

**RESOLUTION NO. R-2017-74**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A DESTINATION AND MARKETING SERVICES AGREEMENT BETWEEN THE CITY OF BASTROP AND VISIT BASTROP ATTACHED AS EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTATION; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City and Visit Bastrop recognize the visitor industry as a key economic generator for the growing City; and

**WHEREAS**, the City desires to engage Visit Bastrop to perform the specific services as outlined in Destination and Marketing Services Agreement, which is attached as Exhibit A, whose initial role the City expects and acknowledges will mirror or exceed that of the City's previous Bastrop Marketing Corporation (*BMC*); and

**WHEREAS**, Visit Bastrop's provision of the Services is expected to contribute to the achievement of the goals stated above; and

**WHEREAS**, the City and Visit Bastrop hereby find and determine that entering into this Agreement is in the best interests of the residents of the City and surrounding areas, the industries served by Visit Bastrop, and the City's tourism market; and

**WHEREAS**, the Bastrop City Council had a joint workshop with the Destination Marketing Organization Start-Up Organization (*DMO*) on April 4, 2017; and

**WHEREAS**, the Bastrop City Council determined that the purpose of the Visit Bastrop was to provide "brand" marketing for Bastrop as a destination, to serve as the primary brand advocate, and to better utilize existing facilities; and

**WHEREAS**, the Bastrop City Council recognizes that tourism represents the purist form of economic development and is instrumental to stabilizing and growing the City's sales tax base; and

**WHEREAS**, Visit Bastrop will provide "global" oversight of Bastrop's visitor assets and activities to provide a level of unity and representation to maximize Bastrop's brand potential; and

**WHEREAS**, Visit Bastrop must ensure each "community asset" is represented in a way that there is equal representation and seek input from each "community asset" group; and

**WHEREAS**, the Bastrop City Council defines the broad representation of "community assets" as Arts, History, Hotels, Restaurants, Retail, Sports, Outdoors, Recreation, Hyatt, Nightlife, Entertainment, and Film; and

**WHEREAS**, the “community assets” must be a “driver” with strong ties to the hospitality industry given the legal requirements of how Hotel Occupancy Tax funds are spent; and

**WHEREAS**, the Bastrop City Council recognizes that “community assets” may change with time and expects Visit Bastrop to adapt by having the ability to add or remove another category of community assets as times and circumstances change; and

**WHEREAS**, the Bastrop City Council recognizes the success and importance of industry knowledge of the specific “community asset” groups available in Bastrop and believes that they, collectively, have a vested interest in ensuring the success of Visit Bastrop and are best suited to serve as Board Members of Visit Bastrop; and

**WHEREAS**, the City will not have any elected or appointed representatives on the Visit Bastrop Board of Directors.

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

**Section 1.** The Destination and Marketing Services Agreement, which is attached as Exhibit A, between the City of Bastrop, Texas and Visit Bastrop is hereby approved.

**Section 2.** The City Manager is hereby authorized to execute all necessary documentation between the City of Bastrop, Texas and Visit Bastrop.


**Section 3.** This resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this 12<sup>th</sup> day of September, 2017.

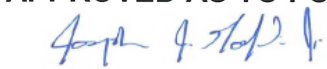
**APPROVED:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Joe Gorfida, Interim City Attorney

**DESTINATION AND MARKETING SERVICES AGREEMENT BETWEEN  
THE CITY OF BASTROP, TEXAS AND VISIT BASTROP**

The City Council (the *City Council*) of the City of Bastrop, Texas (the *City*), a home-rule municipality operating under the City's Home Rule Charter, has approved the City's engagement of Bastrop Destination Marketing Organization (*Visit Bastrop*, and together with the *City*, the *Parties*), a Texas non-profit corporation organized under Chapter 22, Texas Business Organizations Code, as amended (*Chapter 22*), to provide certain Services (defined below) as set forth in this Destination and Marketing Services Agreement (the *Agreement*), entered into by the Parties pursuant to Section 351.101(c), Texas Tax Code, as amended (the *Tax Code*).

**RECITALS**

**WHEREAS**, the City and Visit Bastrop recognize the visitor industry as a key economic generator for the growing City; and

**WHEREAS**, the City desires to engage Visit Bastrop to perform the *Services* (as defined below) in consideration of the compensation provided in this Agreement whose initial role the City expects and acknowledges will mirror or exceed that of the City's previous Bastrop Marketing Corporation (*BMC*); and

**WHEREAS**, Visit Bastrop's provision of the Services is expected to contribute to the achievement of the goals stated above; and

**WHEREAS**, the City and Visit Bastrop hereby find and determine that entering into this Agreement is in the best interests of the residents of the City and surrounding areas, the industries served by Visit Bastrop, and the City's tourism market; and

**WHEREAS**, the Bastrop City Council had a joint workshop with the Destination Marketing Organization Start-Up Organization (*DMO*) on April 4, 2017; and

**WHEREAS**, the Bastrop City Council determined that the purpose of the Visit Bastrop was to provide "brand" marketing for Bastrop as a destination, to serve as the primary brand advocate, and to better utilize existing facilities; and

**WHEREAS**, the Bastrop City Council recognizes that tourism represents the purist form of economic development and is instrumental to stabilizing and growing the City's sales tax base; and

**WHEREAS**, Visit Bastrop will provide "global" oversight of Bastrop's visitor assets and activities to provide a level of unity and representation to maximize Bastrop's brand potential; and

**WHEREAS**, Visit Bastrop must ensure each "community asset" is represented in a way that there is equal representation and seek input from each "community asset" group; and

**WHEREAS**, the Bastrop City Council defines the broad representation of "community assets" as Arts, History, Hotels, Restaurants, Retail, Sports, Outdoors, Recreation, Hyatt, Nightlife, Entertainment, and Film; and



**WHEREAS**, the “community assets” must be a “driver” with strong ties to the hospitality industry given the legal requirements of how Hotel Occupancy Tax funds are spent; and

**WHEREAS**, the Bastrop City Council recognizes that “community assets” may change with time and expects Visit Bastrop to adapt by having the ability to add or remove another category of community assets as times and circumstances change; and

**WHEREAS**, the Bastrop City Council recognizes the success and importance of industry knowledge of the specific “community asset” groups available in Bastrop and believes that they, collectively, have a vested interest in ensuring the success of Visit Bastrop and are best suited to serve as Board Members of Visit Bastrop; and

**WHEREAS**, the City will not have any elected or appointed representatives on the VISIT BASTROP Board of Directors.

**NOW THEREFORE**, In consideration of the mutual promises and covenants contained herein, the City and Visit Bastrop agree as follows:

## **I. TERM**

1.1 **Term.** The term of this Agreement shall commence on October 1, 2017, and will remain in full force and effect through September 30, 2022 (the *Term*), with an extension option of up to 5 years from the end of the Term, unless such Agreement is terminated, pursuant to Article VII herein.

1.2 **Appropriations.** The City agrees, as a part of its budget process and in connection with the City’s collection of Hotel Occupancy Tax (HOT) under the Tax Code, to appropriate an amount to Visit Bastrop as described in Article III below. Visit Bastrop agrees and understands that City is a governmental entity and it has projected costs for this Agreement and City expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of City are subject to annual appropriation by the City Council in future years.

## **II. SCOPE OF SERVICES**

2.1 **Services for Compensation.** Visit Bastrop agrees to provide the services described in Section 2.2 below (the *Services*) in exchange for the compensation described in Article III of this Agreement. The City acknowledges that Visit Bastrop, as permitted by the Tax Code, may contract with various entities and organizations unaffiliated with the City, and that under those agreements and funds derived from those agreements, Visit Bastrop may perform other services and activities in accordance with Visit Bastrop’s Articles and Bylaws. The Parties understand that funds provided by the City through this Agreement must be expended in accordance with the Tax Code particularly §351.101.

2.2 **Scope of Services.** Visit Bastrop shall work to: (1) attract leisure visitors to the City and its vicinity; (2) attract and secure meetings, events, retreats, and conventions to the City and its vicinity and 3) serve as a liaison to local businesses (including hoteliers, restaurateurs, and other similar entities) and City departments to attract leisure and business visitors, meetings, events,



retreats, and conventions to the City and its vicinity. Visit Bastrop, subject to being supplied the appropriate funding pursuant to this Agreement, shall:

(A) carry out the actions defined in the applicable annual Business Plan (defined below) related to attracting leisure visitors, meetings, events, retreats, and conventions to the City and its vicinity and as outlined in Visit Bastrop's Bylaws and expanding the City's approach to recruiting, retaining and expanding meetings, conventions, retreats, and events as identified by that applicable annual Business Plan increasing the visibility of the City through media and public relations efforts, and, where appropriate, coordinate and work with public and private partners and organizations involved in local efforts to attract and retain meetings and events;

(B) utilize research reports on economic trends, growth sectors, and regional competitive strengths and weaknesses, as is customary in the destination and marketing organization industry, as specified in the applicable annual Business Plan, in order to assist the City in making strategic decisions in its efforts to attract leisure visitors, meetings, events, retreats, and conventions to the City and its vicinity and in accordance with Visit Bastrop's Bylaws;

(C) provide marketing and imaging campaigns for the City's tourism and convention industry, as specified in the annual applicable Business Plan and in accordance with the covenants regarding intellectual property as described in Article XII;

(D) inform and partner with the City regarding high-profile or significant recruitment/attraction efforts; and

(E) provide, in appropriate detail in accordance with the Tax Code, reports listing the Visit Bastrop's expenditures made with HOT, and Visit Bastrop's progress in performing the Services in conformance with implementation of the annual Business Plan.

(F) Provide expertise in destination management in conjunction with the City of Bastrop to leverage available resources such as community assets and activities to maximize opportunities to attract visitors to Bastrop, both leisure and business, recognizing the critical role tourism plays in Bastrop's economy, both in HOT and sales tax revenue.

### 2.3 Business Plan.

(A) Development. During FY 2018, which is the initial start-up year, Visit Bastrop shall prepare a draft Business Plan and present it publicly no later than the second Council meeting in November 2017, outlining how it proposes to deliver the *Services* within the fiscal year that is the subject of that draft Business Plan. In Year 1 of the Agreement, the draft Business Plan shall include the initial efforts of Visit Bastrop for the beginning of Fiscal Year 2018 (which is the period ending September 30, 2018). The draft Business Plan shall describe the methodology and steps then expected to be followed by Visit Bastrop to deliver the *Services* within the specified fiscal year, and shall include a budget that indicates in appropriate detail how the funding provided by the City for that fiscal year will be expended. Visit Bastrop shall work to finalize the draft Business Plan, and shall submit the draft Business Plan to its Board of Directors (the *Board*) for approval.

In Years 2 – 5 of the contract, on or before September 1 of each year, Visit Bastrop shall prepare a business plan and include a proposed budget that indicates in appropriate detail how the funding to be provided by the City for that fiscal year will be expended. This business plan and proposed budget will be presented publicly at the second Council meeting in September for fiscal year 2018

After approval by the Board, the approved Business Plan shall become incorporated into this Agreement as Exhibit A. The Parties understand that circumstances during any period of time may differ from those contemplated when the Business Plan was approved; therefore, amendments to the Business Plan may be made by the Board within any fiscal year. However, any material changes to the approved Business Plan affecting the expenditure of HOT must be approved in writing by Visit Bastrop prior to the implementation of such material changes.

(B) **Business Plan Performance Targets.** As part of the development of each annual Business Plan, Visit Bastrop shall establish “Performance Targets” against which Visit Bastrop’s execution of the Business Plan, to include its revenue enhancement efforts and goals, is evaluated. The Revenue Enhancement Plan will be updated as part of the annual Business Plan and will identify targets for potential funding sources of additional non-HOT revenues. If changing market conditions, funding availability issues, unforeseen expenses, or other circumstances beyond Visit Bastrop’s reasonable control arise, the then current Performance Targets may be revised, with the prior written approval of the Board.

(C) **Reporting.** Visit Bastrop will maintain reasonable levels of communication with the City Manager, Finance Department, and any other designated departments of the City throughout the term of this Agreement to ensure coordination between the City and Visit Bastrop as to Visit Bastrop’s efforts to implement the Business Plan. Visit Bastrop shall provide, as required by the Tax Code and this Agreement, various reports to the City that describe in appropriate detail (in all cases, taking into account the need to maintain a high level of confidentiality with respect to proprietary and competitive matters to the extent permissible under applicable law) its progress in implementing the Business Plan and meeting Performance Targets, as specified in this Agreement, as well as providing the City with periodic reports in accordance with the requirements as set forth in the Tax Code and on any activity that Visit Bastrop believes to be of interest to the City. Visit Bastrop agrees to report to the City as follows:

- (i) Monthly and annual written status reports, like the *Sample Albuquerque, NM Report*, shown as Exhibit C and general accountings, and
- (ii) Update presentations monthly at a regularly scheduled Council meeting that address the Services provided pursuant to this Agreement, and
- (iii) Participate in an annual workshop between City Council and Visit Bastrop Board of Directors to have opportunity to dialog about performance, establish future goals and objectives, and other topics that may be relevant to the components of this contract in early June of each year.

2.4 **Utilization of City-Owned Facilities.** The City acknowledges that, to ensure Visit Bastrop’s success in performing the obligations set forth herein, the City will permit Visit Bastrop



access to utilize City-owned facilities, within reason and with approval by the City Manager at no cost to Visit Bastrop, subject to date availability, for the purpose of effectuating the objectives of Visit Bastrop and the City as set forth in this Agreement and the Articles

2.5 Board of Directors. Visit Bastrop will at all times maintain a Board as specified in Visit Bastrop's Certificate of Formation (the *Articles*) and adopted Bylaws. The Board's primary responsibilities include fiduciary oversight and provision of strategic direction.

2.6 Accreditation. To ensure industry best practices are established and performed by Visit Bastrop, Visit Bastrop as an organization must include a plan in their annual Business Plan within the next four years to seek accreditation status by Destination International, to be recognized as an organization of excellence, within the following fiscal year.

### III. COMPENSATION TO VISIT BASTROP

#### 3.1 Compensation.

(A) Transition Period. The applicable compensation to be provided by the City to Visit Bastrop during the period from July 1, 2017 to September 30, 2017 (the *Transition*), in addition to other applicable terms governing the Parties' actions prior to the effective date of this Management Agreement, are set forth in Exhibit B hereto, of which such Transition Plan is hereby incorporated into this Management Agreement by reference.

(B) FY 2018. Beginning on October 1, 2017, the City shall target fifty percent (50%) of the net HOT revenue collected, defined as HOT revenue minus the provision of payment satisfying the City's [outstanding debt secured by HOT]. This amount should not be less than 45% of total Hotel Occupancy Tax Revenues. Each year during the City's annual budget process, the targeted percentage subject to adjustment as outlined below will result in an annual appropriation to be paid to Visit Bastrop. The targeted annual percentage may be adjusted by the City during the City's annual budget process based upon the annual update to the HOT pro forma in order to make a determination on whether or not adjustments are necessary to increase, maintain, or reduce operating expenses due to factors including changing economic conditions, requirements of Visit Bastrop, requirements of the City and funding levels of the contingency funds and lease payment as set forth in the hereafter referenced HOT financial policy. The City will actively manage operating expenses to be funded with HOT in keeping with the HOT Funds financial policy approved by City Council on May 9, 2017 through Resolution No. R-2017-26.

The annual HOT appropriation as approved by the City Council in accordance with the provisions and requirements of the Tax Code, shall be paid to the Visit Bastrop in equal quarterly installments (October, January, April, July) beginning October 1 of each Fiscal Year. The quarterly payments will be made in advance on the first day of each month.

(C) Upon the conclusion of each fiscal year and completion of the City's independent annual audit, the annual amount appropriated in support of the Visit Bastrop for the fiscal year immediately closed will be compared to the targeted percentage of the actual net HOT revenues recorded for that fiscal year. Any surplus or deficit may be considered for an additional adjustment to Visit Bastrop at the City's discretion as part of a mid-year adjustment to the current fiscal year appropriation. Visit Bastrop must also provide an



amended Business Plan detailing how the surplus or reduction of funds will be utilized.

(D) Visit Bastrop shall be the primary provider of the Services delineated in Article II hereof; nevertheless, the Bastrop County Historical Society Museum & Visitor Center shall continue visitor information operations in its normal course of business. In addition, Main Street and the Bastrop Chamber of Commerce shall continue to promote visitors as a part of their organizational mission, in accordance with Visit Bastrop.

3.2 Forecasting. Visit Bastrop shall inform and provide input on the establishment of the five-year forecast and the adopted budget appropriation for HOT Revenues.

3.3 Use of Funds. The funding provided by the City under this Agreement shall be used solely in connection with Visit Bastrop providing the Services described in Article II, pursuant to the budget prepared as part of the approved Business Plan. Visit Bastrop shall segregate all funds provided under this Agreement into a separate account and shall not commingle any funds supplied by the City with the Visit Bastrop's general funds or other funds received by any other entity.

3.4 Investment Policy. All public funds on deposit from time to time in Visit Bastrop's account(s) with its depository shall be invested and reinvested by its depository in any investment authorized pursuant to Chapter 2256, Government Code, as amended (*Chapter 2256*). Visit Bastrop shall comply with Chapter 2256 in the purchase, sale, and investment of public funds under its control. Visit Bastrop and the City agree that the Board will subsequently develop and adopt an investment policy, based upon the City's Investment Policy, and shall invest public funds as permitted by the Investment Act, in compliance with the investment policy approved by the Board, and according to the standard of care prescribed by the Investment Act.

3.5 Additional Services. Should any additional services outside the scope of this Agreement be requested and authorized by the City Manager or her designee, and accepted by Visit Bastrop, Visit Bastrop shall receive additional consideration in the form of separate compensation for those services over and above the compensation discussed in this Article III, at an amount agreed to by the City Manager or her designee and Visit Bastrop.

3.6 Invoices. Visit Bastrop shall submit City invoices to:

City of Bastrop, Texas  
1311 Chestnut Street  
P.O. Box 427  
Bastrop, Texas 78602

#### IV. AUDIT

4.1 City's Audit. The City or its authorized representative shall annually, have the right to examine, inspect, and audit all books, papers, and bank records of Visit Bastrop directly related to the funds provided to Visit Bastrop under this Agreement, to determine the accuracy of reports made under this Agreement. The cost and expenses incurred by the City incident thereto shall be the sole responsibility of and borne by the City. Those records shall be maintained by Visit Bastrop for a period of four (4) years after the termination of the initial Term of this Agreement and any applicable extension period, and shall be made available for inspection, copying and/or audit by

the City or its agents at Visit Bastrop's place of business. Nothing in this Agreement shall be deemed to give the City authority to direct, question, review, audit, or otherwise influence the expenditure of any funds that are not directly paid to Visit Bastrop by the City. In years where Visit Bastrop collects private funds they shall obtain an independent audit, in conjunction with the City's audit.

4.2 Dispute Findings. Either Visit Bastrop or the City may dispute the findings of audits performed under this Agreement, by giving written notice to the other party within thirty (30) days of receiving the results of an audit. The Party electing to dispute audit results shall, within thirty (30) days following receipt of the auditor's report, submit such additional information as it believes is required to correct the auditor's report.

4.3 Scope. Knowledge of Visit Bastrop's financial condition is essential to the City due to its reliance on Visit Bastrop to promote tourism generating HOT. Therefore, it is necessary for the City to have access to review Visit Bastrop's audits, reports or other financial information. Upon ten (10) days' notice, Visit Bastrop shall make such information available for City's review.

## V. DOCUMENTS

5.1 Documents. The parties recognize that, to be successful, Visit Bastrop depends on its ability to keep confidential the identity of its prospects and other proprietary information, and that Visit Bastrop would not achieve the same level of results from providing the Services, or any other services to its other clients and constituents, without maintaining that confidentiality. Accordingly, the Parties acknowledge that certain writings, documents or information produced by or submitted to Visit Bastrop in the course of its execution of the Services will be the sole property of Visit Bastrop, are proprietary, and may be privileged under State law. Without waiving any available claim or privilege, Visit Bastrop will in good faith share information derived from those writings or documents with the City and, if any writings, documents, or information are deemed non-proprietary or non-privileged, provide copies of those writings or documents in an un-redacted form to the City. Visit Bastrop understands and acknowledges that the City has the right to use those non-proprietary writings, documents, and information as the City desires, without restriction. If any "open records" or equivalent request is made of the City relating to this Agreement or the Services, the City shall promptly advise Visit Bastrop, and the Parties shall work cooperatively and in good faith to preserve Visit Bastrop's trade secrets, proprietary documents, and confidential information, in accordance with current law. Visit Bastrop reserves the right to redact its documentation to protect proprietary information. In all events, the City shall not provide any information or documents that Visit Bastrop considers proprietary to any third party without Visit Bastrop's prior written consent, unless the City is legally obligated to do so and so advises Visit Bastrop in writing, of which Visit Bastrop shall have the opportunity to present its objection and legal authority for withholding requested information. In addition, any third-party requests to Visit Bastrop for records relating to this Agreement under the State's Public Information Act shall be coordinated with the City. The City shall provide Visit Bastrop, in accordance with the Public Information Act, the opportunity to submit third-party briefs to the Texas Attorney General to receive an Open Records Decision.

5.2 Documents to the City. Upon expiration or termination of this Agreement, Visit Bastrop shall transfer to the City true and correct copies of any writings, documents, or information in the possession of Visit Bastrop and produced pursuant to the terms and conditions of this



Agreement.

## VI. RECORDS RETENTION

6.1 Records. Visit Bastrop shall take commercially reasonable care in their maintenance of complete and accurate documents, papers, and records, and other evidence pertaining to the Services and funding provided for in this Agreement, and shall make such documents available to the City, at all reasonable times and as often as the City may deem necessary during the Agreement period for purposes of the audit described in Article IV.

6.2 Retention. Visit Bastrop shall retain any and all documents produced as a result of services or funding provided hereunder for a period of four (4) years from the date of termination of the Agreement or for such period as specified in Visit Bastrop's compliance policy. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Visit Bastrop shall retain the records until the resolution of such litigation or other such questions.

## VII. SUSPENSION/TERMINATION

7.1 Termination for non-appropriation. In the event that funds will not be appropriated or are not otherwise legally available to pay for the services required under this Agreement then this Agreement may be terminated by the City. The City agrees to deliver notice of termination as soon as practicable after determination is made by the City Council that funds will not be appropriated.

7.2 Suspension. The City may summarily suspend this Agreement with pay continuing to fund the salaries and basic operations of Visit Bastrop, if Visit Bastrop breaches its obligations hereunder and fails to cure such breach within sixty (60) days after receiving written notice of suspension. The City shall promptly apprise Visit Bastrop of the basis for suspension. Any such suspension shall remain in effect until the City determines that appropriate measures have been taken to ensure Visit Bastrop's future compliance. Grounds for such suspension include, but are not limited to the following:

- a.) Failure to abide by any terms or conditions of this Agreement;
- b.) Failure to keep and maintain adequate proof of insurance as required by this Agreement.

7.3 Termination Defined. For purposes of this Agreement, "termination" shall mean termination by expiration of the Agreement or earlier termination pursuant to any of the provisions hereof.

7.4 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII, the City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events:

- a) the sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI;



- b). ceasing operations for a period exceeding twenty (20) days;
- c). Failure to spend funds in accordance with this Agreement or in violation of Texas Tax Code Chapter 351.
- d). failure to cure cause of suspension.

7.5 Defaults with Opportunity for Cure. Should Visit Bastrop default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. The City shall deliver written notice of the default, specifying in detail the matter(s) in default. Visit Bastrop shall have sixty (60) calendar days after receipt of the written notice, in accordance with Article VIII hereof. If Visit Bastrop fails to cure the default within such sixty (60) day cure period, the City shall have the right, without further notice or adoption of a City ordinance, to terminate this Agreement in whole or in part as the City deems appropriate. The following actions are defaults that may be cured by Visit Bastrop:

- a). performing unsatisfactorily, as evidenced by failure to make adequate progress to meet Visit Bastrop's pre-determined benchmarks for success, as outlined in the jointly approved Business Plan;
- b). failing to perform or failing to comply with any material term or covenant herein required as determined by the City; and
- c). bankruptcy or selling substantially all of Visit Bastrop's assets.

7.6 Termination by Law. If any State or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.7 Ceasing City Activity. Upon the effective date of expiration or termination of this Agreement, Visit Bastrop shall cease all work being performed by Visit Bastrop or any of its subcontractors on behalf of the City.

- a) Provisional Period. Regardless of the method by which this Agreement is terminated, Visit Bastrop agrees to provide a provisional period of termination for a period not to exceed two (2) months upon the City's request. During such provisional period, Visit Bastrop will receive adequate percentage payments of HOT, to be distributed in accordance with Article III hereof, to continue to provide services as provided for, and for which it will be compensated, under this Agreement.

7.8 Expiration and Termination. If this Agreement shall expire, without reasonable expectation of renewal thereof, or otherwise terminate pursuant to the above provisions, any interest in any funds or property of any kind (real, personal, intellectual or mixed), each of the foregoing deriving funding from HOT forwarded to Visit Bastrop under this Agreement, shall not be transferred to private ownership, but shall be transferred and delivered to City, which shall utilize such funds and property pursuant to and in accordance with the Tax Code, being those activities

substantially similar to Visit Bastrop's purpose and mission. Such transfer shall only occur after satisfaction of outstanding debts, claims, and any other obligations. For the avoidance of doubt, any remaining interests in any funds or property of any kind (real, personal, or mixed) deriving funding from private interests shall remain the sole property of Visit Bastrop.

## VIII. NOTICE

8.1 Written Notice. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

CITY:  
City of Bastrop, Texas  
Attn: City Manager  
1311 Chestnut Street  
P.O. Box 427  
Bastrop, Texas 78602

VISIT BASTROP:  
Visit Bastrop  
Attn: Chief Executive Officer  
P.O. Box 1200  
Bastrop, Texas 78602

8.2 Time. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

## IX. INSURANCE

9.1 Certificate of Insurance. Prior to the commencement of any work under this Agreement, Visit Bastrop shall furnish an original completed certificate(s) of insurance to the City, and which shall be clearly labeled "Visit Bastrop Professional Services" in the Description of Operations block of the Certificate. The original certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to Visit Bastrop and the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the City, and no officer or employee, other than the City Manager, shall have authority to waive this requirement.

9.2 Right to Review. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by the City Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance, will the City allow modification whereupon the City may incur increased risk.

9.3 Financial Integrity. Visit Bastrop's financial integrity is of interest to the City; therefore, subject to Visit Bastrop's right to maintain reasonable deductibles in such amounts as are approved by this Agreement, Visit Bastrop shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Visit Bastrop's sole expense, insurance



coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Any employee or Board Member with financial responsibilities that include access to HOT funds shall be bonded in a minimum amount of \$100,000 each.	
5. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	
Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence	

9.4 Copies. The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). So long as this Agreement is in effect, Visit Bastrop shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the address provided in Section 9.6 herein within 10 days of the requested change. Visit Bastrop shall pay any costs incurred resulting from said changes.

9.5 Required Provisions. Visit Bastrop agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain the following required provisions:

- A. name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects to operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- B. provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy;



C. workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

9.6 Cancellation/Non-Renewal. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by the City, Visit Bastrop shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Visit Bastrop knows of said change in advance, or ten (10) days after the change, if Visit Bastrop did not have actual knowledge of the change in advance. Such notice must be accompanied by a replacement certificate of insurance. All notices shall be given to the City at the following address:

City of Bastrop, Texas  
1311 Chestnut Street  
P.O. Box 427  
Bastrop, Texas 78602

9.7 Failure to Maintain. In addition to any other remedies the City may have upon Visit Bastrop's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Visit Bastrop to stop work hereunder, and/or withhold any payment(s) which become due to Visit Bastrop hereunder until Visit Bastrop demonstrates compliance with the requirements hereof.

9.8 Responsibility of Visit Bastrop. Nothing herein contained shall be construed as limiting in any way the extent to which Visit Bastrop may be held responsible for payments of damages to persons or property resulting from Visit Bastrop's or its subcontractors' performance of the work covered under this Agreement.

9.9 Primary Insurance. It is agreed that Visit Bastrop's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this Agreement.

## X. INDEMNIFICATION

10.1 VISIT BASTROP covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY arising out of or resulting from VISIT BASTROP activities under this AGREEMENT, including any acts or omissions of VISIT BASTROP, any agent, officer, director, representative, employee, VISIT BASTROP or subcontractor of VISIT BASTROP, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VISIT BASTROP AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE

**APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**102 The provisions of the foregoing indemnity are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Visit Bastrop shall advise the City in writing within three business days of any claim or demand against the City or Visit Bastrop known to Visit Bastrop related to or arising out of Visit Bastrop's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Visit Bastrop's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Visit Bastrop of any of its obligations under this paragraph.**

### **XI. SUBCONTRACTING**

Any work or services subcontracted by Visit Bastrop hereunder shall be by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Visit Bastrop. The City shall in no event be obligated to any third party, including any subcontractor of Visit Bastrop, for performance of services or payment of fees.

### **XII. INTELLECTUAL PROPERTY RIGHTS**

**121 Intellectual Property Rights.** Visit Bastrop recognizes the City is the owner of certain intellectual property, including images, trademarks, slogans, recordings, etc. So long as Visit Bastrop utilizes such intellectual property to perform the Services described in this Agreement, Visit Bastrop shall receive a royalty-free, worldwide license to use such intellectual property during the Term of this Agreement. To the extent, Visit Bastrop prospectively utilizes previously registered intellectual property of the City, the City shall waive any infringement claims. Visit Bastrop acknowledges that it is not the intent of this provision to divest the City of any ownership rights in its intellectual property nor to provide any ownership interest in Visit Bastrop to City's intellectual property.

**122 Other Intellectual Property Agreements.** The City recognizes Visit Bastrop may enter into various licensing agreements with BMC (or its parent company), the Bastrop County Historical Society, or related entities now holding the rights for the prospective use of marketing assets (previously produced by BMC) to promote the City to visitors and tourists. The City agrees to assist Visit Bastrop in its efforts to obtain permission and acquire use of various Intellectual Property from any source to support Visit Bastrop achieve the purposes for which it was created.

### **XIII. INDEPENDENT CONTRACTOR**

Visit Bastrop and the City covenant and agree that: 1) Visit Bastrop is an independent contractor and not an officer, agent, servant or employee of the City; 2) Visit Bastrop shall have control of and right to control, in its sole discretion, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers,



agents, employees, contractors, subcontractors and Visit Bastrop; 3) the doctrine of respondent superior shall not apply as between the City and Visit Bastrop, its officers, agents, employees, contractors, subcontractors and Visit Bastrop; and 4) nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between the City and Visit Bastrop. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the Services to be performed by Visit Bastrop under this Agreement and that the City's authority to bind Visit Bastrop is limited to the provisions of this Agreement.

#### **XIV. CONFLICT OF INTEREST**

14.1 City's Ethics Code. Visit Bastrop acknowledges that it will follow the City's Ethics Code which prohibits City officials and employees from, either during their service with the City or within twelve (12) months of the termination of the official duties, having an economic interest, directly or indirectly, in any contract with the City, and City officials and employees shall not be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service.

#### **XV. LEGAL/LITIGATION EXPENSES**

15.1 Litigation Against the City. Under no circumstances will the funds received under this Agreement or any other City funds, be used, either directly or indirectly, to pay the costs associated with attorney fees incurred in any adversarial proceeding against the City or any other governmental or public entity constituting a part of the City.

15.2 Termination. During the term of this Agreement, if Visit Bastrop files and/or pursues an adversarial proceeding against the City, the City, at its option, may terminate this Agreement and all access to the funding provided for hereunder if it is found that Visit Bastrop has violated this Article.

#### **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both the City and Visit Bastrop, and subject to approval by the City Council and the Board, as evidenced by passage of a resolution, or ordinance, as applicable, to that effect.

#### **XVII. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, State or local laws, including but not limited to the City Charter, the City's Code, City ordinances, Visit Bastrop's Articles and Bylaws, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or



provision as similar in terms to such invalid, illegal or unenforceable clause or provision as shall be permissible, legal, valid and enforceable.

#### **XVIII. LICENSES/CERTIFICATIONS**

Visit Bastrop warrants and certifies that, to its knowledge, Visit Bastrop and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

#### **XIX. COMPLIANCE WITH LAWS**

Visit Bastrop shall provide and perform all services required under this Agreement in compliance with all applicable federal, State and local laws, rules and regulations.

#### **XX. NON-WAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

#### **XXI. LAW APPLICABLE**

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BASTROP COUNTY, TEXAS.

21.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, because of this Agreement shall be in Bastrop County, Texas.

#### **XXII. LEGAL AUTHORITY**

22.1 Visit Bastrop. The signor of this Agreement on behalf of Visit Bastrop represents, warrants, assures and guarantees that he has full legal authority, pursuant to Chapter 22, the Texas Non-Profit Corporation Act, the Tax Code by adoption of resolution of the Visit Bastrop Board of Directors to bind Visit Bastrop to all terms conditions, provisions and obligations herein contained.

22.2 City of Bastrop. The signor of this Agreement on behalf of the City represents, warrants, assures and guarantees that she/he has full legal authority, pursuant to Article XI, Section 5 of the Texas Constitution, the City's Home Rule Charter, the Tax Code, and an resolution adopted by the City Council on September 12, 2017 to execute this Agreement on behalf of the City and to

bind the City to all of the terms, conditions, provisions and obligations herein contained.

### **XXIII. PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

### **XXIV. CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

### **XXV. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

EXHIBIT A: Business Plan (to Be delivered at the second Council Meeting in November, 2017.)

EXHIBIT B: Transition Plan

EXHIBIT C: Sample Albuquerque, NM Monthly Report of Performance Measures

### **XXVI. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto, and duly executed by the Parties.

The Parties recognize that certain agreements and policies referenced herein and necessary to effectuate this Agreement, including but not limited to, Visit Bastrop's Investment Policy, insurance policies, and contracts and agreements delineating shared intellectual property between the Parties and third parties are currently in the process of formulation and will be finalized after the execution of this Agreement.

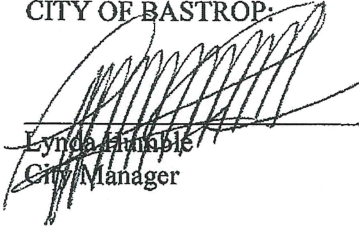


*SIGNATURES APPEAR ON NEXT PAGE*

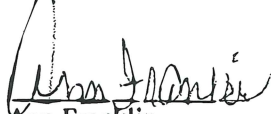
WITNESS OUR HANDS, EFFECTIVE as of September 12<sup>th</sup> 2017 (the "Effective Date"):

Accepted and executed in two duplicate originals on behalf of the City of Bastrop pursuant to Resolution R-2017-74 dated September 12th, 2017, and Visit Bastrop, pursuant to the authority of its Board of Directors.

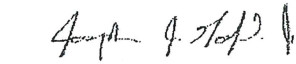
CITY OF BASTROP:

  
Lynda Hinkle  
City Manager

ATTEST

  
Ann Franklin  
City Secretary

APPROVED AS TO FORM:

  
Joe Gorfida, Interim City Attorney

VISIT BASTROP:

  
Dale Lockett  
Interim Chief Executive Officer