

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

DEPARTMENT: Museums and Cultural Affairs

AGENDA DATE: December 10, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Ben Fyffe, 541-4898

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE a resolution that the City Manager be authorized to sign the Guggenheim Masterpiece Exhibition Series Agreement by and between the City of El Paso and Solomon R. Guggenheim Foundation, a New York education corporation with principal offices at 1071 Fifth Avenue, New York, New York, USA 10128, (the "Guggenheim") to provide for the loan of a series of major artworks from the Guggenheim to the City of El Paso for exhibition at the City's accredited Museum of Art on rotation from October 5, 2014 through October 2, 2016 for the amount of **TWO HUNDRED THOUSAND DOLLARS AND NO/100 (\$200,000.00)** and that the City Manager be authorized to make necessary budget transfers to effectuate this agreement.

BACKGROUND / DISCUSSION:

The artwork to be loaned represents some of the most iconic pieces by major, internationally recognized artists, many of whom have never been exhibited in El Paso. The El Paso Museum of Art will be the only site outside of a Guggenheim facility in which they will be shown for a considerable period of time, allowing El Pasoans to encounter the works and helping to drive regional tourism.

PRIOR COUNCIL ACTION:

Yes, council has previously approved exhibition agreements on November 3, 2009 ("Bedazzled: 5,000 Years of Jewelry"), December 14, 2010 ("Monet to Matisse: French Masterworks from the Dixon Gallery and Gardens") and November 8, 2011 ("Rembrandt, Rubens, Gainsborough and the Golden Age of Painting in Europe").

AMOUNT AND SOURCE OF FUNDING:

Dept ID - 454, Division - 54110, Fund - 2528, Account 522150

It will require a budget transfer from fund balance, however, the El Paso Museum of Art is currently fundraising to cover costs of exhibition agreement.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

CITY CLERK DEPT.
2013 DEC -3 AM 8:34

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 the Guggenheim Masterpiece Exhibition Series Agreement by and between the City of El Paso and Solomon R. Guggenheim Foundation, a New York education corporation with principal offices at 1071 Fifth Avenue, New York, New York, USA 10128, (the "Guggenheim") to provide for the loan of a series of major artworks from the Guggenheim to the City of El Paso for exhibition at the City's accredited Museum of Art on rotation from October 5, 2014 through October 2, 2016 for the amount of TWO HUNDRED THOUSAND DOLLARS AND NO/100 (\$200,000.00) and that the City Manager be authorized to make necessary budget transfers to effectuate this agreement.

ADOPTED this _____ day of _____, 2013.

CITY OF EL PASO:

Oscar Leeser
Mayor

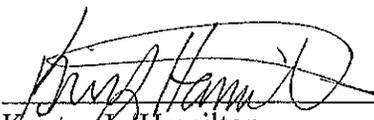
ATTEST:

Richarda Duffy Momsen
City Clerk

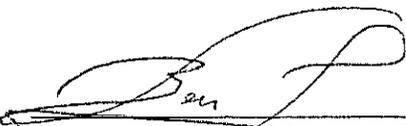
CITY CLERK DEPT.
2013 DEC -2 PM 5:50

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Kristen L. Hamilton
Assistant City Attorney



Ben Fyffe, Interim Director
Museums and Cultural Affairs Department

**GUGGENHEIM MASTERPIECES SERIES
EXHIBITION AGREEMENT**

This Exhibition Agreement (the “*Agreement*”) is made as of November 20, 2013 by and between the **Solomon R. Guggenheim Foundation**, a New York education corporation with principal offices at 1071 Fifth Avenue, New York, New York, USA 10128 (the “*Guggenheim*”), **and the City of El Paso, a Texas municipal corporation by and through its accredited art museum, The El Paso Museum of Art**, with an address at One Arts Festival Plaza, El Paso, TX 79901 (“*EPMA*”).

WHEREAS, EPMA desires to borrow and present certain works from the Guggenheim’s collection (the “*Works*”) at EPMA, and the Guggenheim desires to lend such works, all in accordance with this Agreement;

NOW, THEREFORE, the Guggenheim and EPMA hereby agree as follows.

1. Loaned Works

- (A) Checklist. The Guggenheim shall loan to EPMA the 10 Works listed on the checklist attached hereto as Schedule 1 (the “*Checklist*”), which Checklist is subject to additions or deletions by the Guggenheim in its discretion if specified Works reasonably need to be withdrawn for security or conservation reasons, or to such additions or deletions as may be mutually agreed by both parties.
- (B) Loan Schedule. From October 2014 through October 2016, the Guggenheim shall loan one or two Works to EPMA at a time, for a period of approximately four months each, as described in the tentative schedule attached hereto as Schedule 2 (the “*Schedule*”). The Schedule is subject to changes as mutually agreed by the parties.
- (C) Curatorial Content. The Guggenheim shall be responsible for providing wall labels, artist biographies and wall text for each Work, and upon request shall reasonably assist EPMA to develop didactic material for use in connection with the Works. If EPMA desires to revise or modify any content provided by the Guggenheim, EPMA must obtain the Guggenheim’s advance written consent prior to any use or distribution of such modified content.

2. Fee and Payment Schedule

- (A) Fee. In connection with the loan and presentation of the Works, EPMA shall pay to the Guggenheim a flat fee (the “*Fee*”) of US \$200,000 payable as follows:

US \$50,000	On the signing of this Agreement
US \$25,000	On or before August 1, 2014
US \$25,000	On or before November 1, 2014
US \$25,000	On or before, April 1, 2015
US \$25,000	On or before July 1, 2015
US \$25,000	On or before December 1, 2016
US \$25,000	On or before April 1, 2016

The Fee includes:

- (i) Loan preparation (e.g., framing, glazing, etc.)
- (ii) Preparatory conservation

- (iii) Crate construction, storage and disposal
 - (iv) Packing and unpacking labor in New York
 - (v) Shipping and dispersal, except local courier expenses, which shall be EPMA's responsibility pursuant to paragraph 2(B)
 - (vi) Registrar services
 - (vii) Provision to EPMA of high resolution digital image files for all Works
 - (viii) Fine art insurance coverage
 - (ix) All full time staff labor costs incurred in registrar services, curatorial services, project management, viewings for Checklist development, provision of a selection of images for press and promotion, review of all text for educational and promotional materials.
- (B) EPMA Local Costs. EPMA shall be directly and solely responsible for managing the installation, presentation and deinstallation of the Works at its premises, and for all local costs incurred in connection therewith, including but not limited to visitor services, administration, retail operation, utilities, permits, insurance, security, maintenance, loading and unloading, storage, unpacking and repacking the Works and related materials on-site, production of printed materials and graphics, publicity, marketing, press materials and press events, educational and special events, and courier accommodations, local transportation and a *per diem* of \$100 USD per person.
- (C) Guggenheim Payment Information.

All payments to the Guggenheim hereunder shall be made in US dollars by wire transfer to the following account:

Bank of America
1501 Pennsylvania Avenue, NW
Washington, DC 20005
ABA: 026009593
IN FAVOR OF SOLOMON R. GUGGENHEIM FOUNDATION
Account Number: 0019-2466-9335
Swift Code: BOFAUS3N

Past due payments of any portion of the Fee shall accrue interest from the date due until date paid at a rate of eight percent (8%) per annum.

3. Assembly, Transportation, Receipt and Dispersal of the Works

- (A) Assembly and Packing. The Guggenheim shall be responsible, at the Guggenheim's cost, for assembling the Works, including arranging all necessary loan preparation and conservation, crating, and packing the Works for transport to EPMA.
- (B) Transport to EPMA and Dispersal. The Guggenheim shall be responsible, at the Guggenheim's cost, for arranging the shipment of the Works to EPMA and the dispersal of the Works from EPMA, including courier travel but excluding local courier accommodations and per diem, which shall be borne by EPMA pursuant to paragraph 2(B). The Guggenheim's registrars shall liaise with EPMA's registrar on all shipping arrangements. Contact information for EPMA's registrar is: Michelle Villa, El Paso Museum of Art, One Arts Festival Plaza, (915) 532-1707 ext 19, villam1@elpasotexas.gov.

- (C) Packing, Unpacking and Handling. All crate movement, unloading, unpacking, handling, installation, de-installation, reloading and repacking of the Works at EPMA will be conducted by EPMA, under the supervision of a Guggenheim courier.
- (D) Acclimatization of Crates. All packed crates must be allowed to acclimatize for at least twenty-four (24) hours in the exhibition space prior to unpacking unless otherwise specified by the Guggenheim. In addition, during the Exhibition, EPMA shall use its best efforts to store crates in similar climate conditions to those set forth in paragraph 4(E) below. Crates stored in an area with climatic conditions outside the ranges listed above must be returned to EPMA and allowed to acclimatize for a minimum of 24 hours prior to repacking.
- (E) Receipt of Shipments. EPMA shall ensure that all shipments will be received directly into EPMA (*i.e.*, not an offsite storage facility) upon arrival, regardless of the hour of the day. All shipping dates will be confirmed with EPMA by the Guggenheim.

4. Care and Conservation

- (A) Condition Reporting. The Guggenheim shall provide condition reports for each Work listed on the Checklist prior to packing. All Works will be inspected by the Guggenheim and EPMA on arrival at EPMA, and by the Guggenheim and EPMA prior to packing at the close of each loan period. During EPMA's exhibition of the Works, EPMA shall keep and maintain the original condition reports, and shall provide to the Guggenheim copies (either digital scanned copies or hard copies) for its use. Upon the close of the loan period for each Work, EPMA shall return the original condition report with respect to such Work to the Guggenheim, and EPMA shall retain copies for its files.
- (B) Care and Security. EPMA shall care for the Works in accordance with international museum standards. To that end, EPMA shall ensure that (i) the areas in which the Works are stored, unpacked, repacked and prepared for installation are locked and secure at all times, (ii) during the hours that the Works are on public view or whenever the galleries are open to staff and/or special groups, EPMA shall post a security guard in each gallery where the Works are on display, each maintaining sightlines of the Works in their posted gallery; guards will not monitor multiple galleries simultaneously, (iii) the EPMA premises is monitored 24 hours per day by on-site human security personnel, (iv) no construction work or painting shall be done in the exhibition galleries or any staging or storage areas during the installation, presentation and de-installation of any Works, and (v) no food, drink or smoking is permitted in the exhibition galleries or any staging or storage areas. EPMA shall provide to the Guggenheim installation-specific security information prior to the installation of the first Guggenheim Work. All security measures must be approved by the Guggenheim prior to the installation of the first Work and may not be changed without the Guggenheim's prior written approval. In addition to the conditions contained herein relating to ongoing care, conservation and security of the Works during the applicable loan period, EPMA shall comply, at its expense, with all reasonable additional requests relating to care, handling, storage, environmental conditions and security made by the Guggenheim.
- (C) No Unframing, Change in Installation or Conservation. EPMA shall ensure that (i) no Work shall be unframed, reframed, unmatted, unbacked, unglazed, restored, cleaned, repaired, or otherwise altered in any way, (ii) no change shall be made in the manner in which a Work is installed (*e.g.*, removal from base/mount, equipped with new hanging hardware, stripped of existing hardware) and (iii) no conservation or restoration work shall be undertaken with respect

to any Work, in each case without the prior written approval of the Guggenheim. The Guggenheim reserves the right to inspect the Works at any time for the purposes of verifying their physical condition and, if reasonably necessary for conservation or security purposes, to withdraw one or more Works from public display at any time prior to the end of any particular loan period. If an emergency requires that a Work be moved, it shall be moved only by persons fully trained and qualified for the assignment, and the Guggenheim shall be notified immediately.

- (D) Reporting Damage. In the event of any damage or change to the condition of a Work, EPMA must contact the Guggenheim representatives listed below within 24 hours and take all precautions to prevent any additional damage to the Work. EPMA shall cooperate with the Guggenheim in documenting in writing and by photographing, any loss or damage, and any evidence of the damage (e.g., wrapping/packing materials, frame, base, display case) must be preserved and made available to the Guggenheim. To this end, EPMA shall contact:

MaryLouise Napier
Chief Registrar
Solomon R. Guggenheim Foundation
Telephone: 212-423-3562
Email: mnapier@guggenheim.org

Carol Stringari
Deputy Director and Chief Conservator
Solomon R. Guggenheim Foundation
Telephone: 212-423-3727
Email: cstringari@guggenheim.org

Karen Meyerhoff
Managing Director for Business Development
Solomon R. Guggenheim Foundation
Telephone: 212-423-3508
Email: kmeyerhoff@guggenheim.org

After receipt of any such notice, the Guggenheim will, at the expense of EPMA (estimates of such expense amounts to be provided), either send a conservator to EPMA or authorize, in writing, a conservator to act on its behalf. To the extent not covered by insurance (in the event a claim is filed), costs of such conservation or restoration shall be borne by EPMA, including, without limitation, associated travel and accommodation costs for conservator(s) and/or other specialist(s) (estimates of the cost of such conservation or restoration to be provided).

- (E) Temperature, Humidity and Light Levels. EPMA covenants that, unless explicitly agreed in writing with the Guggenheim, the Works will be exposed, at all times, only to the following limits of temperature, relative humidity, and visible and ultraviolet light:
- (i) Works shall not be exposed to sunlight or strong illumination; adjacent windows must be completely covered in order to block incoming sunlight; quartz and fluorescent light components must be filtered to remove the ultra-violet range.

- Works on paper and textiles are to be exhibited only in artificial light, not exceeding five (5) footcandles (50 Lux), and all lighting must be extinguished when EPMA is closed.
 - Paintings are to be exhibited in artificial light, not exceeding 15-20 footcandles (150-200 lux).
 - Lower limits may be placed, in which case the Guggenheim will notify EPMA in writing.
- (ii) Works shall not be installed in close proximity to sources of heat, cold, or ventilation outlets, or next to windows or doors leading to the outside, even if they will remain closed throughout the loan period.
- (iii) The exhibition galleries must maintain a humidity level of 50% ±5 and a temperature of 70° F (21°C) ±2.

EPMA shall make a facility report and Building Management System readings available to the Guggenheim promptly upon request. In order to assure proper environmental conditions for the exhibition of the Works, a representative of the Guggenheim may monitor each gallery's temperature, lighting and humidity conditions prior to shipment of the Works to EPMA. The Guggenheim's registrar (named above) shall be notified immediately by telephone or e-mail of any fluctuations in temperature or humidity greater than those specified above, and EPMA shall take action to remedy the situation in accordance with the Guggenheim's instructions.

5. Insurance Coverage for the Works; Venue Insurance

- (A) Fine Arts Insurance Coverage. The Guggenheim shall insure all Works listed on the Checklist wall-to-wall, against risk in transit, and while on location at EPMA under its global fine arts insurance policy. The City of El Paso will be listed as an additional insured on the insurance policies during the loan period for each Work.
- (B) Damage to Works; Deductibles. In the event of damage to, or devaluation of, a Work, while in transit to or from, or on-site at, EPMA, or if a Work needs to be re-fabricated upon arrival at EPMA, EPMA/The City of El Paso shall be responsible for all costs that fall below policy deductibles (US \$100,000 for a Guggenheim collection work under the Guggenheim's global policy), or any costs relating to the examination and treatment of a Work if it is determined by the Guggenheim that a claim will not be filed. In the event an insurance claim is filed, EPMA shall be responsible for any deductible and EPMA agrees to cooperate with and abide by the procedures dictated under the terms of the applicable policy or endorsement thereto for settling claims. The proceeds of any such claim for damage to any of the Works shall be payable to the Guggenheim, and no amount shall be payable to EPMA.
- (C) Venue Insurance. EPMA shall maintain: (i) a general liability (bodily injury, property damage) insurance policy during the Exhibition, in an aggregate amount of not less than \$2,000,000; and (ii) workers compensation coverage as required by applicable law, all of which shall be obtained from insurance companies rated no lower than "AAA" by Standard & Poor's (or rated equivalently by an international rating entity comparable to Standard & Poor's). The Solomon R. Guggenheim Foundation shall be named as an additional insured on the liability and property damage. EPMA shall provide the Guggenheim with proof of such coverage and coverage limits.

Non-conforming insurance shall not relieve EPMA of the obligation to provide insurance as specified herein.

6. Photography, Publicity and Marketing

(A) *Images of Works.* The Guggenheim will provide to EPMA digital images of the Works (the “Images”). Subject to EPMA’s securing all necessary third party permissions to reproduce the Works depicted in the Images as described in paragraph 6(G) below, the Guggenheim hereby grants to EPMA a royalty-free, non-exclusive license to reproduce the Images solely for publicity and educational purposes related to the exhibition of the Works, from the date of this Agreement until the end of the last loan period hereunder.

(B) *Printed, Broadcast and Digital Materials.* The design and content of all printed, broadcast, digital and video materials (other than internal announcements), including all media relations, marketing, promotion and membership communications by EPMA in connection with the exhibition of the Works or referencing the Guggenheim name, must be approved in advance by the Guggenheim. The Guggenheim shall not withhold such approval unreasonably, and shall provide any feedback within five (5) full business days of receipt of materials from EPMA, and in the absence of any written objection within such five (5) business-day period, the Guggenheim will be deemed to have approved such materials. Upon notice from the Guggenheim, EPMA will immediately withdraw any printed, broadcast or digital material which is not in a form which has been approved pursuant to this paragraph.

(C) *Limitations on Other Photography.*

(i) Subject to paragraph 6(G) below, maintenance of proper light and heat levels, and compliance with copyright laws, the Guggenheim grants to EPMA the right to (1) photograph and film general installation views of the installed Works (which, for clarity, should not contain detailed or close-up reproductions of any Works) solely for archival, documentation (including for conservation, registration and the post-exhibition report (described below)), educational, and publicity purposes, and (2) permit professional press and media to photograph and/or film the installed Works for press purposes, provided that these personnel are fully supervised by EPMA staff.

(ii) Except for condition reporting and internal registrarial records, EPMA may not take detailed, close-up photographs of or film individual Works, and shall only use the Images of the Works provided by the Guggenheim.

(iii) EPMA shall not, and shall not allow any third parties to, photograph or film any crates or the packing, unpacking, installation or deinstallation of the Works.

(D) *Standards Affecting Reproductions.* Reproductions of Images from photographs may not be cropped or bled off the page or printed in single color other than black and nothing may be superimposed on any Image without prior written approval from the Guggenheim.

(E) *Information to be Disclosed with Respect to Reproductions.* Reproductions of Images must disclose full catalogue information about each Work, including the artist’s name, title and date of the Work, medium, owner of the Work, and the Work’s designated accession number, and the name of the Image photographer. The foregoing information must appear directly under each Image reproduction or on the page opposite the Image reproduction.

- (F) Post-Exhibition Report. Promptly after the completion of the final loan period, EPMA shall provide to the Guggenheim:
- (i) All printed and digital materials produced by EPMA in conjunction with the exhibition of the Works and any published reviews (one copy of each – printed or digital pdf); and
 - (ii) Photographic documentation (digital images) of the installation of the Works.
- (G) Copyright Clearances by EPMA. EPMA shall be responsible for securing all necessary permissions, clearing reproduction rights, and rendering payments to appropriate rights holders as required by law in connection with any use or presentation by EPMA of a Work or a reproduction of a Work. Prior to any use of the Images, EPMA shall provide to the Guggenheim evidence of all necessary third party permissions, or EPMA shall have no right to use the Images provided by the Guggenheim for any purpose.
- (H) No Commercial Sale. No reproductions of Works (including the Images), films or videotapes of the exhibition of the Works may be distributed commercially or offered for sale, except as provided by this Agreement, a separate retail agreement, or otherwise with prior written approval from the Guggenheim which may not be unreasonably withheld or delayed.

7. Credit Line and Sponsorship

- (A) Credit Lines. EPMA will use the following organizational credit line (the “*Credit Line*”) in all materials related to the exhibition of the Works (including, without limitation, social media, media releases, television, radio or satellite broadcast programs, invitations, announcements (whether spoken or printed), brochures, posters, advertisements, and on EPMA’s Web site as well as other EPMA postings on the Internet) and on any other occasion in which the Exhibition is mentioned publicly:

Organized by The Solomon R. Guggenheim Foundation, New York.

The parties acknowledge that the foregoing Credit Line may change prior to the opening of the Exhibition due to the participation of EPMA sponsors (as described more fully in paragraph 7(B) below).

Placement and design of printed credit lines in the galleries must have prior approval from the Guggenheim, which may not be unreasonably withheld or delayed.

- (B) Sponsorship. Subject to the prior written approval of the Guggenheim, which may not be unreasonably withheld or delayed, EPMA may arrange for sponsorship of the exhibition of the Works at its premises. Any applicable EPMA sponsor credit line shall require the approval of the Guggenheim, which may not be unreasonably withheld or delayed, and which must appear on a separate line, below, and in a font no larger than, the Guggenheim’s Credit Line specified above. In addition, the Guggenheim will review the content and format of all sponsorship acknowledgements and materials produced, displayed or distributed by EPMA in connection with the exhibition of the Works (including materials provided by a sponsor to EPMA) prior to distribution to ensure that such materials (i) comply with the guidelines for constituting a “qualified sponsorship payment” under section 513(i) of the United States Internal Revenue

Code, as amended, and the regulations thereunder, and (ii) do not include any qualitative or comparative language, price information or other indication of savings or value.

No sponsor shall be accorded the right to use the Guggenheim's logo, image or artworks in connection with the exhibition of the Works or in any other manner unless approved by the Guggenheim in advance in writing, but for clarity, any sponsor shall have the right to use the Guggenheim name as it is contained in the exhibition title and Credit Line.

8. Guggenheim Materials

All of the works of authorship that the Guggenheim may conceive or develop in connection with the exhibition of the Works (the "*Guggenheim Materials*"), and all copyrights and other rights therein, shall be owned by the Guggenheim. The Guggenheim hereby grants to EPMA a non-exclusive license to reproduce, distribute and display the Guggenheim Materials solely in connection with the exhibition of the Works, in all media, throughout the world, consistent with its charitable, educational and publicity purposes. For clarity, EPMA may not repurpose any Guggenheim Materials for any other use without the express prior written consent of the Guggenheim.

9. Cancellation and Force Majeure

- (A) EPMA acknowledges that if the exhibition of the Works is canceled (i) by the Guggenheim as a result of a breach of EPMA's warranties, representations or obligations under this Agreement (which breach remains uncured for 30 days after written notice thereof), or (ii) by EPMA for any reason other than a breach of this Agreement by the Guggenheim or force majeure, the Guggenheim will incur substantial damages that are difficult if not impossible to accurately estimate, and that based on the foregoing, the parties agree that the Guggenheim shall retain any portion of the Fee that EPMA has already paid to the Guggenheim prior to the effective date of cancellation and EPMA shall promptly pay to the Guggenheim an additional payment of \$25,000. EPMA agrees that the amounts set forth above bear a reasonable relationship to the anticipated harm which would be caused by a cancellation of the Exhibition and does not constitute a penalty.
- (B) If the Guggenheim cancels the exhibition of the Works other than for EPMA's breach of this Agreement (which is addressed in paragraph 9(A) above) or reasons of *force majeure* (which is addressed in paragraph 9(C) below), upon written notice to EPMA, this Agreement shall immediately terminate, and the Guggenheim shall refund to EPMA any portion of the Fee that EPMA has paid to the Guggenheim prior to the effective date of cancellation for Works not yet exhibited at EPMA, and each party shall be responsible for its own out-of-pocket expenses.
- (C) If the Works are not exhibited for reasons constituting *force majeure* (*force majeure* reasons including but not limited to war, public emergency or calamity, strike, labor disturbance, fire, interruption of transportation service, casualty, physical disability, illness, earthquake, flood, Act of God, or other similar disturbance beyond the reasonable control of the parties, or any governmental restriction), EPMA may cancel the exhibition of the Works upon written notice to the Guggenheim, in which event this Agreement shall immediately terminate, the Guggenheim shall retain any portion of the Fee that EPMA has already paid and each party shall be responsible for its own out-of-pocket expenses.

- (D) Each party hereby waives any right to any indirect, special, incidental, consequential or punitive damages of any kind. EPMA agrees that the Guggenheim's total liability arising out of or in connection with the exhibition of the Works or this Agreement shall not exceed the total Fee paid by EPMA hereunder.

10. Notices

Unless otherwise stated hereunder, all notices and other communications by either party shall be given or made in writing by first class mail or hand delivery (or by telephone, facsimile or e-mail where permitted by specific provision hereof) to the other party at its respective address below:

For the Guggenheim:

Karen Meyerhoff
Managing Director for Business Development
Solomon R. Guggenheim Foundation
345 Hudson Street, 12th Floor
New York, NY 10014

With a copy to:

Sarah G. Austrian
Deputy Director, General Counsel and
Assistant Secretary
Solomon R. Guggenheim Foundation
345 Hudson Street, 12th Floor
New York, NY 10014

For EPMA:

With a copy to:

11. Nondisclosure and Confidentiality

Each party fully understands that in connection with this Agreement, it may have access to proprietary, non-public information of the other party. Each party represents, warrants and covenants that it shall not divulge, communicate, or in any way make use of any confidential, proprietary or sensitive information, including financial data, loan arrangements, and related correspondence, acquired in connection with this Agreement, except to the extent required by law.

12. Guggenheim Trademarks

Both the interior and exterior building image of the Solomon R. Guggenheim Museum and variations on the name "Guggenheim," including, without limitation, "The Solomon R. Guggenheim Foundation," "The Solomon R. Guggenheim Museum," and "Guggenheim Museum" are world famous trademarks and important assets of the Guggenheim (the "*Guggenheim Marks*"). EPMA acknowledges and agrees that any use by EPMA of the Guggenheim Marks beyond the use expressly authorized in this Agreement requires the additional express consent of the Guggenheim. All right, title, and interest in and to the Guggenheim Marks and any derivative thereof, including goodwill associated with and symbolized by the name "Guggenheim", shall remain vested in the Guggenheim, and all use of the name "Guggenheim" and any derivative thereof shall inure to the benefit of the Guggenheim.

13. Representations and Warranties

Each party hereto warrants and represents that (i) it is duly organized, validly existing and in good standing under the laws of the state or country of its organization,, and (ii) it has or will

have received no later than the first shipment date of any Work to EPMA any and all authorizations required to enable such party to enter into this Agreement and to be bound by the terms and conditions hereof.

14. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws and jurisprudence of the State of New York without regard to principles of conflicts of laws; any case, controversy, suit, action, or proceeding arising out of, in connection with, or related to this Agreement shall be brought in any federal or state court located in New York County, the State of New York. The parties hereby consent to the jurisdiction of these courts.

15. No Assignment

Neither party may assign or otherwise transfer any or all of its rights or delegate any of its duties or obligations under this Agreement, provided that each party may engage a third party subcontractor to perform activities on the party's behalf (*e.g.*, security, environmental maintenance, cleaning, installation, gallery preparation, shipping), but shall remain liable for such third party subcontractor's performance. Any assignment or delegation in violation of the provisions of this paragraph shall be void and of no force and effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and legal representatives.

16. Entire Agreement and Modification

This Agreement is the complete statement of the agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties hereto with respect to the subject matter hereof. In order to be binding, any amendment or modification of this Agreement must be effected by an instrument in writing signed by the parties.

17. Severability

In the event any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable, in any respect, the validity, legality, and/or enforceability of remaining provisions contained herein shall not in any way be affected or impaired thereby. In such event, such invalid provision or provisions shall be severed and deleted from this Agreement.

18. Survival

Notwithstanding any provisions of this Agreement stating otherwise, paragraphs 5, 6, 8, 10, 11, 12, 13, 14 and 18 shall survive any completion, rescission, expiration or termination of this Agreement.

19. Waiver

Failure by either party to take action against the other in case of the other party's noncompliance with obligations or conditions set forth in this Agreement shall not be interpreted as a waiver to take action for a subsequent noncompliance of the same or other obligations or conditions. No

waiver shall be deemed to have been made by either party of any of its rights under this Agreement unless the same is in writing and is signed by such party. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time.

20. No Agency

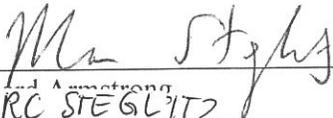
Notwithstanding anything contained herein to the contrary, this Agreement does not create a partnership, joint venture or agency relationship between the parties.

21. Counterparts

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each party and delivered to the other party. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the date first written above.

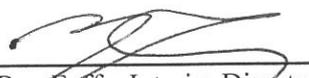
The Solomon R. Guggenheim Foundation


Richard Armstrong
MARC STEGLITZ
COO

The City of El Paso

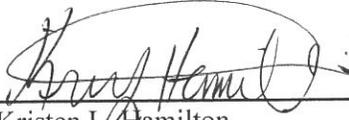
Joyce A. Wilson
City Manager

Approved as to Content



Ben Pyffe, Interim Director
Museums and Cultural Affairs Department

Approved as to Form



Kristen L. Hamilton
Assistant City Attorney

CITY CLERK DEPT.
2013 DEC -2 PM 4:29

SCHEDULE 1

CHECKLIST

See attached.

Masterpieces from the Solomon R. Guggenheim Museum

Masterpieces from the Solomon R. Guggenheim Museum

October 2014-October 2016

Paul Cézanne
Still Life: Plate of Peaches, 1879-80
Oil on canvas
23 1/2 x 28 7/8 inches (59.7 x 73.3 cm)
Solomon R. Guggenheim Museum, New York
Thannhauser Collection, Gift, Justin K. Thannhauser, 1978
78.2514.4



CYCLE 1: *Cubism and its Origins*

Pablo Picasso
Carafe, Jug and Fruit Bowl, Horta de Ebro, summer 1909
Oil on canvas
28 1/4 x 25 3/8 inches (71.8 x 64.6 cm)
Solomon R. Guggenheim Museum, New York
Solomon R. Guggenheim Founding Collection, By gift
37.536
Zervos Ila, 164



CYCLE 1: *Cubism and its Origins*

Vasily Kandinsky
Landscape with Factory Chimney, 1910
Oil on canvas
26 x 32 1/4 inches (66.2 x 82 cm)
Solomon R. Guggenheim Museum, New York
Solomon R. Guggenheim Founding Collection, By gift
41.504
Roethel 343



CYCLE 2: *Expressionism and Der Blaue Reiter*

Franz Marc
White Bull, 1911
Oil on canvas
39 3/8 x 53 1/4 inches (100 x 135.2 cm)
Solomon R. Guggenheim Museum, New York
51.1312
no. 154, Hoberg and Jansen, Franz Marc: *The Complete Works*, v. I (2004), p. 173;
no. 150, Lankheit, Franz Marc: *Katalog der Werke* (1970), p. 47 ("Der Stier")



CYCLE 2: *Expressionism and Der Blaue Reiter*

Masterpieces from the Solomon R. Guggenheim Museum

Masterpieces from the Solomon R. Guggenheim Museum

October 2014-October 2016

Albert Gleizes
On Brooklyn Bridge, 1917
Oil on canvas
63 3/4 x 51 inches (161.8 x 129.5 cm)
Solomon R. Guggenheim Museum, New York
Solomon R. Guggenheim Founding Collection
37.489

CYCLE 3: *Orphism and the School of Paris*



Robert Delaunay
Circular Forms, 1930
Oil on canvas
26 1/4 x 43 1/8 inches (67.3 x 109.8 cm)
Solomon R. Guggenheim Museum, New York
Gift, Andrew Powie Fuller and Geraldine Spreckels Fuller Collection,
1999
2000.10

CYCLE 3: *Orphism and the School of Paris*



Marc Chagall
Green Violinist, 1923-24
Oil on canvas
78 x 42 3/4 inches (198 x 108.6 cm)
Solomon R. Guggenheim Museum, New York
Solomon R. Guggenheim Founding Collection, By gift
37.446

CYCLE 4: *Marc Chagall*



Vasily Kandinsky
In the Black Square, June 1923
Oil on canvas
38 3/8 x 36 3/4 inches (97.5 x 93.3 cm)
Solomon R. Guggenheim Museum, New York
Solomon R. Guggenheim Founding Collection, By gift
37.254

CYCLE 5: *Vasily Kandinsky at the Bauhaus*



Vasily Kandinsky
Blue Painting, January 1924
Oil on canvas, mounted on board
19 7/8 x 19 1/2 inches (50.6 x 49.5 cm)
Solomon R. Guggenheim Museum, New York
Gift, Fuller Foundation, Inc., 1976
76.2277

CYCLE 5: *Vasily Kandinsky at the Bauhaus*



Masterpieces from the Solomon R. Guggenheim Museum

Masterpieces from the Solomon R. Guggenheim Museum

October 2014-October 2016

Pablo Picasso
Pitcher and Bowl of Fruit, February 1931
Oil on canvas
51 1/2 x 64 inches (130.8 x 162.6 cm)
Solomon R. Guggenheim Museum, New York
By exchange, 1982
82.2947

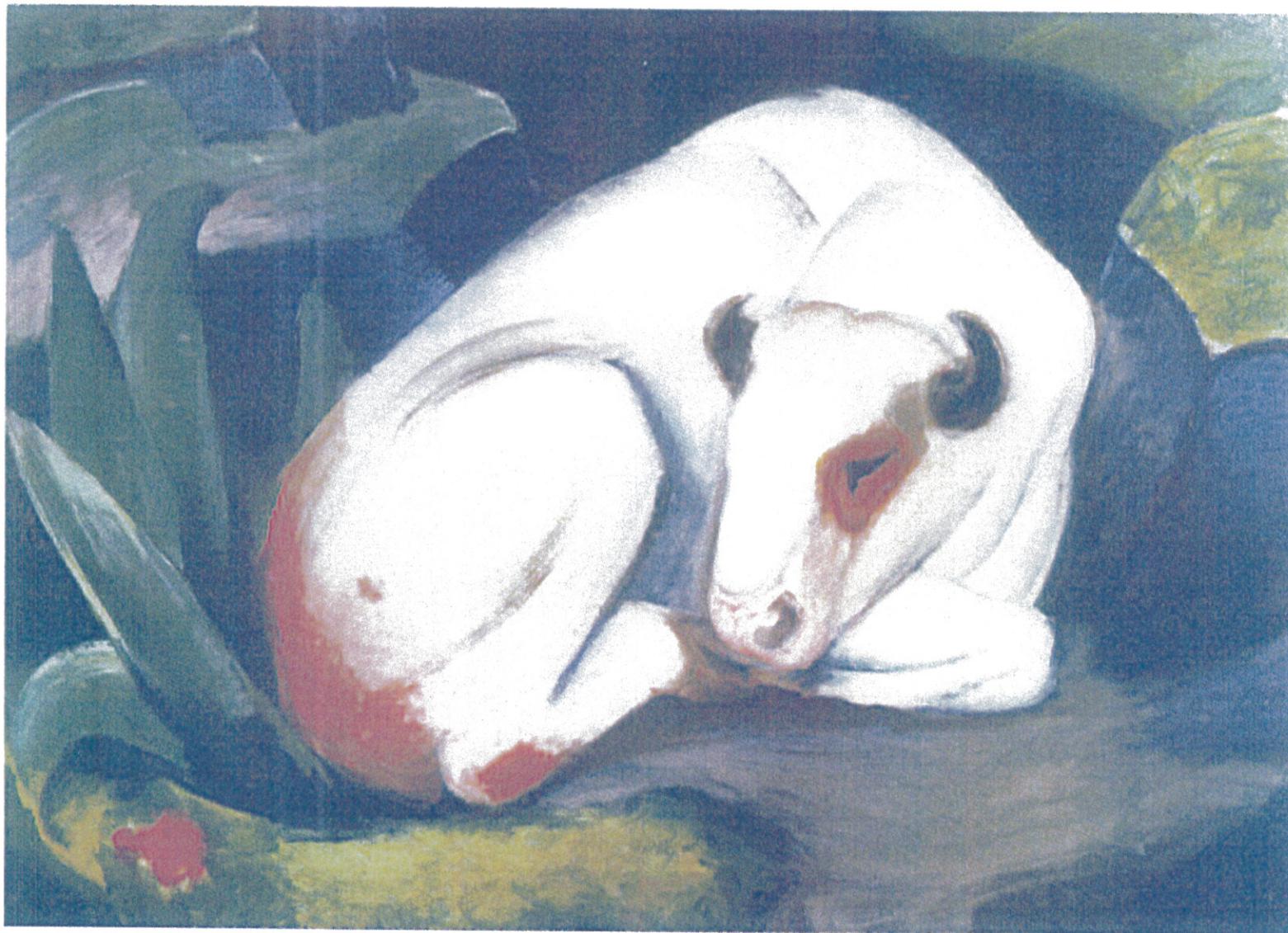


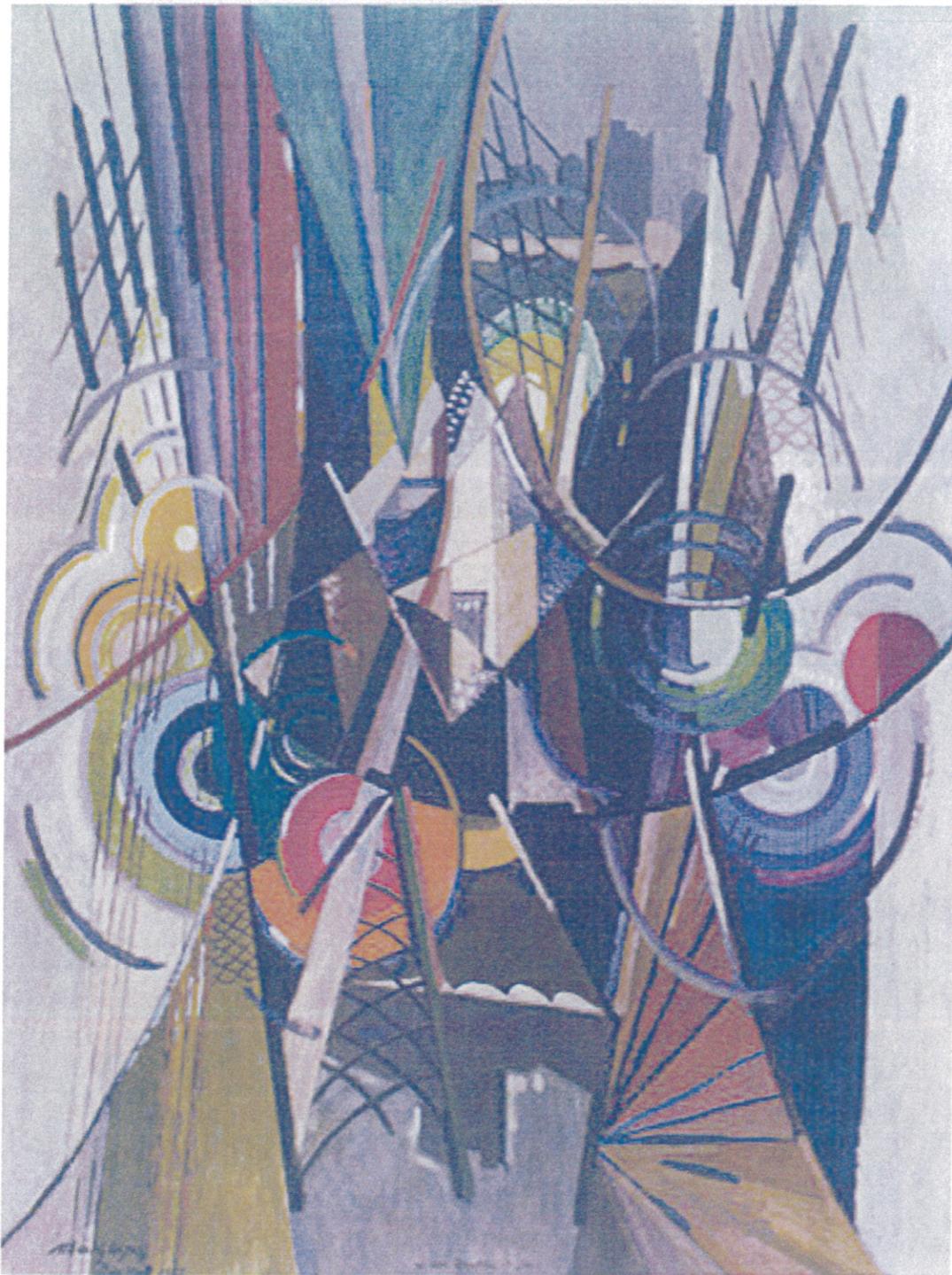
CYCLE 6: *Pablo Picasso*





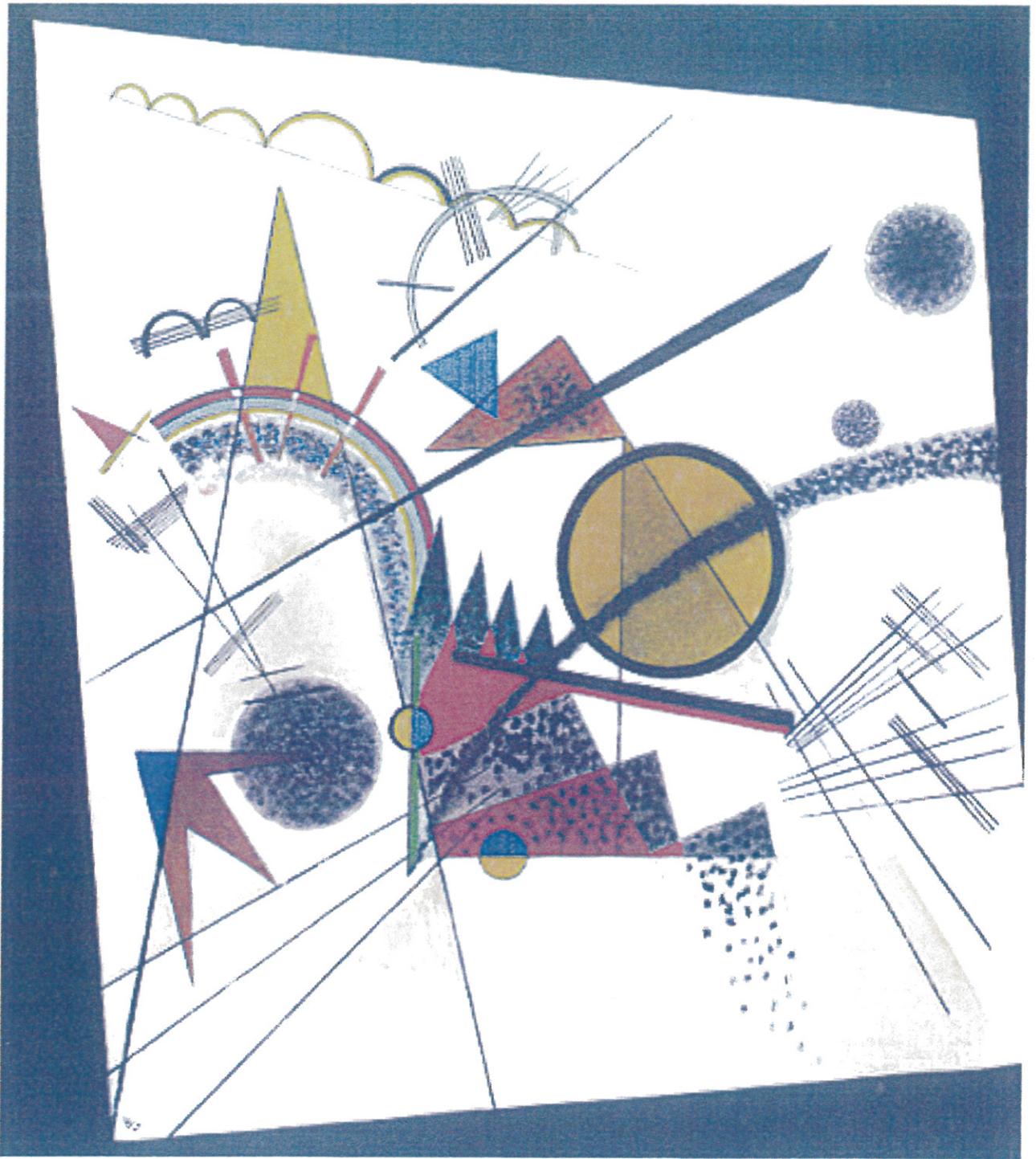
















SCHEDULE 2

LOAN SCHEDULE

Masterpieces from the Guggenheim Series Proposed Schedule for El Paso

Cycle #1 - Cubism and its Origins
October 5, 2014 – February 1, 2015

Cycle #2 - Expressionism and Der Blaue Reiter
February 4 - May 31, 2015

Cycle #3 - Orphism and the School of Paris
June 3 - September 27, 2015

Cycle #4 - Marc Chagall
September 30, 2015 – January 31, 2016

Cycle #5 - Vasily Kandinsky at the Bauhaus
February 3 - May 29, 2016

Cycle #6 - Pablo Picasso
June 1 - October 2, 2016