,000.00). In this step:
 - (1) The Parties, Artspace, and other stakeholders will work in order to establish (i) a preliminary scope for the Project and (ii) a possible space development program for evaluating building and site capacity.
 - (2) Artspace will, with input from the Parties, analyze candidate building/sites with respect to cost, availability, and other factors affecting such candidates' respective abilities to address development program goals.
 - (3) Artspace will, with input from the Parties, review existing information about potential sites to identify key legal, environmental, physical, and financial issues affecting suitability.
 - (4) Artspace will, with the assistance of the Parties, negotiate with property owners of potential sites, with the goal of obtaining a written site control agreement.
 - (5) Artspace, with the assistance of the Parties, will negotiate in order to obtain a written purchase agreement or other means of obtaining site control.
- c. Project Design and Financing Modeling (anticipated to take an additional 12 - 18 months and to cost \$350,000.00).

- (1) Artspace will, with participation by the Parties, establish a process for selecting the architectural team.
 - (2) Artspace, with input from the Parties, will confirm development goals and space program with the selected architectural team.
 - (3) Artspace will, at its sole expense, engage: (i) the architectural team to create conceptual plans and schematic designs; and (ii) a cost consultant or contractor to provide pre-construction services with respect to the Project.
 - (4) Artspace will resolve any contingent conditions relating to site control through continued due diligence.
 - (5) Artspace will create capital (sources and uses of funds) and operating (annual income and expense) budgets to be associated with the Project.
 - (6) Artspace will obtain proposals and/or other letters of interest from possible lenders and equity investor financing partners.
 - (7) Artspace will submit low income housing tax credit and/or other federal tax credit applications with respect to the Project.
 - (8) Artspace will submit other financing applications, as applicable with respect to the Project.
- d. From Tax Credits to Financial Closing (anticipated to be an additional 4 – 9 months and to cost an additional \$200,000.00).
- (1) Artspace will secure final gap funding commitments with respect to the Project.
 - (2) Artspace will raise funds for equity, including (without limitation) private sector philanthropic dollars.
 - (3) Artspace will complete construction documents and submit permit applications.
 - (4) Artspace will negotiate construction and permanent loan commitments.
 - (5) Artspace will negotiate limited partner equity investment commitments.
 - (6) Artspace will advance Project to construction closing.
- e. Construction and Lease-up (anticipated to take an additional 12 – 18 months and at a cost which will depend upon the final details of the Project, as approved).

- (1) Artspace, as owner of the Project, is to oversee Project construction and related matters.
- (2) Artspace is to engage, from time to time, a local management company with respect to the Project.
- (3) Artspace is to identify any (if any) commercial tenants and sign lease agreements.
- (4) Artspace is to conduct the residential tenant selection process, identify such residential tenants, and sign lease agreements.

Section 1.3 Ownership and Operations of the Project, Post-Construction.

- a. The Parties anticipate that the Project, once constructed, will be owned and operated by Artspace, such ownership and operation to be within the context of guidelines to be developed and agreed by the Parties and Artspace for purposes of maintaining the purposes of the Project, as agreed between the Parties and Artspace.
- b. Although in order to complete the Project there undoubtedly will be a requirement for funding by other nonprofit sources (including, by way of example only and without limitation, other nonprofit foundations) and by other private sector and governmental sources, all of which to be a part of any details for the Project as agreed in writing between Artspace and the Parties in the future, beyond that provided pursuant to this Agreement: (i) there is no commitment or obligation (funding or otherwise) by the City with respect to acquiring, constructing, or operating the Project; and (ii) there is no commitment or obligation (funding or otherwise) by the Community Foundation with respect to acquiring, constructing, or operating the Project.
- c. Although there is no current commitment or obligation with respect thereto, it is understood by the Parties that, in order to complete the Project, there necessarily must be a future, related allocation of low income housing tax credits (pursuant to Section 42 of the Internal Revenue Code).

Section 1.4 Termination of this Agreement. This Agreement may be terminated as follows:

- a. By the then mutual written agreement of both Parties, in their respective sole discretions.
- b. By either Party by reason of the other Party's breach of this Agreement, provided such breach continues for not less than ten (10) days after receipt of written notice to the violating Party, specifying such breach with particularity; provided, however, that any termination of this Agreement pursuant to this Section 1.4.b.

shall be without limitation upon any remedies at law or in equity available to the terminating Party from the breaching Party by reason thereof.

- c. In the event Artspace fails to deliver the services required pursuant to the contract (the "Contract") by and between Artspace and the Community Foundation, there shall be no liability of the Community Foundation to reimburse the City the funds which it has advanced pursuant to this Agreement, it being understood and agreed between the Parties that: (i) the selection of Artspace and the Contract between Artspace and the Community Foundation are matters about which the Parties have mutually agreed; (ii) in the event that Artspace should fail to deliver such services, the City and the Community Foundation shall have each suffered damages respectively by reason of any such failure by Artspace; and (iii) except as regards any payments due under this Agreement which shall have accrued prior to any such failure, neither the City nor the Community Foundation shall owe the other Party reimbursement or damages by reason of any such failure by Artspace to deliver such services.
- d. In the event the Project is not constructed, assuming that both the City and the Community Foundation have performed, and are not in uncured default with respect to, their respective obligations under this Agreement, the City and Community Foundation will jointly own the work product created by Artspace as contemplated by this Agreement. If either Party shall have performed its obligations under this Agreement and the other Party shall not have performed its obligations under this Agreement or shall have an uncured default under this Agreement, the non-defaulting Party will solely own the work product created by Artspace as contemplated by this Agreement.

ARTICLE II MISCELLANEOUS

Section 2.1 Amendments or Modifications. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the Parties hereto.

Section 2.2 Partial Invalidity. If any Article, Section, subsection, term or provision of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement or the application of same to Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either Party of the enjoyment of its substantial benefits under this Agreement.

Section 2.3 Current Revenue. The obligations of the City contained in this Agreement will be satisfied solely out of current revenues. In the event the City Council should fail to provide for funding of this Agreement in subsequent budget years, the City's obligation to fund shall cease and any obligations of the Community Foundation pursuant to this Agreement shall likewise cease.

Section 2.4 Gender and Number. Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and the plural.

Section 2.5 Attorneys' Fees and Costs. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing Party(ies) shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which he/she/it may otherwise be entitled.

Section 2.6 Applicable Law. This Agreement has been prepared in the State of Texas and shall be governed in all respects by the laws of the State of Texas.

Section 2.7 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 2.8 Prior Agreements. This Agreement supersedes any prior understanding or written or oral agreements between the Parties respecting the within subject matter. There are no oral agreements among the Parties hereto.

Section 2.9 Notices. All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given at the earlier of the date when actually delivered, or when sent by telecopy or facsimile machine to the number shown below, or when properly deposited for delivery by a nationally-recognized commercial overnight delivery service, prepaid, or by deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, and addressed as follows, unless and until any of such Parties notifies the other in accordance with this Section 6.8 of a change of address or change of telecopy number:

- a. If to the City:
City Manager
City of El Paso
2 Civic Center Plaza
10th Floor
El Paso, TX 79901
Fax: (915) 541-4501

With a copy to:

City Attorney
City of El Paso
2 Civic Center Plaza
9th Floor
El Paso, TX 79901
Fax: (915) 541-4501

b. If to the Community Foundation:

El Paso Community Foundation
P. O. Box 272
El Paso, Texas 79943-0272
Attention: President
Fax No: (915) 532-0716

With a copy to:

ScottHulse, PC
201 E. Main Drive
11th Floor
El Paso, Texas 79901
Attention: G. Russell Hill, Esq.
Fax No.: (915) 546-8333.

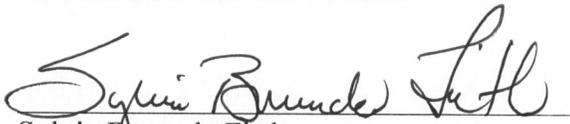
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

THE CITY:

CITY OF EL PASO,
a Texas municipal corporation

By: _____
Name: Joyce A. Wilson
Title: City Manager

APPROVED AS TO FORM:


Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Kathy Dodson
Director, Planning & Economic
Development

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

THE COMMUNITY FOUNDATION:

**EL PASO COMMUNITY
FOUNDATION,**
a Texas non-profit corporation

By: _____
Name: VIRGINIA S. MARTINEZ
Title: President



Artspace Inc.





Artspace's mission is to create, foster, and preserve affordable space for artists and arts organizations.

Artspace owns and operates 24 projects in 17 cities and 12 states. Nineteen of the 24 are live/work projects with a total of 846 residential units. Many of the live/work projects also include non-residential space such as studios, offices for arts organizations, rehearsal and performance venues, and space for arts-friendly businesses.



A “live/work” project is a residential building in which each unit has extra space (usually 100 to 150 square feet) that the artist can use as a studio. Other design elements, such as high ceilings, large windows, durable surfaces, and wide doorways, accommodate a wide variety of creative processes. Artspace live/work projects also include common spaces that encourage cooperation and community involvement.

Artspace live/work projects qualify as affordable housing for low- to moderate-income households under Section 42 of the IRS Code.











S E R V I C E S O L U T I O N S S U C C E S S



DOWNTOWN
el pasonext
ADELANTE





We would like to enter into a contract with the El Paso Community Foundation to contract with Artspace for a low-income, live-work space for artists in El Paso. Their preliminary study has shown a market demand for up to 127 units in downtown El Paso.

The Artspace would help City Council achieve their downtown redevelopment and affordable housing goals, as the project will be:

- located in the 2015 Downtown Plan area
- 100% affordable units
- a catalyst for economic development projects



The City is being asked to make a commitment of \$350,000 over two fiscal years in order to move forward with the project. The Community Foundation will raise \$300,000 for the development phase and raise additional funds for the actual building. The Kresge Foundation will provide \$150,000 for the development phase. The total development phase costs are expected to be \$700,000.

The City's portion of the funding is to come from the contingency fund, and has been spaced to account for the City's fiscal requirements.