R-23- 20

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH THEA FOUNDATION; AND FOR OTHER PURPOSES.

WHEREAS, the City desires to promote development of the downtown area with a variety of activities, including the arts, that would benefit its citizens and residents; and

WHEREAS, THEA Foundation advocates the importance of the arts in the development of youth with programs designed to help children find motivation, confidence, self-worth and perspective through creative expression from experiences in many arts-related activities, including a scholarship program for high school seniors; and

WHEREAS, the City of North Little Rock ("the City") entered into an agreement with THEA Foundation (authorized by Resolution No. 10197 adopted January 24, 2022) and, pursuant to the 2022 agreement, THEA Foundation has performed its duties and met reporting requirements; and

WHEREAS, it is in the best interests of the City and its residents that the City engage in a collaborative effort with THEA Foundation to provide a downtown student art gallery and artistic programs intended to develop an interest in art among the youth of the City.

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 THEA Foundation (substantially similar to Exhibit A attached hereto) whereby THEA Foundation, through its arts and cultural museum, will provide certain activities for the benefit of the citizens of the City of North Little Rock.

SECTION 2: That the City will make a lump sum payment to THEA Foundation in the amount of One Hundred Thousand & 00/100 Dollars ($100,000.00) as consideration for services provided, 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:

Terry C. Hartwick By AF

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 11:05 A.M. _____ P.M.

By A. Fields

DATE 2-7-23

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

RECEIVED BY S Ussery

EXHIBIT
A

AGREEMENT

Between
City of North Little Rock, Arkansas
And
THEA Foundation

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

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

WHEREAS, THEA is a non-profit organization that advocates the importance of the arts in the development of youth with programs designed to help children find motivation, self-worth and perspective through creative expression from experiences in many arts-related activities; and

WHEREAS, THEA programs are designed to help kids find confidence, self-worth and perspective through creative expression, from experiences in many arts-related activities, including a scholarship program for high school seniors; and

WHEREAS, THEA has requested funding from the City for the 2023 calendar year and has properly submitted its application in accordance with North Little Rock Department of Commerce ("NLR Commerce") procedures and guidelines; and

WHEREAS, NLR Commerce has reviewed and verified that THEA has properly filed its quarterly and final performance reports for 2022 and has provided all requested documentation to the City; 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 THEA has the expertise, knowledge and ability to provide administration and operation of an arts and cultural gallery in North Little Rock.

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>. THEA and the City will engage in a collaborative effort to provide a downtown student art gallery and artistic programs (such as competitions, classes or displays) intended to develop an interest in art among the youth of North Little Rock. THEA will provide the necessary facilities and expertise required to accomplish the general goals of this agreement. The City will provide the funding stated herein and further announce and endorse the artistic programs resulting from this agreement in the same manner as similar programs conducted through the City. THEA will prepare and provide schedules for programs and events for posting on the City's web site. THEA will

offer free or reduced admission to the downtown student art gallery. THEA will operate programs in accordance with nondiscrimination requirements of Title VI of the 1964 Civil Rights Act.

Any programs and classes administered by THEA 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.

The City will not be held liable for any injuries suffered by individuals who are participating in activities on or in THEA facilities. THEA 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 THEA, its agents, employees or program participants.

2. Term. The term of this Agreement shall begin February 15, 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 THEA in the amount of One Hundred Thousand & 00/100 Dollars ($100,000.00). THEA intends for, and estimates that, the amount of the annual payment is approximately equal to the cost of the services provided to or for the benefit of the City by THEA. In the event that either THEA 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 THEA 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 to THEA that it has the authority to enter into this Agreement, and the party signing for the City has been duly authorized. THEA represents and warrants to the City that it has the authority to enter into this Agreement, and the party signing THEA has been duly authorized. This Agreement shall not be effective until approved by official public action of the North Little Rock City Council.

6. THEA agrees:

(a) That it will secure and maintain appropriate and adequate insurance coverage for the programs it will be operating and conducting. THEA 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.

(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, THEA 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 THEA 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. If tax returns have been submitted, Thea will also attach a copy of the most recent tax return.

(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.

THEA FOUNDATION

401 Main Street, Suite 100
North Little Rock, AR 72114

By: _____
Annie Lindsey
Director of Development

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