

**RESOLUTION NO. R-2023-149**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS AWARDING A COMMUNITY SUPPORT SERVICE AGREEMENT FOR SERVICES ASSOCIATED WITH OPERATING, MARKETING, AND PROVIDING OF CULTURAL ART AND THEATER SERVICES TO THE BASTROP OPERA HOUSE, AT A COST OF ONE HUNDRED AND SIXTY NINE THOUSAND AND NINE HUNDRED NINETY-ONE 00/100 DOLLARS (\$169,991.00) ATTACHED AS EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE AGREEMENT; PROVIDING FOR A REPEALING CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** The City Council has appointed the City Manager as the Chief Administrative Officer of the City; and

**WHEREAS,** The City Manager is responsible for the proper administration of all affairs of the City; and

**WHEREAS,** The City Council realizes the importance of preserving the Bastrop Opera House and providing theatrical entertainment and education to the Citizens of Bastrop, Texas and our out-of-town visitors; and

**WHEREAS,** Chapter 351 of the Tax Code provides the requirements on how HOT funds may be spent; and

**WHEREAS,** The City of Bastrop has been working to leverage HOT funds to attract tourism and strengthen our sales tax base by maximizing our return on investment; and

**WHEREAS,** The Bastrop Opera House is an integral part of the cultural arts fabric and has been brought together under the strategic goals and vision of the City Council of the City of Bastrop and the Comprehensive Plan; and

**WHEREAS,** The Comprehensive Plan also states that Bastrop's continued emphasis on cultural arts and tourism development through coordinated policies will lead to hundreds of millions in economic activity for the region.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:**

**SECTION 1.** That the City Manager is hereby authorized to execute a community support service agreement associated with services associated with operating, marketing, and providing of cultural art and theater services, to the Bastrop Opera House at a cost of One Hundred and Sixty-Nine Thousand and Nine Hundred Ninety-One 00/100 Dollars (\$169,991.00) attached as Exhibit A.

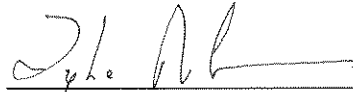
**SECTION 2.** That the City Council of the City of Bastrop has found the Bastrop Opera House staff, volunteers, and board of directors, to be subject matter experts in the field of providing theatrical performances and educational activities to visitors and residents since 1892.

**SECTION 3.** All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

**SECTION 4.** That this resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY RESOLVED AND APPROVED** by the City Council of the City of Bastrop this 7<sup>th</sup> day of November 2023.

**APPROVED:**



\_\_\_\_\_  
Lyle Nelson, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alan Bojorquez, City Attorney



## COMMUNITY SERVICES FUNDING AGREEMENT FY 2023 - 2024

This Community Services Grant Funding Agreement ("Agreement") is made by and between the **City of Bastrop, Texas**, a Texas home-rule municipal corporation, ("City"), and Bastrop Opera House, a Texas non-profit corporation ("Organization"). The City and Organization are also referred to collectively in this Agreement as the "Parties" and singularly as a "Party." The Parties intend that this Agreement will supersede and replace all previously adopted and finalized Agreements in their entirety, if any.

**NOW, IN CONSIDERATION** of the mutual covenants to be performed by the Parties and other valuable consideration hereby acknowledged, therefore, be it mutually agreed as follows:

### 1. SCOPE OF SERVICES

- A. Proposed & Modified Services Plan.** Organization shall utilize the grant funds conveyed herein to provide services to the Bastrop community in accordance with the proposal attached as *Exhibit "A"*, which has been accepted by the City, and as may have been modified in accordance with *Exhibit "B"*.
- B. Staffing.** Organization shall use its best efforts to secure sufficient numbers of employees and volunteers to accomplish the responsibilities set forth in this Agreement. Organization shall further provide such office space, equipment, supplies and other materials as may be necessary to accomplish the purposes of this Agreement. Organization acknowledges that no personnel engaged by the Organization shall be construed as agents, employees or officers of the City.
- C. Nondiscrimination:** Organization shall provide services under this Agreement free of discrimination or retaliation due to a person's race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, religion, parental status, or marital status. Any restrictions on services based on age, physical ability or mental ability shall be directly relevant to legitimate safety concerns in accordance with written Organization policies and procedures.

## 2. FUNDING

- A. Amount.** The City shall provide to Organization grant funds in an amount up to a sum not to exceed One Hundred and Sixty-Nine Thousand and Nine Hundred Ninety-One 00/100 Dollars (\$169,991.00).
- 8. Disbursals.** The City shall remit payment to the Organization of the grant funds due annually as an installment.

## 3. ACCOUNTABILITY

- A. Funding Source Identification.** Organization shall prominently include the City of Bastrop all educational and marketing materials promoting services covered by this Agreement, including (but not limited to) print items, internet posts, and social media. Such materials will also include the line, "Funding for this program was made possible through a grant from the City of Bastrop."
- 8. Written Reports.** Organization shall submit to the Community Engagement Director written reports on a quarterly basis describing the status of the services provided under this Agreement. Quarterly reports shall be submitted during the months of January, April, July, and October. Reports shall be public records. The first three reports shall be progress reports, and the fourth report shall be an annual summary. The reports shall include (but are not limited to) the following information:
- (1) Services:** a description of the services provided during the preceding quarter; and
  - (2) Financial Statement:** a financial statement for the reporting period that indicates how the Organization expended grant funds; and
  - (3) Promotions:** copies of promotional materials distributed.
- C. Oversight of Expenditures.** Organization shall exercise all reasonable, prudent and diligent efforts to ensure the proper and legal oversight, use, and expenditure of the grant funds conveyed under this Agreement. Organization's failure to use the funds in the manner approved by this Agreement shall void and negate the City's obligation to make any further payments to the Organization under the Agreement.

- D. Comingling.** Organization shall properly segregate grant funds and shall not comingle grant funds with other financial assets of the Organization.
- E. Accounting Practices.** Organization shall utilize generally accepted bookkeeping and standard accounting practices to maintain complete and accurate financial records of all expenditures of grant funds. Upon the City's request, the Organization shall promptly make the records available for inspection and review at any time during the term of this Agreement.
- F. Audit.** Organization shall have its records and accounts audited annually and shall prepare an annual financial statement based on the audit. Audits and financial statements shall be prepared by a certified public accountant (CPA) who is licensed in Texas or a public accountant who holds a permit to practice from the Texas State Board of Public Accountancy. Audits and financial statements shall be available to the City upon request, and shall be public records
- G. Records Retention.** All reports and records related to grant funds shall be maintained by the Organization and available to the City for a period of at least 3 years of the Effective Date. If there is any dispute regarding these reports or records, the retention period shall be extended in accordance with the City's instructions. To the extent Organization's records regarding services provided under this Agreement are subject to the Texas Public Information Act, Organization agrees to cooperate with any open records requests.
- H. Hotel Occupancy Tax Policy.** Hotel Occupancy Taxes. Organization shall comply with the requirements in Chapter 351 of the Texas Tax Code in the use of hotel occupancy taxes.

#### 4. GENERAL PROVISIONS

- A. Duration.** This Agreement shall be in effect for fiscal year 2023-2024, which commences October 1<sup>st</sup>, 2023 and ends September 30<sup>th</sup>, 2024 / a term of 1 year (365 days), unless earlier terminated as provided herein.
- B. Suspension of Payments.**
- (1) **Misappropriation.** Organization's failure to use the funds in the manner approved by this Agreement, as specified in Exhibit "A", shall be grounds for the City to suspend the remittance of further payments to the Organization under the Agreement.
- (2) **Comingling.** Organization's failure to properly segregate grant funds shall be grounds for the City to suspend the remittance of further payments to the Organization under the Agreement.

(3) **Records.** Organization's failure to provide the City with copies of financial records mandated under this Agreement shall be grounds for the City to suspend the remittance of further payments to the Organization under the Agreement.

(4) **Reports.** Organization's failure to timely submit reports mandated under this Agreement shall be grounds for the City to suspend the remittance of further payments to the Organization under the Agreement.

(5) **Notice.** Notice of suspension shall be sent by the City to the Organization with an explanation and opportunity for the Organization to cure the infraction within 30 days.

(6) **Breach.** Failure to remedy the infraction within 30 days shall be grounds for the City to declare the Organization in breach and terminate this Agreement as provided herein.

**C. Termination.** In the event that the Organization fails to abide by any of the terms of this Agreement, the City may terminate the Agreement and any obligations of the City hereunder, as set forth herein, with absolutely no penalty or claim against the City by the Organization. Notice of termination shall negate the City's obligation to remit a scheduled payment (if any). Upon termination for failure to cure the misappropriation of grant funds, Organization is obligated to reimburse the City for all funds misappropriated by the Organization in violation of this Agreement.

**D. Ineligibility for Future Funding.** Organization's failure to remedy the infraction upon receipt of notice this Agreement may render the Organization ineligible for future funding by the City.

**E. Good Standing.** The Organization hereby represents that it is in good standing with the Texas Secretary of State and has no City, County, State, or Federal debts or liens charged against it. Organization shall notify the City of any change in such status within 30 days of Organization's receipt of notification.

**F. Future Appropriations.** Any future grants by the City are conditioned on appropriations by the City Council. The Parties acknowledge that nothing related to this Agreement or the City's stated desire to support the Organization (generally), at the time of execution of this Agreement, may be inferred to indicate that the City will provide any funds in the future. The Organization acknowledges that funding by the City shall be decided on a fiscal year basis and will be determined by the City Council based upon its evaluation of the City's budget and considering all fiscal needs confronting the City, including needs related to the proposed community services.

**G. Notices.** Any notice necessary or appropriate relative to this Agreement shall be effective when deposited in the United States mail, either certified and/or registered mail, postage prepaid and addressed as provided herein. Notices to the City shall be sent to the City's designated staff contact person:

City of Bastrop  
Attn: Kathy Danielson  
1311 Chestnut St.  
Bastrop, Texas 78602

Notices to the Organization shall be sent in accordance with *Exhibit "C"*.

- H. Assignment.** No part of this Agreement may be assigned or delegated without the prior written consent of the other Party, and any attempted assignment of benefits or rights or delegation of duties or obligations shall constitute breach of this Agreement.
- I. Governing Law & Venue.** This Agreement shall be subject to the laws of the State of Texas and the City of Bastrop, Texas. Venue for any disputes arising under this Agreement shall rest solely in Bastrop County.
- J. Indemnity.** Organization agrees to and shall indemnify and hold harmless and defend the City of Bastrop, Texas, its officers, agents, representatives, consultants, and employees from any and all claims, losses, causes of action and damages, suits, and liability for the gross negligence and willful misconduct of Organization, including all expenses of litigation, court costs, and attorney fees, for injury to or death of any person, or from damage to any property, arising from or in connection with the operations of Organization, or its officers, agents and employees, carried out in furtherance of this Agreement.
- K. Insurance.** The Organization shall maintain a comprehensive general liability insurance policy for its operations. The policy shall name City as an additional insured. The Organization shall also maintain insurance on the Organization's personal property, in an amount determined sufficient by the Organization. The Organization shall deliver copies of the insurance policies specified hereunder to the City within 30 days of the Effective Date.
- L. Inclusiveness:** This document represents the entire understanding between the Parties. This Agreement may only be amended in writing with the mutual consent of the Parties.
- M. Severability:** If any sentence, clause or portion of this Agreement is deemed unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

**N. Effective Date.** The City and the Organization make and execute this Agreement to be effective upon the 7<sup>th</sup> day of November, 2023.

**IN WITNESS, WHEREOF:**

**CITY:**

**ORGANIZATION:**

by: *SAC*  
Sylvia Carrillo, City Manager  
City of Bastrop  
Date of Execution: 24/10/2023

by: *Lisa Holcomb*  
Executive Director  
Bastrop Opera House  
Date of Execution: 25/10/2023

**ATTEST:**

by: *Ann Franklin*  
Ann Franklin, City Secretary  
City of Bastrop



## **Exhibit "A"**

The 2023-2024 season will be a robust season with season productions, special events, and Academy productions. As the Bastrop Opera House has proven, we provide very high quality, professional productions while still remaining on a budget. Producing a season that will bring in tourist to Bastrop requires that we provide a season that will attract the tourist. A theatre, no matter the size, cannot operate on ticket sales alone. We have several avenues for acquiring funds, however, the support from the city's hot funds is vital to our performances.

### **2023-2024 Season**

The upcoming season will consist of five musicals and four plays, being a total of 9 major productions. Many of these productions are Tony award-winning productions that the Bastrop Opera House is privileged to have received the rights to produce on our stage.

**Special Productions: Four Cabaret and Dinner shows, 8 Youth Productions, Summer Theatre Camp Musical**

### **Budget relevant to Hot Fund request**

|                                 |                     |
|---------------------------------|---------------------|
| Production Projects:            | 94,491.00           |
| Production Project Coordinator: | 20,000.00           |
| Academy Project Coordinator:    | 20,500.00           |
| Production Equipment:           | 10,000.00           |
| <br>                            |                     |
| Advertising:                    | 25,000.00           |
| <br>                            |                     |
| <b>TOTAL Requested:</b>         | <b>\$169,991.00</b> |

### **Advertising Plan for the 2022-2023 Season**

Proper and aggressive marketing is very important to the success of each of our productions.

**Social Media:** Each show is heavily marketed on Facebook, Instagram and Twitter. Each show has several scheduled post that come out each week through the run of the production. There are scheduled post that are paid to be boosted throughout the run of the production. In addition, the Austin Statesman also promotes the performances on social media as well as email blast that go out to 50,000 people. We also advertise in the Greater Austin area through Spectrum commercials. These also target to Austin, San Antonio, Houston greater areas. We target people specifically looking for live theatre performances.

## Exhibit "B"

### Community Asset Funding

the FY 2024 proposed funding for each organization is.

| Organization                                     | FY 21-22<br>Approved<br>Funding | FY 22-23<br>Approved<br>Funding | FY 23-24<br>Requested<br>Funding | % of<br>Operating<br>Funds<br>Requested | FY 23-24<br>Proposed<br>Funding |
|--|---------------------------------|---------------------------------|----------------------------------|---|---------------------------------|
| Bastrop County Historical Society Visitor Center | \$126,905                       | \$162,986                       | \$213,786                        | 100%                                    | \$187,456                       |
| Bastrop County Historical Society Museum         | \$68,338                        | \$88,741                        | \$110,991                        |   | \$101,673                       |
| Bastrop Opera House                              | \$118,806                       | \$147,818                       | \$169,800                        | 29%                                     | \$169,991                       |
| Lost Pines Art Center                            | \$89,536                        | \$129,633                       | \$156,930                        | 27%                                     | \$129,109                       |
| <b>TOTALS</b>                                    | <b>\$403,565</b>                | <b>\$528,875</b>                | <b>\$651,527</b>                 |   | <b>\$608,207</b>                |

## ***Exhibit "C"***

### **CITY'S MODIFIED SERVICES PLAN**

Present 12 months' worth of programs annually (October – September) designed to appeal to tourists and attract overnight visitation to City Council.

All artwork, images and details regarding the individual programs such as "performances," "classes," or "exhibits" for the contract period including ticket prices and purchasing methods must have specific program details received by Visit Bastrop. All artwork, images, and marketing details must be provided to Visit Bastrop 30 days before the event.

Maintain an active social media and online digital presence with written goals for growth of following, reach, and engagement. Include claiming your google, yelp, trip advisor, and similar listings.

Develop an annual marketing plan for the promotion of the arts and activities at the Opera House.

Develop an annual marketing and strategic plan that addresses identifying additional funding sources for sustainability.

Develop and present an annual operating budget to the City.

In partnership with Visit Bastrop, develop an intercept survey of guests to include data such as: where the visitor is from, demographic data, social-economic data, how they discovered Bastrop (advertising, social media, word-of-mouth), lodging information, length of stay, size of party, primary attractor, intent to return.

Maintain and collect monthly year-over-year ticket sales and primary market origin of ticket holders' data.

Participate in customer service, destination, board development and/or Hotel Occupancy Tax Training as provided by the City or Visit Bastrop.

Work with the City of Bastrop and Visit Bastrop to create "programming" that would be available for groups and conventions.

Develop and maintain a building rental program and policies allowing opportunities for additional revenue streams and access to the facility to outside users.

Actively participate with the City of Bastrop and Cultural Arts Commission to development and foster a thriving Cultural Arts District.

Any work to be performed on the Bastrop Opera House historic structure utilizing Hotel Occupancy Tax must comply with all regulations: local, state and federal. All work must also comply with the Secretary of the Interior's standards for rehabilitation. To ensure compliance proposed work must be submitted to the Bastrop Main Street Program prior to work commencing and may require up to 60 days for approval depending on the Texas Historical Commission's project reviewer's schedule.

Receive all site, building and sign permits including certificates of occupancy by the entity before starting any new improvements or renovations.

*Exhibit "D"*

**NOTICE TO ORGANIZATION**

Notices required under the terms of this Agreement shall be sent to the Organization as follows:

Bastrop Opera House  
Attn: Lisa Holcomb  
711 Spring Street  
Bastrop, Texas 78602