AGENDA ITEM HISTORY SHEET

ITEM TITLE	AGENDA NO. 14
Ballroom Program Operator Agreement	AGENDA DATE: 12/17/2024

FUNDING CERTIFICATION (Finance Director) (Signature, if applicable)

MANAGEMENT STAFF REVIEW (Signature)

MAYOR (Signature)

ITEM HISTORY (Previous Council reviews, action related to this item, and other pertinent history)

Will be discussed at 12/12 Workshop

ITEM COMMENTARY (Background discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

The program operator agreement, modeled after similar city agreements, is with the nonprofit Walton Arts Foundation (Arkansas Entertainment). It grants the operator responsibility for scheduling, ticket sales, facility maintenance, repairs, consumables, insurance, sponsorships, and electricity, while the city handles water, sewer, landscaping, and trash collection. The 25-year contract, with a 20-year renewal option, includes five-year performance reviews and allows the city to use the facility up to 12 times annually for nonprofit events at no rental cost, pending availability.

(This section to be completed by the Mayor)

ACTION PROPOSED (Motion for Consideration)

Motion to approve.

Bryant City
2024 Program Agreement

THIS AGREEMENT ("Agreement") made and entered into on the _____ day of _____, 2024 by and between the City of Bryant doing business at 210 S.W. 3rd Street, Bryant, Arkansas (hereinafter called "THE CITY"), and Walton Arts Center Council, Inc., D/B/A Arkansas Entertainment Inc. P.O Box 3547, Fayetteville, Arkansas (hereinafter called "AE" ").

WITNESSETH

WHEREAS, **the City of Bryant, Arkansas** (hereinafter referred to as "THE CITY") owns property located at [Insert Address or Description] in Bryant, Arkansas (the "Property"); and

WHEREAS, THE CITY has identified the optimal use of the Property to be for **entertainment, cultural programming, and community events** to benefit the citizens of Bryant, Arkansas; and

WHEREAS, [Insert Full Legal Name of AE] (hereinafter referred to as "AE") is a recognized and elite provider of programming and operational expertise in entertainment and cultural programs across Arkansas; and

WHEREAS, AE's established expertise and relationships within the cultural and entertainment sectors enhance opportunities for efficiency and success in the development and operation of Bryant's entertainment and cultural facility; and

WHEREAS, outsourcing the operation and programming of the Property to AE will result in **cost savings for taxpayers** by eliminating the need for increased city payroll, benefits, and other administrative expenses, which are among the largest components of THE CITY's budget;

THE CITY agrees to grant use of the Property as outlined herein to AE for the operation of entertainment, cultural and events programming beginning upon completion of a new facility on the Property (referred to herein as the "Event Facilities") and ending on December 31, 2049. The Event Facilities will be used by AE to provide programs and events to the City and community.

1. The Agreement shall have an initial term of 25 years, with an automatic renewal for a second 20-year term.. AE shall be permitted to have exclusive use and maintenance of the Event Facilities solely in consideration of the programs and services it provides to THE CITY and the community, which shall be operated in accordance with guidelines AE deems appropriate. THE CITY agrees to maintain the grounds of the Event Facilities to a standard consistent with the support provided to other associations operating on City property and offering similar programs and services. This maintenance includes general upkeep of the grounds but excludes repairs for property damage caused by AE or its members. AE will have access to all areas of the Event Facilites and Property, with THE CITY covering all utilities associated with its use, except electricity to the Event Facilities and supporting services, which shall remain the responsibility of AE.

2. Notwithstanding the foregoing, however, the use of the Event Facilities shall continue until notification as provided in Section 12 below is given to end the terms of this Agreement.

3. If requested, AE agrees to furnish THE CITY with an annual report illustrating the activities of the AE on behalf of THE CITY, no later than December 31 of each year. In addition, AE mutually will work with THE CITY to do a performance evaluation every 5 years to show the benefits to the taxpayers. THE CITY and AE also agree to have periodic meetings as requested by either party to discuss the Event Facility, trends either party is seeing in the community and surrounding areas, and any other topics that are relevant to the operation and success of the Event Facility.

4. AE shall maintain insurance in amounts required by federal or state laws and to the extent of applicable insurance hereby agrees to indemnify and hold harmless THE CITY from any claims, lawsuits, judgments, or settlements brought as a result of AE's performance of this Agreement or AE's provision of services hereunder; provided, however, that AE will not be liable for indemnifying or holding THE CITY harmless from any claim, lawsuit, judgment or settlement that is due in whole or in part to THE CITY's negligent acts or omissions.

5. The parties agree that THE CITY shall have no authority to direct the day-to-day activities of any AE's employees, shall have no authority over AE's personnel decision, or the conduct of the services and programs provide to the community. The parties agree that AE is solely responsible for any 3rd party agents, promoters, contractors, concessionaires and maintenance companies for the fulfilment of program obligations of the Event Facilities.

6. It is agreed that THE CITY has no financial interest in the business of AE and shall not be liable for any debts or obligations incurred by AE, nor shall THE CITY be deemed or construed to be a partner, joint venture or otherwise interested in the assets of the AE, or profits earned or derived by the AE, nor shall AE at any time or times use the name or credit of THE CITY in purchasing or attempting to purchase any equipment, supplies, or other thing or things whatsoever unless such equipment, supplies or other things are to be provided by THE CITY and such work is being done in coordination with THE CITY. It is also understood and agreed that AE shall not be deemed or construed to be a partner or joint venture party of THE CITY.

7. It is agreed that AE has the exclusive naming rights for Event Facilities for the term of the agreement.

8. AE, in the performance of its operation and obligations hereunder, shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense as THE CITY may from time to time reasonably request to indicate that AE is an independent contractor, and THE CITY will also take any reasonable steps requested by AE to show THE CITY and AE are

independent contractors. THE CITY does not and will not assume any responsibility for the means by which or manner in which service by AE shall be wholly responsible for providing.

9. If upon completion of the Events Facilities, the new Events Facilities does not meet minimum requirements or specifications as outlined by AE in the design and building process, then AE has no further obligation to perform its duties as outlined in this agreement.

10. In the event any clause, phrase, provision, sentence, or part of this Agreement or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Use Agreement as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional.

11. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

12. The general conditions of this program Agreement will be:

A. AE will operate programs under this Agreement in accordance with nondiscrimination requirements of *Title VI* of the 1964 Civil Rights Act.

B. It is agreed that the programs for which this Agreement is written must be made available to the general public to join and participate in. It is further agreed that program personnel must adhere to all provisions of the Americans with Disabilities Act (ADA) that apply to all programs.

C. AE personnel and participants agree to abide by all Federal, State, and Local laws in addition to the policies of THE CITY. If THE CITY enacts any policy that makes it impracticable for AE to provide programs as intended under this Agreement, or the policy is specifically directed at AE and its operations under this Agreement, then AE may terminate this Agreement and THE CITY will compensate AE for their Capital investment and all other reasonable costs associated with discontinuing operations of the Event Facility

D. It is understood that THE CITY will not be liable for any injuries incurred by participants who are participating in activities on or in THE CITY facility. To the extent of its insurance, AE shall indemnify and hold THE CITY, and all its employees harmless against losses, claims, causes of action, and liabilities on account of damage to property or injury to or death of persons arising out of negligent acts by AE, its agents, employees, or program participants: however, AE will have no obligations to indemnify and hold harmless under the terms of this section if the loss, claim, cause of action or liability was caused in whole or in part by the negligent acts or omissions of THE CITY, its employees, agents or contractors.

E. AE assumes full responsibility and liability for damage caused by participants of their programs unless such damage is precipitated by the negligent acts or omissions of THE CITY. Any damage caused will be fixed by AE If the repair is neglected for a long period of time THE CITY will make the necessary repairs and bill AE.

F. AE agrees to return this Agreement signed by the appropriate persons, and any and all additional material reasonable requested and related to this Agreement.

G. AE agrees to provide a list of any bulk chemicals used and/or stored at the Event Facility during this Agreement if applicable. This list must include a MSDS for each chemical listed and AE must ensure that each chemical is properly stored according to MSDS specifications. THE CITY must be made aware of the intention to use any form of chemical prior to its use or storage in the Event Facility.

H. Additional conditions to be agreed upon not previously listed:

a. AE will control all litter by picking up litter their program creates. The litter must be placed in the proper receptacle by AE and then be removed on a regular basis by THE CITY contracted trash service. If excessive litter must be picked up after 24 hours of the program by THE CITY, AE will be charged $10 for each individual man hour worked.

b. AE will provide proper insurance for the programs they will be operating on the Property. Proof of insurance will be provided to THE CITY prior to programs commencing under this Agreement. AE understands that their program participants are in no way covered by insurance by THE CITY unless such participant's injury or damages are caused by the acts or omissions of THE CITY and are not exempt under the doctrine of sovereign immunity.

c. AE will submit contact person(s) for after-business-hour emergencies and will list the responsibility of the person submitted. THE CITY will provide AE with a similar list for after-business-hour emergencies.

d. At the request of THE CITY, AE will remove all their equipment at the completion of this Agreement.

e. AE will ensure that their employees or participants do not attempt to operate equipment belonging to THE CITY.

f. AE has the right of first refusal to renew this agreement for an additional 20 years.

13. Other specific agreements or assurance:
    A. Permanent improvements to facilities will become property of THE CITY. Permanent fixtures include, but are not limited to all: concrete work, fences, underground installations, sprinkler heads, structural work, lighting fixtures, etc…

B. Non-permanent improvements will be retained by AE and include: appliances, equipment, video boards, sound and lighting systems, concession equipment, portable buildings, and etc… which were purchased by AE.

C. THE CITY and AE will review capital needs every other year of the term of this Agreement to assess needs related to public safety and amenities. THE CITY and AE will consider additional capital dollars into the premises based on mutual agreement.

14. For Programs-

A. The CITY has the right to use the Event Facility for local nonprofit or CITY organizations up to 12 times a year without a rental fee. However, the CITY will be responsible for any costs incurred AE or other vendor expenses and subject to AE booking policies.

B. THE CITY will provide at least a 60 day notice prior to the end of the term of this Agreement of the City's intent to cancel, modify or otherwise change the terms of this Agreement.

C. Either party may request an amendment to this Agreement when deemed necessary, but any amendment, alteration or change will only be effective by the mutual consent of both parties and will be effective when reduced to writing signed by both parties and attached to this original agreement.

Not withstanding the above, once the project is approved by the voters and not more than 6 months after the facility opens, the parties agree to create an addendum to this agreement to iron out unforeseen building or operating conditions. This Amendment will be an integral part of this overall agreement ~~between the parties~~ to ensure the operations are financially feasible for both parties. During such discussions on this amendment, each party will act reasonable to address the concerns raised by each party. If the parties can't reach agreement on a reasonable addendum, either party can terminate this agreement.

Either party can terminate this agreement if (i) the other party is in breach, and such breach has not been cured within 90 days, (ii) the other party is insolvent or has filed for bankruptcy.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in their behalf and supersede any and/or all previous agreements, contracts, or leases.

CITY OF BRYANT, ARKANSAS **Walton Arts Center**

_____ _____

Mayor Chris Treat

President / CEO Peter B. Lane

Attest:

_____

Mark Smith, City Clerk

_____