

**RESOLUTION NO. R-2019-93**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS AWARDED A COMMUNITY SUPPORT SERVICE AGREEMENT TO THE BASTROP OPERA HOUSE FOR SERVICES ASSOCIATED WITH OPERATING, MARKETING, AND PROVIDING CULTURAL ART AND THEATER SERVICES AT A COST OF ONE HUNDRED AND TWENTY-SIX THOUSAND AND 00/100 DOLLARS (\$126,000) 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 citizens Comprehensive Plan 2036; 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 to the Bastrop Opera House associated with services associated with operating, marketing and providing cultural art and theater services at a cost of One Hundred and Twenty-Six Thousand and 00/100 dollars (\$126,000) 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.

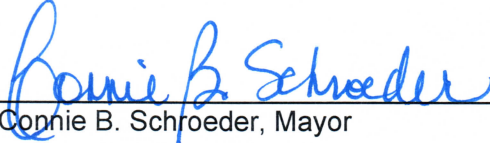
**SECTION 3.** All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such

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 24<sup>th</sup> day of September 2019.

**CITY OF BASTROP, TEXAS**

  
\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

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



## COMMUNITY SERVICES FUNDING AGREEMENT FY 2019 - 2020

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 Twenty-Six Thousand and 00/100 Dollars (\$126,000.00).
- 8. Disbursals.** The City shall remit payment to the Organization of the grant funds due at execution of this agreement.

## 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."  
*in part*
- 8. Written Reports.** Organization shall submit to the City Manager 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. Oral Reports.** Organization shall attend a regular meeting of the City Council on a quarterly basis to make a public presentation on the services provided under this Agreement. Attendance shall be scheduled in advance with the City's designated staff contact person. Organization shall submit presentation materials (i.e., visual aids) to the City's designated staff contact person at least 96 hours prior to the meeting.
- D. 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.

- E. Comingling.** Organization shall properly segregate grant funds and shall not comingle grant funds with other financial assets of the Organization.
- F. 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.
- G. 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
- H. 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.
- I. 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 2019-2020, which commences October 1<sup>st</sup> and ends September 30<sup>th</sup> / 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 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: City Manager  
P.O. Box 427  
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 1<sup>st</sup> day of October, 2019.

**IN WITNESS, WHEREOF:**

**CITY:**  
by: \_\_\_\_\_  
Lynne M. ..., City Manager  
City of Bastrop  
Date of Execution: 9/27/19

**ORGANIZATION:**  
by: \_\_\_\_\_  
Executive Director  
Bastrop Opera House  
Date of Execution: 10-17-19

**ATTEST:**  
by: \_\_\_\_\_  
Ann Franklin, City Secretary  
City of Bastrop



## ***Exhibit "A"***

### **Bastrop Opera House 2019-2020 Funds Request**

Funds for the 2019-2020 season will be used for:

- Production expenses
- Promoting/Marketing
- Production Equipment
- Performing Arts Academy

Funds will be used in promoting the art of theatre and encouraging attendance at events for out of town visitors' thereby directly growing and advancing cultural tourism and the hotel industry.

The Bastrop community will continue to benefit from the Opera House by having high quality performances/shows bringing in both day visitors as well as overnight visitors. We often have employees and business owners from downtown tell us they can tell when we are having a performance because their traffic and sales increase from visitors who visit shops and restaurants before the show.

The Bastrop Opera House is currently the only live community theatre venue in Bastrop. There are other venues in Bastrop that provide live bands, however the Opera House is the only community venue that provides live theatre and the only venue that provides educational and acting opportunities for Bastrop citizens.

### **Funds Proposal Budget**

#### **Percentage of Production Expenses Applied For:**

Show production expenses: \$67,000

Marketing and promotional: \$19,000

Academy expenses: \$20,000

Production equipment: \$20,000

**Total Production Expense Requested: \$126,000**

## ***Exhibit "B"***

# **CITY'S MODIFIED SERVICES PLAN**

Present 9-12 months' worth of programs annually (January- December) designed to appeal to tourists and attract overnight visitation to City Council.

All art work, 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 through their online CRM system no later than 90 days in advance, preferably 120 days in advance.

Maintain an active social media and online digital presence including 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 a strategic plan that addresses identifying additional funding sources for sustainability.

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 Visit Bastrop and Explore Bastrop County 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 in the Cultural Arts Master Plan development and implementation process that is yet to be identified.

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.

*Exhibit "C"*

**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