

DBA FY 2013-14 Budget

EXPENSES

Personnel

Salaries	\$142,400
Executive Director	\$55,000
Operations Director	\$40,000
Events Director	\$40,000
TAMU Interns (2)	\$ 7,400
Benefits	\$ 22,800
Medical Insurance stipends	\$10,800
Payroll Taxes	\$12,000
Total Salary & Benefits	\$165,200

Contract Services

Accounting	\$ 3,000
Required audit	\$ 3,500
Total Contract Services	\$ 6,500

Operating Expenses

Queen Theatre mortgage	\$11,000
Queen Restoration note	\$ 1,500
Queen construction	\$60,000
Office lease	\$ 0
Utilities – Queen	\$ 2,000
Marketing/Advertising	\$22,550
Phone/Internet	\$ 1,750
Insurance premiums	\$ 3,200
Office supplies/equipment	\$ 1,500
Printing	\$ 1,800
Misc. city fees	\$ 500
Travel/conferences	\$ 2,000
Postage	\$ 350
Professional memberships	\$ 500
Misc/Contingency	\$12,500
Total Operating Expenses	\$121,150

Total Expenses **\$292,850**

REVENUE

Queen Marquee Rental	\$ 2,400
Queen Misc Donations	\$ 30,000
City of Bryan	\$165,000
Memberships	\$ 20,000
In-Kind & Volunteers	\$ 40,000
Palace Theatre Rental	\$ 8,400
Advertising Co-op	\$ 16,800
Misc. Grants/Income	\$ 5,000
Arts Council Grant	\$ 5,250
Total Revenue	\$292,850

**CONTRACT FOR SERVICES
DOWNTOWN BRYAN ASSOCIATION**

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

The City of Bryan, hereinafter referred to as "**CITY**," a home rule municipal corporation doing business at 300 South Texas Avenue, Bryan, Texas 77803 and the Downtown Bryan Association, hereinafter referred to as "**DBA**," a non-profit organization doing business at 216 W. 26th Street, Bryan, Texas 77803 have made the following Contract For Services:

WHEREAS, there is sufficient assurance by reason of the conditions of this contract that the public purposes stated herein will be accomplished; and

WHEREAS, there is adequate consideration in the exchange of service for the public financial assistance provided by this contract; and

WHEREAS, the public purposes stated in this contract serve the citizens of Bryan, Texas, Brazos County, the State of Texas, and the United States of America, and

WHEREAS, the **DBA** was created to revitalize and maintain the commercial and aesthetic viability of the historic business district of downtown Bryan, and

WHEREAS, the **DBA** strives for a vibrant historic business district that accentuates the uniqueness and diversity of the community while maintaining the historic integrity of the past amidst a multi-use business/residential environment, and

WHEREAS, the public purposes and services to be provided by **DBA** are the predominant reasons for **CITY** to enter this contract:

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1.

CITY agrees to pay **DBA** the total sum of ONE HUNDRED TWENTY-THREE THOUSAND, SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$123,750.00), through a combination of general fund and hotel occupancy tax revenues collected by **CITY** for services for the period commencing February 16, 2014 and extending through September 30, 2014.

Payment Number	Amount	Payment Date
1	\$41,250	February 16, 2014
2	\$41,250	May 15, 2014
3	\$41,250	August 15, 2014

NINETY THOUSAND AND NO/100 DOLLARS (\$90,000.00) of the total contract amount shall be paid to **DBA** from the City's hotel occupancy tax revenues, and must be spent in compliance with the requirements of Chapter 351 of the Texas Government Code. It is expressly agreed and understood that **DBA** will be required to return all or apportion of that funding, if City determines that expenditures

deviate materially from their approved amended budget or if the reports required herein are not submitted in a complete and timely manner.

2.

DBA agrees to provide the following services through September 30, 2014:

- 2.1 Maintain an office for the **DBA** in the Core Study Area of the Downtown Bryan Master Plan.
- 2.2 Develop and maintain membership dues revenues.
- 2.3 Obtain in-kind and cash contributions, including volunteer hours for the next Texas Reds Festival.
- 2.4 Employ and retain an Executive Director for the **DBA**.
- 2.5 Submit quarterly reports summarizing **DBA**'s activities to revitalize and maintain the commercial and aesthetic viability of the historic business district of downtown Bryan. The reports should include, but not be limited to, the following information: private sector reinvestment, public sector reinvestment, number of new businesses, number of relocating businesses, number of businesses closing or relocating out of the Core Study Area, membership dues revenues, in-kind and cash contributions, and volunteer hours. The reports shall be received by the Deputy City Manager for Community Services or designee not later than the twentieth (20th) business day following the end of each calendar quarter. These quarterly reports shall be submitted to:

**Deputy City Manager for Community Services
City Manager's Office
City of Bryan
P.O. Box 1000
Bryan, TX 77805**

- 2.6 **DBA** agrees to operate First Fridays in Downtown Bryan on the first Friday of every month between the hours of 5pm and 10pm subject to the following terms:
 - 2.6.1 Boundaries of First Fridays' events are:
 - North: MLK, Jr. Street
 - South: 30th Street
 - East: Texas Avenue
 - West: Sims Avenue
 - 2.6.2 Review all complete applications and will approve or deny groups or individuals applying for vendor permits in a non-discriminatory manner. At no additional charge, **CITY** will be responsible for issuing vendor permits for Downtown First Friday events. Artist demonstrations, entertainers, and other non-commercial activities are not required to obtain vendor permits.
 - 2.6.3 **CITY** will rent Sale Park to **DBA** to use for First Friday events at the rate of \$25/evening. **DBA** may sublease Sale Park to groups or individuals for First Friday events only. **DBA** will remain responsible to **CITY** for rental payments and for any damage occurring to Sale Park resulting from this assignment. All groups or individuals granted use by **DBA** under this Agreement will be subject to oversight by **DBA** and not

CITY. At all other times, if **DBA** does not make use of the park, then **CITY** shall have the ability to rent the park to other parties as approved by **DBA** at standard rental rates.

- 2.6.6 Comply with **CITY's** standard process and procedures for obtaining an electric permit for electric service for First Fridays events.
 - 2.6.7 Comply with **CITY's** standard process and procedures for obtaining an alcohol permit to serve or sell alcohol for First Fridays events.
 - 2.6.8 Comply with all TABC rules and regulations for the sale of alcohol and acquire a Special Event permit from TABC, when applicable.
 - 2.6.9 **DBA** does not have the authority to close any streets in Downtown Bryan.
 - 2.6.10 Maintain a minimum of 4 feet of pedestrian access on all sidewalks.
 - 2.6.11 **DBA is responsible for** promoting Downtown Bryan activities and events on Fridays during Texas A&M University home game weekends.
- 2.7 **DBA** agrees to assume the management responsibility for the Texas Reds Festival subject to the following terms:
- 2.7.1 **DBA is responsible for** planning and carrying out the production of the next Texas Reds Festival.
 - 2.7.2 **DBA is responsible for** recruiting volunteers, vendors, sponsors, and community support and participation in the festival.
 - 2.7.3 **DBA** is responsible for promoting the festival outside of Brazos County with the goal of maximizing attendance by non-local groups and individuals.
 - 2.7.4 **DBA** will communicate with and coordinate with downtown merchants and stakeholders on issues related to the next Texas Reds Festival.
 - 2.7.5 On or before April 1, 2014, **DBA** will present to the City Council a fully detailed Texas Reds budget for review and approval.
- 2.8 **DBA** agrees to assume the management control of the Palace Theatre, and receive the revenues from its operation, subject to the following terms:
- 2.8.1 **DBA** will schedule and solicit bookings for the use of the facility in accordance with appropriate limitations approved by the City of Bryan.
 - 2.8.2 **DBA** will assure that appropriate responsible staff for each particular event is on site during the usage of the facility.
 - 2.8.3 **DBA** will maintain and clean the facility after each use to a condition that is ready for the next function while the facility is not in use.
 - 2.8.4 **DBA** will exercise reasonable care to assure that the facility is secure during periods when it is not actively being used.

- 2.8.5 **DBA** will perform maintenance that does not require skilled labor to accomplish. **CITY** will conduct monthly inspections of the facility and share inspection reports with **DBA** identifying maintenance needs that do and do not require skilled labor to accomplish.
- 2.8.6 **DBA** will pay for all monthly utility costs in excess of \$169.61 consumed during the period that the **DBA** is responsible for managing the Theatre under the terms of this Agreement. **DBA** shall make this reimbursement payment to the **City** within ten (10) calendar days of receipt of an invoice from the **City**, which invoice shall be provided to **DBA** within 30 days of the end of the term of this Agreement.

3.

DBA further agrees and represents to **CITY** the following:

- 3.1 That the public purposes herein stated will be effectuated;
- 3.2 That it will provide, at a minimum, a reasonable quality of service;
- 3.3 That any charges made for services rendered by **DBA** will be reasonable and without discrimination;
- 3.4 That **DBA** will operate as a private nonprofit association for the benefit of the general public;
- 3.5 That **DBA**, on an annual basis not later than May 31st of each budget year, shall submit its proposed budget, proposed service levels and performance measures to the **CITY** for review, including a list each scheduled activity, program, or event that is directly funded or has its administrative costs funded in whole or in part by the funds provided under this this agreement; and that will directly enhance and promote tourism and the convention and hotel industry. At the same time the **DBA** shall present to the Bryan City Council a report of their year to date activities and accomplishments and also present information with regard to upcoming projects and activities. Funding by **CITY** shall be subject to annual review and allocation;
- 3.6 That **DBA** will establish and maintain budget control and furnish a copy of the annual budget to the Bryan City Secretary and Chief Financial Officer when the budget is adopted;
- 3.7 That **DBA** will establish, operate and maintain an accounting system that will allow for adequate review of its income, expenses, and financial status of the association at the end of each fiscal year.
- 3.8 The **DBA** will have its books reviewed and a report provided to the **CITY** following each odd numbered fiscal year. This shall be completed within 120 days from the last day of the fiscal year. This review shall be conducted by an Independent public accountant who will furnish a financial report to **CITY** throughout the term of this Agreement. **DBA** shall make available for inspection its books and records to the City Auditor during regular business hours upon reasonable notice.
- 3.9 That all meetings of the **DBA** Board of Directors will comply with all requirements of the Texas Open Meetings Act, currently codified in Chapter 551 of the Texas Government Code, when conducting its meetings, and all **DBA** board members will complete TOMA training.

- 3.10 That all present and future rules, regulations, policies, bylaws, and amendments to its bylaws will be filed with the Bryan City Secretary.
- 3.11 That the funds provided by this contract shall be used to discharge the **DBA's** activities described in this contract.

4.

4.1 **Insurance**

DBA's Insurance

The DBA agrees to maintain, on a primary basis, for the duration of this Contract the insurance coverages and limits as described below. The DBA must deliver to City a certificate(s) of insurance evidencing that such policies are in full force and effect within 10 business days of execution of this Agreement. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten business days **may cause the contract to be terminated.** CITY reserves the right to obtain complete, certified copies of all required insurance policies at any time.

The requirements as to types and limits, as well as CITY's review or acceptance of insurance coverage to be maintained by DBA, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the DBA under this Contract.

Commercial General Liability (CGL) Insurance

That **DBA** will keep insurance with the following minimum amounts in effect during the term of this Contract:

Commercial General Liability in the amount of:

\$250,000 for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property

DBA's Insurance to be Primary – DBA's insurance shall be deemed primary with respect to any insurance or self-insurance program carried by the City of Bryan.

Waiver of Subrogation Waiver of subrogation in favor of the City of Bryan for each required policy. When required by the insurer or should a policy condition not permit DBA to enter into a pre-loss agreement to waive subrogation without an endorsement, then DBA agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should DBA enter into such an agreement on a pre-loss basis.

Deductibles, Coinsurance Penalties & Self-Insured Retention DBA shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

Certificate of Insurance DBA shall furnish CITY with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The

certificate must be from a company with an A.M. Best rating of "A-" or better and/or otherwise acceptable to the CITY. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. DBA has the affirmative obligation to advise CITY at the address listed below within two business days of the cancellation or substantive change of any required insurance policy, and failure to do so shall be construed as a breach of the contract.

In the event CITY is notified that a required insurance coverage will cancel or non-renew during the contract period, the DBA shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. CITY reserves the right, but not the obligation, to withhold payment to DBA until coverage is reinstated. If the DBA fails to maintain the required insurance, CITY shall have the right, but not the obligation, to purchase the required insurance at DBA's expense.

5.

5.1 **Indemnification and Release.** DBA agrees to indemnify and hold harmless the City, its officers, agents, and employees from and against any and all loss, costs, or damage of any kind, nature, or description that may arise out of or in connection with this Agreement whether or not the claim or cause of action results from any negligence of the City or any of its officers, agents, or employees. DBA assumes full responsibility for the work performed and services to be provided, and hereby releases, relinquishes and discharges the City, its officers, agents, and employees from any and all claims, demands, causes of action of every kind and character, including the cost of defense thereof, for any injury to, including death of, any person (whether employees or agents of either of the parties hereto or third persons) and any loss of or damage to property (whether the property is that of either of the parties hereto or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the DBA's work or services provided hereunder whether or not said claims, demands, or causes of actions are covered in whole or part by insurance.

6.

6.1 **Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by DBA with another private entity, person, or organization for the performance of those services described in §2.7 - §2.8 above. In the event that DBA enters into any arrangement, contractual or otherwise, with such other entity, person or organization, DBA shall cause such other entity, person, or organization to indemnify the City by way of an indemnification agreement in a form acceptable to the City Attorney, and to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Chapter 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments and Hotel Tax Revenue. In the event any work is sublet, the DBA shall require the subcontractor similarly to provide the same insurance coverage required under §4.1, and shall himself acquire evidence of such coverage on behalf of the subcontractor.

7.

7.1 **Compliance.** If DBA does not comply with any agreement or representation made in this contract, excluding Section 3.9, CITY may provide written notice to the DBA stating specifically the deficiencies in DBA's performance and/or DBA's noncompliance with the terms of this contract. DBA shall have ten (10) business days within which to cure the alleged deficiencies and/or noncompliance to

CITY's satisfaction. If such deficiencies are not cured within ten business (10) days, **CITY** may terminate this contract and discontinue funding.

If **DBA** does not comply with Section 3.9 of this contract, the **CITY** has the option to immediately terminate the contract.

8.

8.1 This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and DBA and their respective successors and assigns.

8.2 No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

8.3 This Agreement has been made under and shall be governed by the laws of the State of Texas.

8.4 Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

8.5 Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

8.6 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

8.7 The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

8.8 This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other parties to this Agreement.

8.9 It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

8.10 If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

8.11 It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

8.12 Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City: CITY OF BRYAN
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805

DBA: DOWNTOWN BRYAN ASSOCIATION, INC.
P.O. Box 233
Bryan, TX 77806

8.13 The Recitals set forth are incorporated herein by reference as if fully set forth in the body of this Agreement.

All notices shall be deemed received when sent certified mail, return receipt requested, to the parties at the address shown.

8.14 This contract shall be subject to all applicable rules, regulations, and laws of the United States of America, State of Texas, City of Bryan, or any other governmental body or agency having lawful jurisdiction.

9.

9.1 This contract is binding to **CITY** to the extent permitted by law.

IN WITNESS WHEREOF, the parties hereto, acting under the authority of the Bryan City Council and the Board of Directors of the Downtown Bryan Association, have caused this contract to be executed in duplicate originals, on this day ____ of _____, 2014.

CITY OF BRYAN

Downtown Association ("DBA")

Jason P. Bienski, Mayor

Ben Hardeman, Chairman of DBA

ATTEST:

ATTEST:

Mary Lynne Stratta, City Secretary

Sandy Farris, Executive Director of DBA

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT A
DBA FY14 BUDGET