

CITY OF BASTROP, TX
RESOLUTION NO. R-2023-136

**4TH AMENDMENT TO DESTINATION AND
MARKETING SERVICES WITH VISIT BASTROP**

**A RESOLUTION OF THE CITY OF BASTROP, TEXAS
AMENDING THE DESTINATION AND MARKETING
SERVICES AGREEMENT WITH VISIT BASTROP; AND
PROVIDING FOR FINDINGS OF FACT, REPEALER,
SEVERABILITY, EFFECTIVE DATE, PROPER NOTICE
AND MEETING**

WHEREAS, in 2017 the Bastrop Destination Marketing Organization was incorporated as a nonprofit entity and took on the assumed name of, Visit Bastrop ("Visit Bastrop"); and

WHEREAS, later in 2017, the City of Bastrop ("City") entered into a Destination and Marketing Services Agreement with Visit Bastrop (the "Agreement") pursuant to which the City agreed to allocate funding based on Hotel Occupancy Tax revenue (HOT Funds); and

WHEREAS, the parties amended the Agreement in 2019, 2020, and 2021; and

WHEREAS, in exchange for funding from the City, Visit Bastrop agreed to work to attract leisure visitors to the City and its vicinity, attract and secure meetings, events, retreats, and conventions, and serve as a liaison to local businesses and City departments in furtherance of tourism; and

WHEREAS, given changes in market conditions and the City's prioritization of the Bastrop Convention and Exhibit Center, the City Council finds it reasonable and necessary to amend the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bastrop, TX:

Section 1. Findings of Fact: The foregoing recitals are incorporated into this Resolution by reference as findings of fact as if expressly set forth herein.

Section 2. Amendment: The Destination and Marketing Services Agreement with Visit Bastrop (the "Agreement") is hereby amended in accordance with *Attachment "A"*.

Section 3. Repealer: To the extent reasonably possible, ordinances, resolutions, and contract amendments are to be read together in harmony. However, any that 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are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters regulated.

Section 4. Severability: Should any of the clauses, sentences, paragraphs, sections, or parts of this Resolution be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Resolution.

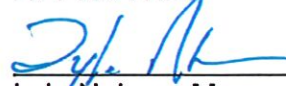
Section 6. Effective Date: This Resolution shall take effect upon the date of final passage noted below.

Section 7. Proper Notice & Meeting: It is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

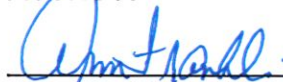
PASSED & APPROVED on by the City Council of the City of Bastrop, on this, the 12th day of September 2023.

APPROVED:

by:


Lyle Nelson, Mayor

ATTEST:


Ann Franklin, City Secretary

APPROVED AS TO FORM:


Alan Bojorquez, City Attorney

Attachment "A"

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

This Amendment is made to the Destination and Marketing Services Agreement between the City of Bastrop, Texas, and Visit Bastrop, as of this ~~12th~~ day of September 2023, by and between the City of Bastrop, Texas ("City"), a Texas municipal corporation, and Visit Bastrop ("Visit Bastrop"), a Texas non-profit corporation organized under Chapter 22, Texas Business Organizations Code, acting by and through their authorized representatives.

WHEREAS, the City and Visit Bastrop entered into that certain Destination and Marketing Services Agreement, ("Agreement") on September 12, 2017, for destination and marketing services to be provided by Visit Bastrop; and

WHEREAS, the City of Bastrop City Council and the Visit Bastrop Board of Directors approved minor amendments to the terms of the Agreement on September 9, 2019; and

WHEREAS, the City of Bastrop City Council and the Visit Bastrop Board of Directors approved a *First Amendment* to the terms of the Agreement on January 15, 2020; and

WHEREAS, the City of Bastrop City Council and the Visit Bastrop Board of Directors approved a *Second Amendment* to the terms of the Agreement on November 10, 2020, as provided herein; and

WHEREAS, the City of Bastrop City Council and the Visit Bastrop Board of Directors approved a *Third Amendment* to the terms of the Agreement on October 12, 2021, as provided herein; and

WHEREAS, the City of Bastrop City Council seeks to provide for a more cohesive and streamlined reporting process, while providing a funding ceiling that appropriately funds Visit Bastrop, and provides clear metrics that define success.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree on the following modifications to the Agreement:

1. That Section I. "Term", Paragraph 1.1 "Term", is revised as follows:

- The term of this Agreement that commenced on October 1, 2017, between the City of Bastrop, a Texas municipal corporation, and Visit Bastrop, a Texas non-profit corporation, and has since been extended, shall expire on October 1, 2024. This Agreement shall automatically renew for successive one-year periods unless a party provides written notice of an intention to terminate to the other party ninety

(90) days prior to the expiration date.

2. Section II. "Scope of Services", Subsection 2.3 "Business Plan", (C) "Reporting", Item (i) is revised as follows:

- In August 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 plan and proposed budget will be presented publicly as part of a Joint City Council meeting to be held no later than the third Monday in September for the upcoming year.

In the first quarter of each fiscal year, Visit Bastrop shall present an end of year presentation to Council which will present a recap of accomplishments for the previous fiscal year.

3. Section II. "Scope of Services", Subsection 2.4, Utilization of City -Owned Facilities, is revised as follows:

The City acknowledges that, Visit Bastrop is a valued colleague to the city as well as an independent contractor of the City of Bastrop. To help Visit Bastrop achieve success in performing the obligations set forth herein, the City will permit Visit Bastrop to enter into a shared services agreement that allows the use of City Facilities on a cost reimbursement basis. ,

4. Section III. "Compensation to Visit Bastrop", paragraph 3.1 (B) is revised by adding the

(A) *Repealed in its entirety and left intentionally blank*

- (B) FY 2024. Beginning on October 1, 2023, the City shall target thirty-five percent (35%) of the net HOT revenue collected by the City (defined as HOT revenue minus the provision of payment satisfying the City's outstanding debt, and other contractual obligations secured by HOT). This amount shall not be more than \$1,543,600 of total HOT Revenues. Each year during the City's annual budget process, the targeted percentage will be considered in making an annual appropriation to be paid to Visit Bastrop under this Agreement.

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.

Upon the conclusion of each fiscal year and completion of the City's independent annual audit, the annual amount appropriated in support of 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. Visit Bastrop must also provide an amended Business Plan detailing how the surplus or reduction of funds will be utilized.

5. In the event any section, subsection, paragraph, sentence, phrase, or word herein is held invalid, illegal, or unconstitutional, the balance of this Agreement shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.
6. This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State District Court of Bastrop County, Texas. This Agreement is performable in Bastrop County, Texas.
7. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
8. This Agreement amends and supersedes only those specific enumerated provisions of the Destination and Marketing Services Agreement between the City of Bastrop, Texas, and Visit Bastrop, as amended the balance of which remains unaffected by the amendments set forth herein.
9. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein may not be modified without written agreement of the parties to be attached to and made a part of this Agreement.
10. The Agreement, as heretofore amended, shall continue in full force and effect except as amended herein.

Signature Page to Follow

EXECUTED in duplicate originals this, the 12th day of September 2023.

CITY OF BASTROP:



Sylvia Carrillo, City Manager

ATTEST:

Ann Franklin, City Secretary

VISIT BASTROP:



Kerry Fossler, Board Chair

ATTEST:

Name:

Board Secretary

EXECUTED in duplicate originals this, the 12th day of September 2023.

CITY OF BASTROP:



Sylvia Carrillo, City Manager

ATTEST:

Ann Franklin, City Secretary

VISIT BASTROP:

Kerry Fossler, Board Chair

ATTEST:

Name: Board Secretary