

STATE OF TEXAS)
)
COUNTY OF DALLAS)

THIS AGREEMENT, entered into this the 30th day of October, 1972, by and between the CITY OF DALLAS, a municipal corporation, acting by and through its PARK AND RECREATION BOARD, hereinafter collectively called "CITY", and the ~~DALLAS MUSEUM OF FINE ARTS~~ a non-profit corporation chartered and existing under the laws of the State of Texas:

W I T N E S S E T H:

WHEREAS, the Dallas Museum of Fine Arts, formerly known as the Dallas Art Association, having been organized in the public interest for the purpose of establishing, maintaining, promoting, and operating museums for the display of art objects to the public has, under prior agreement with the City of Dallas, operated an art museum at Fair Park in the City of Dallas; and

WHEREAS, the prior contract by and between the parties hereto has expired, and it is the mutual desires of the parties to renew said contract under the terms and conditions set forth below; Now, Therefore,

CITY and the DALLAS MUSEUM OF FINE ARTS, in consideration of the terms, covenants and conditions herein contained, hereby agree as follows:

1.0. PRIOR CONTRACT:

The Contract dated July 30, 1956, between the City and the Dallas Art Association (now Dallas Museum of Fine Arts) is hereby rescinded and the future rights and obligations of the parties shall be determined under this instrument. Any liabilities, however, arising out of or which arose out of such prior contract shall be governed by the terms of the prior contract.

2.0. TERM:

This Agreement shall become effective as of the date of execution by the parties, and shall expire on May 1, 1991.

3.0. PROPERTY.

3.1. TITLE TO BUILDINGS:

Dallas Museum of Fine Arts acknowledges without reservation that City has title to the building at Fair Park commonly known as the Dallas

Museum of Fine Arts, heretofore and presently occupied by the Dallas Museum of Fine Arts, in accordance with this and prior agreements.

3.2. TITLE TO ART OBJECTS:

The Dallas Museum of Fine Arts has heretofore accumulated a sizeable collection of paintings, pictures and other works of art which are presently housed in the Dallas Museum of Fine Arts at Fair Park. It is acknowledged and agreed by the Dallas Museum of Fine Arts, that the title to the present collection and all additions thereto (not including works of art on loan from private owners and works of art owned by the Foundation for the Arts) is vested in the City of Dallas under the operational jurisdiction and control of the Park and Recreation Board. Dallas Museum of Fine Arts irrevocably recognizes said title and ownership of the City to said paintings, pictures and works of art which are now housed and exhibited in the Dallas Museum of Fine Arts or otherwise in the possession of the Dallas Museum of Fine Arts (except art objects on loan from private owners and works of art owned by the Foundation for the Arts) and also to additional works of art as may be acquired in the future.

4.0. OPERATING POLICIES AND RESPONSIBILITIES.

4.1. INSURANCE AND CARE OF ART OBJECTS:

Dallas Museum of Fine Arts agrees to properly care for all paintings, pictures and other works of art, including future additions to the present collection, and to keep said collection insured for a reasonable amount at all times, and to provide funds for such care and insurance in its annual budget.

4.2. HOURS OF OPERATION:

Dallas Museum of Fine Arts agrees to maintain said museum at Fair Park open to the public each day from 10:00 a.m. to 5:00 p.m. except Mondays and Sundays. The hours of operation on Sundays shall be from 2:00 p.m. to 6:00 p.m. The museum shall be permitted to close on Mondays. The hours of operation established in this paragraph shall be the minimum operating schedule of the Museum. The Dallas Museum of Fine Arts may extend these hours from time to time when, in the opinion of the trustees, the public interest may best be served.

4.3. SUPERVISION OF DISPLAY AND OF ACQUISITION OF ART OBJECTS:

The Board of Trustees elected by the Dallas Museum of Fine Arts shall exercise supervisory authority over such matters as the exhibition of art objects in the museum, the display and hanging of pictures and paintings,

the purchase or other acquisition of additional art objects, and the exchange of art objects in the acquisition of other art objects to be added to the collection, and shall supervise all other matters pertaining to the general operation of the museum.

4.4. SALE AND EXCHANGE OF ART OBJECTS:

The Board of Trustees of the Dallas Museum of Fine Arts may engage in the sale or exchange of art objects from the collection owned by the City only on the following conditions:

(1) No sale or exchange of art objects owned by the City may be made by Trustees without the express written approval of the Park and Recreation Board in each case separately.

(2) Any sale or exchange approved by the Park and Recreation Board shall be made only in substantial conformity with the provisions of the Charter and Ordinances of the City of Dallas governing the disposal of surplus personal property owned by the City.

4.5. ELECTION OF TRUSTEES:

It is stipulated and agreed by the Dallas Museum of Fine Arts that said organization, through its trustees, utilizes and manages property owned by the public; and that said organization depends in part on public funds for financing of its operations. In recognition of this public trust, the Dallas Museum of Fine Arts hereby expressly agrees to exercise appropriate care, prudence and diligence in the selection of members and the election of trustees for the purpose of assuring broad representation of the community interest in the promotion and preservation of the arts, and to act always in accordance with community goals and in the highest public interest. Further, the Dallas Museum of Fine Arts hereby expressly agrees to supply the names of those persons selected as trustees to the Park and Recreation Board for filing as a public record. Said names shall be placed on record in the minutes of the Park and Recreation Board. Trustees shall faithfully and diligently exercise such authority as herein conferred in conformity with the provisions of this agreement and with the terms and provisions of any contract now in effect between the City and the State Fair of Texas governing the use of the State Fair grounds, commonly known as Fair Park.

4.6. CONDUCT OF MEETINGS:

The Board of Trustees of the Dallas Museum of Fine Arts hereby expressly

agrees to conform in principle and where applicable, with the procedures adopted by the City Council and the Park and Recreation Board in the conduct of their respective meetings, and the trustees shall adopt appropriate and reasonable regulations to this end.

4.7. CHARTER AND BY-LAWS:

Dallas Museum of Fine Arts shall file a true and correct copy of its corporate charter, with amendments, if any, and an accurate and complete copy of its by-laws and any amendments thereto, with the Park and Recreation Board to be maintained by said Board as a public record available for inspection to any person upon request during normal business hours. In the event of subsequent amendments to said Charter or By-Laws, true and correct copies of the same shall be timely filed with the Park and Recreation Board.

4.8. EXHIBITIONS AND FEES:

That Dallas Museum of Fine Arts shall have the right to promote public exhibitions of works of art in the museum and may charge admission fees therefor, subject to the prior approval of the Park and Recreation Board in each instance. A report shall be made to the Park and Recreation Board during each quarter showing in detail the amount of all funds derived from admission fees and the disposition of same.

4.9. STATE FAIR OF TEXAS:

The State Fair of Texas is an annual event held at Fair Park and usually lasting two weeks. During the time that Fair Park is turned over to the State Fair of Texas, the State Fair of Texas shall have such rights with reference to the Museum of Fine Arts as have been granted to said State Fair under the provisions of the presently existing contract between the City of Dallas and the State Fair of Texas, and such provisions in said contract relating to the Dallas Museum of Fine Arts are hereby expressly incorporated by reference into this agreement as though written fully word for word herein.

4.10. OPERATING BUDGET:

Dallas Museum of Fine Arts agrees that it will submit its proposed annual operating budget to the Park and Recreation Board not later than May 10 of each fiscal year, which year shall begin each October 1st and end each

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September 30th next. In said proposed operating budget, Dallas Museum of Fine Arts shall disclose the amount of funds that it expects to acquire from any and all sources whatsoever, including (but not limited to) private contributions and admission fees. Further, said proposed budget shall disclose the amount of all funds available to the Dallas Museum of Fine Arts as of October 1st and shall indicate the approximate amount expected to be provided by the Park and Recreation Board for the operation of the Museum of Fine Arts for the next fiscal year. The Park and Recreation Board shall review said proposed budget upon receipt thereof and shall recommend to the City Council an amount to be provided by City for the operation of the Museum of Fine Arts. It is understood and agreed that the Council may, in its discretion, accept, reject, or modify the amount recommended by the Park and Recreation Board. Whatever amount, if any, is approved by the City Council shall be included in the annual budget appropriation of the Park and Recreation Board for that purpose.

4.11. STATUS OF PERSONNEL:

Nothing herein shall be construed to alter in any manner the status of personnel employed or utilized by the Dallas Museum of Fine Arts, who shall in any event be deemed to be employees of said organization for all purposes, and not of the City.

4.12. OPERATING EXPENSES:

~~The Park and Recreation Board shall employ the necessary personnel within the amount appropriated for the operation of the Dallas Museum of Fine Arts. The Park and Recreation Board shall pay the personnel expenses for the Dallas Museum of Fine Arts. The Dallas Museum of Fine Arts shall furnish reports to the Park and Recreation Board each month setting forth the amounts expended and the previous month's support of said expenditures by receipts, vouchers, and/or bills. The Park and Recreation Board shall then reimburse the Dallas Museum of Fine Arts for such approved expenses.~~

4.13. BUILDING MAINTENANCE:

The Park and Recreation Board shall provide for the mechanical and structural maintenance of the Dallas Museum of Fine Arts building at Fair Park and the grounds adjacent thereto, including electrical, gas, and water utilities.

4.14. CODE OF ETHICS AND PERSONNEL RULES:

Dallas Museum of Fine Arts agrees to adopt, maintain, and enforce such personnel rules and regulations to govern the conduct of its employees as may be necessary to carry out the spirit, purpose and intent of this agreement. To effect this end, the Dallas Museum of Fine Arts shall adopt a Code of Ethics for its personnel, and will abide by, and require its employees to abide by, the same. The Dallas Museum of Fine Arts shall provide a copy of its personnel rules and regulations, Code of Ethics, and any amendments thereto to the Park and Recreation Board to be maintained in the files of the Park and Recreation Board.

4.15. COMPLIANCE WITH LAWS:

The Dallas Museum of Fine Arts agrees that it will strictly observe and abide by the ordinances of the City of Dallas, laws of the State of Texas and the United States of America as the same may now exist or as the same may hereafter be amended, to include such ordinances, statutes and regulations as may hereafter be enacted. Further, the Dallas Museum of Fine Arts hereby agrees that it will exercise the highest sense of civic responsibility to the end that neither public funds nor public property shall be used in any manner which is inimical to public confidence in the administration of the Dallas Park system.

5.0. REMEDIES FOR BREACH OR VIOLATIONS:

In the event the Park and Recreation Board is of the opinion that the provisions of this agreement are being violated by the Dallas Museum of Fine Arts or its employees, the President of the Park and Recreation Board shall direct that such violations be corrected or abated which order shall be obeyed by the Dallas Museum of Fine Arts within the time specified therein; provided however, that the Dallas Museum of Fine Arts is entitled to a hearing before the Park and Recreation Board upon prompt application therefor through the Director of the Park and Recreation Department. The Dallas Museum of Fine Arts may appeal to the City Council from any order of the Park and Recreation Board issued after a hearing, but not otherwise. Said appeal must be perfected within a reasonable time. The City Council may review the subject matter of the controversy and, in its discretion, may pass on the matter or grant a hearing thereon. In every case, the decision of the City Council shall be final and binding and not subject to review by the Courts. Failure or

refusal of the Dallas Museum of Fine Arts to comply with any such order of the Park and Recreation Board, if the same be not reversed by the City Council, shall authorize the Park and Recreation Board to cancel this contract and assume full control of the operation and direction of the Museum of Fine Arts at Fair Park. Nothing herein shall be construed to inhibit or affect the authority of the Park and Recreation Board in exercising its power of supervision and control over the Art Museum or Fair Park.

6.0. UNLAWFUL PROVISIONS DEEMED STRICKEN:

Any provisions of this agreement which may be unlawful shall be deemed stricken from this agreement, and shall be of no effect. Upon application of either party, the unlawful part hereof shall be considered stricken without affecting the binding force of the remainder thereof.

7.0. AMENDMENTS AND REVOCATION:

It is not the intention of either party to cause or impose unreasonable burdens upon the other by this agreement. It is the intention and understanding of the parties hereto, that all provisions of law required to be inserted herein shall be and are inserted herein. However, if by mistake or otherwise, some such provision is not inserted herein, or is not in proper form, then upon application of either party this agreement shall be amended to comply with the law without prejudice to the rights of either party hereunder. Further it is agreed that this agreement may be amended from time to time, providing however that there must be mutual consent by and between the parties hereto and approval of any such amendments by the City Council.

8.0. EFFECTIVE DATE:

This contract supersedes any prior contract between the parties hereto, and shall become effective immediately and shall operate until May 1, 1991, which is the same expiration date as the presently existing contract by and between the City of Dallas and the State Fair of Texas.

IN TESTIMONY WHEREOF, WITNESS the signature of the parties hereto this 30th day of October, A.D., 1972, the City of Dallas signing by and through its City Manager W. S. McDonald, attesting by its City Secretary Harold G. Shank, and countersigned by its City Auditor, E. Lynn Crossley, and the Park and Recreation Board of the City of Dallas signing by and through its President, Wm. B. Dean, MD., and attesting by its Secretary, and the

Dallas Museum of Fine Arts, signing by and through its President and
attesting by its Secretary.

ATTEST:

CITY OF DALLAS

Harold G. Shaik
HAROLD G. SHAIK, City Secretary

By: W. S. McDonald
W. S. McDONALD, City Manager
GEORGE R. SCHRADER
Acting City Manager

COUNTERSIGNED:

APPROVED AS TO FORM:
M. ALEX BICKLEY, City Attorney

E. Lynn Crossley
E. LYNN CROSSLEY, City Auditor

By: Allen M. Barber
Assistant City Attorney

ATTEST:

PARK AND RECREATION BOARD OF
THE CITY OF DALLAS

Jean Craft
JEAN CRAFT, Secretary

By: Wm B. Dean
WM. B. DEAN, HD., President

ATTEST:

DALLAS MUSEUM OF FINE ARTS

Donald Cherry
Secretary

By: R. B. Hazus
President

Following

WHEREAS, at an election held November 7, 1979, the voters of the city approved the issuance of \$24.8 million of general obligation bonds for the construction of a new museum of fine arts;

WHEREAS, by Resolution No. 79-3739, the city council has established a cultural arts policy to guide the participation of public and private interests in the development of cultural arts facilities; and

WHEREAS, the Dallas Museum of Fine Arts and the City of Dallas desire to cooperate in the construction of a facility to house the Museum of Fine Arts; NOW, THEREFORE,

THIS MEMORANDUM OF AGREEMENT made by and between the City of Dallas, Texas ("City"), and the Dallas Museum of Fine Arts ("Museum"), a non-profit corporation chartered and existing under the laws of the State of Texas:

W I T N E S S E T H :

I.

(a) By execution of this Memorandum of Agreement, the City and the Museum agree to undertake financing of the land acquisition for and construction of a facility to house a museum of fine arts ("the Project") on the prorated basis in accordance with the City Council's cultural arts policy. The Museum shall pay 40 percent of construction and furnishing costs and 25 percent of land acquisition costs, and the City shall pay 60 percent of construction and furnishing costs and 75 percent of land acquisition costs.

(b) In addition it is agreed that the Museum shall pay all architectural fees, and the City shall pay the cost of public street improvements and off site utility relocation costs in the vicinity of the new museum. Street improvements and utility relocation costs on the museum site will be calculated as construction costs.

(c) The City agrees that the following expenses previously paid for by the Museum as of July 1, 1980, will be accepted as a credit toward the Museum's share of land acquisition and construction costs:

Land purchase and options	\$1,733,934
Construction Management	57,406
Survey	5,189
Taxes	24,808
Legal Services	15,943
Consultants	17,615
Audit	2,904
Bank Charges	12,591
Sundry	1,462

II.

It is agreed that the City Manager shall designate a project director who shall have authority to direct the Project. The project director shall consult with the person designated by the

Board of Trustees of the Museum as its project representative with regard to changes in plans, construction, or scope of the Project. It is understood, however, that the project director has the authority to make the final decision upon all matters concerning the construction of the Project.

III.

(a) Each month the City will furnish a statement to the Museum detailing the previous month's construction costs that have been approved by the architect and project director and the previous month's land acquisition costs. Payment from the Museum becomes due upon receipt of the statement, and Museum shall promptly reimburse the City for the Museum's pro rata share of those costs in accordance with Article I of this Memorandum of Agreement.

(b) It is agreed, however, that should the Museum be unable to convert its pledged contributions to cash in time to promptly make payments when due, the Museum shall immediately notify the project director. The City will cover the Museum's share of those costs from available funds or if no funds are available then the City will issue previously authorized certificates of obligation to cover the costs.

(c) The Museum agrees to pay to the City an amount equal to:

(1) the advanced funds plus the interest that the City would have earned on those funds during the period between the time the payment became due and the time payment is made by the Museum; or

(2) if certificates of obligation are issued to cover the Museum's share of costs, the principle and interest on any certificates of obligation issued to cover any of the costs which the Museum has agreed to pay. It is further agreed that the Museum will make these payments to the City in time for the City to meet principle and interest payments on the certificates of obligations when due.

IV.

It is agreed that on completion of the Project, any savings resulting from implementation of the guaranteed maximum price contract and other economies achieved during the course of the Project, will be credited between the City and the Museum on the same pro rata basis as used in Article I to determine payment of costs.

V.

(a) It is agreed that the fee simple title to all land and improvements that are financed as part of the Project will be in the City.

(b) The City agrees that upon completion of the Project, the City will grant the Museum, the use of the new facility in place of the building now being used at Fair Park under the same terms and conditions as presently exist under the Agreement executed October 30, 1972, between the City and the Museum.

IN WITNESS WHEREOF, the City of Dallas has executed this

Memorandum of Agreement through its City Manager, and the Dallas Museum of Fine Arts, through its President.

ATTEST:

Robert S. Sloan
ROBERT S. SLOAN,
City Secretary

COUNTERSIGNED:

Bruce Festa, Jr.
BRUCE PESTA, JR.,
Acting City Controller

ATTEST:

Siame J Roberts
Secretary

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EXECUTED December 23, 1980.

CITY OF DALLAS
GEORGE R. SCHRADER, City Manager

BY *James G...*
Assistant City Manager

APPROVED AS TO FORM:
LEE E. HOLT, City Attorney

BY *Analeslie Muncy*
ANALESIE MUNCY,
Assistant City Attorney

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DALLAS MUSEUM OF FINE ARTS

BY *Dir L. Levy*
President