R-23-06

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH ARGENTA COMMUNITY THEATER; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock ("the City") desires to promote development of its downtown area with a variety of activities, including the arts, thereby benefiting its citizens and residents; and

WHEREAS, the City further desires to support facilities that serve as a multipurpose venue within the community, including the support of those facilities that advance and present various artistic forums; and

WHEREAS, the Argenta Community Theater ("ACT") has designed and constructed a facility that can accommodate up to 300 for any type of event, including a black-box theater that allows flexible staging techniques for smaller theater companies; and

WHEREAS, the City entered into an agreement with ACT (authorized by Resolution No. 10216 adopted February 14, 2022) and, pursuant to the 2022 agreement, ACT has performed its duties and met reporting requirements; and

WHEREAS, the City desires to continue its promotion of the performing arts and related activities, and feels it is in the best interests of the City and its residents that it enter into an agreement with ACT for the 2023 calendar year.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter an Agreement between the City of North Little Rock and the Argenta Community Theater (substantially similar to Exhibit A attached hereto) whereby ACT will continue to provide a multipurpose venue for a variety of activities, including the arts, benefiting the citizens and residents of the City.

SECTION 2: That the City will make a lump sum payment to ACT in the amount of One Hundred Ninety Five Thousand & 00/100 Dollars ($195,000.00) pursuant to the terms of the agreement, said amount having been included in the 2023 Budget.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED: APPROVED:

_____ _____

Mayor Terry C. Hartwick

SPONSOR:

Mayor Terry C. Hartwick

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 10:20 A.M. _____ P.M.

By A. Fields

DATE 1/17/23

Diane Whitbey, City Clerk and Collector
North Little Rock, Arkansas

RECEIVED BY B Toyln

EXHIBIT
A

AGREEMENT
Between
CITY OF NORTH LITTLE ROCK, ARKANSAS
And
ARGENTA COMMUNITY THEATER

This Agreement made and entered into this _____ day of _____, 2023, by and between the **CITY OF NORTH LITTLE ROCK** (City) and **ARGENTA COMMUNITY THEATER** (ACT):

W-I-T-N-E-S-S-E-T-H:

WHEREAS, ACT is a non-profit organization committed to serving the community through education and advancement of the performing arts; and

WHEREAS, ACT is the first of its kind in Arkansas with a strategic building design that can accommodate up to 300 for any type of event, and the black-box theater allows flexible staging techniques for smaller theater companies; and

WHEREAS, ACT will feature local, regional, and national productions, book readings, private and business events; and

WHEREAS, the City desires to promote the development of its downtown area with a variety of activities, including the arts, that would benefit its citizens and residents, and ACT has designed and constructed a forum intended to serve the City of North Little Rock as both a self-sustaining art facility and a multipurpose venue accessible for use by the public; and

WHEREAS, ACT has properly submitted its application in accordance with North Little Rock Department of Commerce ("NLR Commerce") procedures and guidelines.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, it is agreed by and between the parties as follows:

1. <u>Provision of services</u>. ACT shall operate its theater as a forum for artistic expression and a multipurpose venue that is available for use by the public in accordance with the nondiscrimination requirements of Title VI of the 1964 Civil Rights Act. ACT shall establish internal policies governing the prioritization of conflicting uses and apply such policies fairly and uniformly.

Any programs and events administered by ACT may be made available to the general public, to specific age groups within the general public, or to targeted groups

representing economically disadvantaged segments of society. It is further agreed that program personnel will adhere to all provisions of the Americans with Disabilities Act (ADA) that may apply to a particular program.

ACT shall prominently display appropriate signage indicating the City's support for the theater. ACT shall reasonably inform the City about performances and events to be held at the theater.

The City will not be held liable for any injuries suffered by individuals who are participating in activities on or in ACT facilities.

2. Term. The term of this Agreement shall begin January 1, 2023 and end December 31, 2023.

3. Consideration by the City. As consideration for the services as provided for in Paragraph 1 above, the City will make a lump sum annual payment to ACT in the amount of One Hundred Ninety Five Thousand and 00/100 Dollars ($195,000.00). ACT intends for, and estimates that, the amount of the payment approximately equals the cost of the services provided to or for the benefit of the City by ACT. In the event that either ACT or the City gives a notice of termination of this Agreement pursuant to Section 9 below, the parties agree to negotiate in good faith a reinstatement of this Agreement with adjustments to the amount of the annual payment and/or the services provided by ACT to equalize such cost and benefit.

4. Assignment. This Agreement shall not be assigned in whole or in part by any of the parties to this Agreement ***unless*** prior written approval has been given by the non-assigning party.

5. Authority. The City represents and warrants that it has the authority to enter into this Agreement, and the party signing for the City has been duly authorized. ACT represents and warrants to the City that it has the authority to enter into this Agreement, and the party signing ACT has been duly authorized. This Agreement shall not be effective until approved by official public action of the North Little Rock City Council.

6. ACT agrees:

(a) That it will secure and maintain appropriate and adequate insurance coverage for the programs it will be operating and conducting. ACT agrees and understands fully that participants in its program(s) are not covered by any insurance of the City and will provide its Proof of Insurance to the City. Failure to do so will result in immediate cancellation of this Agreement. ACT shall indemnify and hold harmless the City and all of its employees, agents, and officers against losses, claims, causes of action and liabilities on account of damage to property, or injury or death of individuals arising out of negligent acts by ACT, its agents, employees or program participants.

(b) To comply with Ark. Code Ann. § 21-13-101, et seq. if it uses volunteers

to accomplish its contractual obligations of a public nature, as expressed in this Agreement.

(c) That is will not discriminate against any person on the basis of race, color, religion, natural origin, age, gender or any other constitutionally-protected basis.

(d) That it will not mingle City funds with funds obtained from other sources and shall document the expenditure of all City funds in a manner consistent with generally accepted accounting principles and provide the same to the City upon request.

(e) Acknowledges that certain procedural restrictions apply to the expenditure of City funds in excess of $35,000 and the employment of professionals, as that term has been defined by the City. (For procedural guidance in the expenditure of City funds, ACT may contact a city purchasing officer at (501) 975-8881.)

(f) Acknowledges that the expenditure of government funds for a governmental purpose is a matter of public interest and subject to disclosure under the Arkansas Freedom of Information Act ("FOIA").

(g) That it will submit an annual report to NLR Commerce that accurately reflects all performance under this Agreement, said report to be submitted no later than January 1, 2024. A representative of ACT will be available, at the request of the City, to appear before a specified City Council meeting to answer any questions concerning the report.

(h) To attach to this agreement a document identifying each member of the governing board of the nonprofit entity.

(i) To attach to this agreement evidence of nonprofit status, and if designated a nontaxable entity, attach a copy of an IRS opinion letter affirming the designation.

(j) To submit a budget to demonstrate the projected use of City funds.

7. **Governing Law.** The parties hereto agree that this Agreement shall be construed under Arkansas law. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Agreement shall be vested in the state courts of Arkansas.

8. The headings in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof.

9. This Agreement may be terminated by either party without cause upon ninety

(90) days' written notice. The fee described in Section 3 shall be prorated based upon the date of termination.

10. Time is of the essence in regard to the terms and conditions of this Agreement.

11. This Agreement may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

ARGENTA COMMUNITY THEATER

405 Main Street
North Little Rock, AR 72114

By: _____
Vincent Insalaco
Title: Artistic Director & Co-Founder

CITY OF NORTH LITTLE ROCK, ARKANSAS
300 Main Street – City Hall
North Little Rock, AR 72114

By _____
Terry C. Hartwick, Mayor

ATTEST:

_____
Diane Whitbey, City Clerk