



Action Requested/Required:

- Vote/Action Requested
- Discussion or Presentation Only
- Public Hearing
- Report Date: _____
- Hearing Date: _____
- Voting Date: _____

Department: Cultural Arts **Presenter(s) & Title:** Kristin Norton Green, Theatre Events and Facilities
Director

Agenda Item Title:

Discussion and Possible Approval of Fox Theatre Preservation Grant Award Contract

Summary:

In April 2024, the City published a Request for Proposals for Exterior Renovations for the Historic Canton Theatre. The scope of work encompasses paint work including windows, doors, and trim, restoration of the "Canton Theatre" exterior lights, and design and execution of additional decorative elements to better incorporate the digital marquees into the look of the historic facade.

A \$20,000 Grant has been awarded to the City of Canton from Fox Gives and the Fox Theatre for this work. This contract is an acceptance of the funding and the Fox Theatre's terms.

Budget Implications:

Budgeted? Yes No N/A

Total Cost of Project: \$ 80,000.00 Check if Estimated

Fund Source: General Fund Water & Sewer Sales Tax Other: _____

Staff Recommendations:

Staff recommends Council consider: Motion to approve the Fox Theatre Grant Award and Approve the Mayor to Sign the Contract

Reviews:

Has this been reviewed by Management and Legal Counsel, if required? Yes No

Attachments:

Fox Theatre Preservation Grant Award Contract

SINGLE YEAR GRANT CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (including all of the Exhibits attached hereto, this “Agreement”) is entered into as of October 1, 2024 (the “Effective Date”), by and between **THE FOX THEATRE, INC.**, a Georgia non-profit corporation (“Fox”), and **CITY OF CANTON** (“Theater”; together with Fox, the “Parties” and individually a “Party”).

BACKGROUND

- A. As part of Fox Theatre’s outreach initiative, Fox Theatre desires to provide certain consulting services to Theater related to grants for historic theatres and/or operation of Theater’s business.
- B. Theater desires to benefit from the provision of such services; and
- C. Fox Theatre and Theater desire to enter into this Agreement upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

1. SERVICES

1.1 Services. Fox Theatre agrees to provide to Theater the consulting services described in Exhibit A attached hereto (the “Services”). The Parties acknowledge that Fox Theatre is not bound by any duty or obligation to provide the Services other than those set forth in this Agreement.

1.2 Control of Theater’s Business. Notwithstanding the Services provided by Fox Theatre, the Parties agree that Theater always shall retain control over all decisions related to its property and business.

1.3 Modification of Services. From time to time, the Services may be supplemented, deleted, or modified by amending Exhibit A in accordance with the terms of this Agreement.

1.4 Suspension of Services for Non-Compliance. If a Party is in non-compliance with a provision of this Agreement or of applicable law and such non-compliance (in the reasonable judgment of the other Party, the “Concerned Party”) (a) endangers the safety or health of any person or (b) threatens to damage the environment or personal property, then the Concerned Party may immediately suspend the impacted Services until the problem has been abated in the reasonable opinion of the Concerned Party. Upon suspension of the Services pursuant to and in accordance with Section 1.4, the Concerned Party shall immediately notify in writing the other Party in accordance with Section 10.1.

1.5 Suspension of Services Due to Ineffectiveness. In the event Fox Theatre determines that the Parties are working together in a way that results in the Services being ineffective, Fox Theatre may immediately suspend the Services. Upon suspension of the Services pursuant to Section 1.5, Fox Theatre shall immediately notify in writing Theater in accordance with Section 10.1.

1.6 Historic Properties Standards. The Parties shall comply with the Secretary of the Interior’s Standards for the Treatment of Historic Properties (1995) (the “Standards”) unless a signed writing by Fox Theatre specifically states that the Standards shall not apply. These changes must be approved by the Director of Community Partnerships and in consultation with all parties.

2. ANCILLARY SERVICES

2.1 Ancillary Services. From time to time, Fox Theatre may advise Theater to enter into arrangements with certain third-party service providers (each, a “Contractor” and collectively, the “Contractors”) to provide

(“Ancillary Services”) related to or in furtherance of the Services. Theater always shall be wholly responsible for negotiating and entering into agreements related to Ancillary Services and for overseeing the provision of Ancillary Services.

2.2 Consulting with Contractors. Notwithstanding the terms and conditions of any agreement or arrangement between Theater and any Contractor providing Ancillary Services, Fox Theatre shall be permitted to consult with such Contractor regarding the provision of Ancillary Services; provided, however, that Theater at all times shall retain control over all decisions related to the Contractors and the provision of Ancillary Services.

3. RELATED MATTERS

3.1 Licenses and Permits. Theater shall obtain and maintain, at its sole cost and expense, always during the term of this Agreement, all licenses, permits and other authorizations from governmental authorities or boards necessary to enable it to benefit from the Services. To the extent requested by Fox Theatre, Theater shall provide Fox with copies of all permits, licenses, and inspection reports.

3.2 Property. All property of any kind, owned, hired, used, or supplied by either Party not intended to be incorporated into or made a part of the Services shall be maintained at the sole risk of the Party responsible therefor and no such Party shall have the right to look to or hold the other Party responsible in any manner, for the safekeeping thereof.

3.3 Employees. At all times, Fox Theatre and Theater shall remain responsible for each of their respective employees. Neither Party shall have the right to hire, fire or otherwise control the employees of the other Party.

3.4 Fees and Expenses. Fees and expenses incurred in connection with the Services shall be paid in the manner set forth in Exhibit B attached hereto.

3.5 Insurance. Theater shall, until completion of the Services, procure and maintain at its own expense, adequate insurance coverage as is typical for a building and enterprise of that of Theater in a company or companies authorized to do business in the jurisdiction in which the Theater’s place of business is located. Fox Theatre shall not be required to maintain any insurance coverage relating to its provision of the Services. Theater waives all rights of subrogation for losses, claims or costs covered by insurance, irrespective of the negligence or willful misconduct of Fox or any of its tenants, contractors, employees, guests, invitees, or agents.

4. FUNDING

4.1 Funding Provided. Fox Theatre shall provide to Theater an amount of funding (“Funding”) set forth in Exhibit C attached hereto. The sole purpose of such Funding is to enable Theater to obtain Ancillary Services from one or more Contractors, and Theater may not use Funding for any other purpose without the prior written consent of Fox Theatre. Theater warrants that it will only use Funding for the express purpose set forth in this Section 4.1 unless Fox Theatre consents in writing to another use.

4.2 Suspension of Funding. Fox Theatre may immediately suspend Funding upon the occurrence of any of the following:

- (a) Theater materially breaches or is in material non-compliance with a provision of this Agreement.
- (b) Fox Theatre determines, in its sole and absolute discretion, that Theater is not taking its advice and direction, and as a result Theater is not benefiting from the Services (whether or not the Services have been suspended pursuant to and in accordance with Section 1.5); or
- (c) Fox Theatre determines upon reasonable inquiry that Theater is not using Funding for the express purpose set forth in Section 4.1.

5. WARRANTIES

5.1 Theater.

- (a) Theater warrants that it will use its best efforts to cooperate with Fox Theatre in connection with Fox Theatre's provision of the Services.
- (b) Theater warrants that it will use its best efforts to obtain Ancillary Services recommended by Fox Theatre.
- (c) Theater warrants that it will always comply with all applicable laws.

5.2 Fox.

FOX THEATRE DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, AND THEATER EXPRESSLY WAIVES, ANY WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES, REGARDLESS WHETHER ORAL OR WRITTEN, EXPRESSED, OR IMPLIED.

6. INDEMNIFICATION AND LIMITATION OF LIABILITY

6.1 By Theater.

- (a) Theater assumes full liability for the acts and omissions of Theater's employees, affiliates, officers, servants and agents and any Contractors engaged by the Theater to perform Ancillary Services.
- (b) Theater assumes full liability for any and all damages, death, or injury of any kind to all person(s) and property, and hereby agrees to release and to defend, indemnify and hold harmless Fox Theatre and its respective affiliates, directors, officers, employees, servants, tenants, contractors, guests, invitees and agents, from and against any and all loss, cost, expense, liability, damages, claim or other expense (including, without limitation, court costs and reasonable attorneys' fees) suffered or incurred in connection with the failure of Theater to comply with the terms and conditions of this Agreement.

6.2 By Fox Theatre.

FOX THEATRE EXPRESSLY DISCLAIMS, AND THEATER EXPRESSLY WAIVES, ANY LIABILITY ARISING FROM FOX THEATRE'S BREACH OR FAILURE TO PERFORM ANY OF FOX THEATRE'S OBLIGATIONS UNDER THIS AGREEMENT, EXCEPT TO THE EXTENT THAT SUCH BREACH OR NON-PERFORMANCE IS DUE TO THE WILLFUL MISCONDUCT OF FOX THEATRE. THEATER EXPRESSLY ACKNOWLEDGES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OR NON-PERFORMANCE OF THIS AGREEMENT BY FOX THEATRE SHALL BE THE TERMINATION OF THIS AGREEMENT.

7. TERM AND TERMINATION

7.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until the earlier of the completion of the Services to the satisfaction of both Parties or the termination of this Agreement in accordance with the provisions set forth in Section 7.2 below. All work under this Agreement must conclude no later than June 30, 2025. If extensions are requested these must be confirmed by both the Director of Community Partnerships and the Chief Financial Officer of the Fox Theatre.

7.2 Termination.

- (a) This Agreement may be terminated upon mutual agreement of the Parties.

(b) Either Party may terminate this Agreement in the event of any material breach or non-performance by the other Party of any of its obligations under this Agreement, provided the breaching Party does not cure such breach or non-performance within thirty (30) days after written notice of such from the non-breaching Party.

(c) Fox Theatre may terminate this Agreement for convenience at any time upon written notice to Theater.

(d) Theater may terminate this Agreement upon thirty (30) days' prior written notice to Fox Theatre. In the event Theater terminates this Agreement pursuant to this sub-section and Theater has accepted any Funding from Fox Theatre, Theater shall be required to pay to Fox to amount of such Funding, less any amount that have already been paid to one or more Contractors; provided further, in no event shall Theater be entitled to recover lost profits, overhead, incidental or consequential damages.

7.3 Repayment of Funding. It is the intent of the Parties that the [owner] will continue to own and operate the Theater solely as a venue, open to the public, for the presentation of plays, concerts, and similar entertainment events (the "Intended Use"). In the event that, at any time within five (5) years of the date of the last Funding hereunder, the [owner] or any third-party (whether by way of lease, transfer, assignment, license, succession, or otherwise) uses or occupies the Theater for any use other than the Intended Use, [owner], whether or not the then current owner of the Theater, shall, within thirty (30) days of the commencement of such other use, refund to the Fox Theatre all of the Funding previously provided to [owner]. This section shall survive the expiration or termination of this Agreement.

8. CONFIDENTIALITY

8.1 Confidentiality. Neither Party shall disclose any information regarding the operation of the other Party (the "Owner Party") to which such Party has access as a result of this Agreement, and which a reasonable person would consider to be confidential or proprietary, to any third parties or use such information for any purposes other than the performance of the Services or Ancillary Services hereunder, unless required by law or governmental agency (in which case such Party shall notify in writing the Owner Party and give the Owner Party the opportunity to protect the disclosure, prior to any such disclosure required by law or governmental agency) or consented to in writing by the Owner Party. Theater may disclose confidential information to Contractors only to the extent necessary to obtain Ancillary Services. Confidential information shall include business, technical, personnel and other information designated as confidential, but shall not include information that is or becomes publicly known without fault of such Party or was known to such Party and recorded in a writing prior to disclosure. All confidential information shall be returned to the Owner Party upon request.

8.2 Publicity. Theater shall not identify, either expressly or by implication, Fox Theatre or any of its respective affiliates or use any of their trademarks, trade names, service marks, other proprietary marks or the Services performed hereunder in any advertising, press releases, publicity matters or other promotional materials without the prior written consent of Fox Theatre. Fox Theatre may identify Theater in its advertising, press releases, and publicity and promotional materials, provided, however, that Fox Theatre shall be required to modify and/or remove any reference to Theater in any such identifying materials upon Theater's written request. Any official logos of the Fox Theatre must be requested in writing to the Director of the Fox Theatre 14 days prior to use.

9. FORCE MAJEURE

9.1 Events of Force Majeure. Neither Party shall be in breach of its obligations hereunder to the extent that its performance is prevented or delayed as a result of any act of God or other cause beyond its reasonable control, including, without limitation (collectively referred to as "Force Majeure"): (a) labor disturbances, whether or not involving the employees of the Party concerned or otherwise, and whether or not the disturbance could be settled by acceding to the demands of a labor group; (b) changes in law or regulation (including the interpretation thereof);

(c) acts of terrorism or sabotage; and (d) fire and other casualty losses; provided, however, that the suspension of performance in the event of any Force Majeure shall be of no greater scope or of no longer duration than is required, that the non-performing Party shall give the other Party verbal notice of the particulars of the Force Majeure event as soon as possible, confirmed in writing within five (5) days of the giving of verbal notice and that the non-conforming Party shall use commercially reasonable efforts to reduce the scope and duration of the event or to mitigate its effects.

9.2 Effects of Force Majeure. Whenever performance is so affected by such an event, performance shall be reduced by the affected Party in its discretion.

10. MISCELLANEOUS

10.1 NOTICES.

(a) Any notice required or permitted to be given hereunder shall be in writing and shall be deemed to be given if delivered personally; delivered by certified mail, postage prepaid; delivered by a recognized overnight commercial carrier with receipt acknowledged to the following addresses:

The address for Fox Theatre shall be:

Ms. Leigh Burns
Director of Community Partnerships
Fox Theatre
660 Peachtree Street NE
Atlanta, GA 30308

Telephone: (404) 881-2003

The address for Theater shall be as set forth on the signature page attached hereto.

(b) Either Party may change its notice address by notifying the other Party of such change in writing, which shall be effective ten (10) days after the giving of such notice.

(c) Any notice delivered in accordance with this Section 10.1 shall be deemed received on the day of personal delivery, the next business day following delivery by overnight commercial carrier, and the third business day following delivery by certified mail.

(d) Notwithstanding the terms and conditions of this Section 10.1, nothing herein shall limit either Party's ability to take immediate and appropriate action in the case of emergency or in any cases of a deadline by governmental authority or other circumstance of urgency; provided, however, that such Party shall, to the extent reasonably practicable, otherwise comply with the terms of this Section 10.1.

10.2 CONFLICT OF INTEREST. Neither Party nor any director, employee, representative or agent of such Party shall give to or receive from any director, employee, representative or agent of the other Party any commission, fee, rebate, gift, entertainment, or other favor of significant value. Likewise, neither Party nor any director, employee, representative or agent of either Party shall, without prior written notification thereof to the other Party, enter into any business relationship with any director, employee, representative or agent of the other, unless such person is acting for and on behalf of a Party.

10.3 ASSIGNMENT. This Agreement shall not be assignable by either Party without the other Party's prior written consent, which shall not be unreasonably withheld.

10.4 INDEPENDENT CONSULTANT. Fox Theatre shall for all purposes hereunder be an independent consultant of Theater and not an agent of Theater. Nothing contained in this Agreement shall be construed to create any joint venture or any other relationship between the Parties including, but not limited to, an association, trust or partnership or impose a trust or partnership duty, obligation, or liability on or regarding either Party. This Agreement does not create a fiduciary or other similar relationship between Theater and Fox Theatre.

10.5 AMENDMENT. This Agreement (including its Exhibits) may not be amended or modified in any manner except by a written agreement signed by both Parties which expressly amends this Agreement.

10.6 WAIVER. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether similar) nor shall such waiver constitute a continuing waiver unless expressly provided.

10.7 GOVERNING LAW. ANY QUESTION CONCERNING THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF GEORGIA, WITHOUT REGARD FOR PROVISIONS CONCERNING CHOICE OF LAW.

10.8 UNENFORCEABILITY. If any section or provision of this Agreement or any Exhibit shall be determined to be invalid or unenforceable by applicable law, then for such period of time that the same is invalid, it shall be deemed to be deleted from this Agreement and rewritten as a valid and enforceable provision that comes as close as possible to the meaning of the invalid or unenforceable provision.

10.9 THIRD PARTY BENEFICIARIES. There are no intended third-party beneficiaries to this Agreement and nothing in this Agreement shall entitle any person other than Fox Theatre, Theater, or an assignee pursuant to Section 10.3 above, to any claim, cause of action, remedy or right of any kind.

10.10 COUNTERPARTS. This Agreement may be executed in two or more counterparts all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party. Copies of executed counterparts transmitted by telecopy or electronic transmission shall be considered original executed counterparts for purposes of this Section 10.10 if receipt of copies of such counterparts is confirmed.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have caused this Consulting Agreement to be signed by their duly authorized representatives effective as of the Effective Date set forth above.

FOX THEATRE, INC.

By: _____

Name: Allan Vella

Title: President & CEO

[THEATER]

By: _____

Name:

Title:

Address:

EXHIBIT INDEX

- Exhibit A – Services
- Exhibit B – Fees & Expenses
- Exhibit C – Funding Options
- Exhibit D – Marketing
- Exhibit E – Fox in a Box

EXHIBITS

**CITY OF CANTON
Fox Theatre Single-Year Grant Recipient, 2024/2025**

Exhibit A - Services

1. City of Canton in partnership with the Fox Theatre will undertake a project funded by a Preservation Grant to commence upon the completion of this Agreement.

Exhibit B - Fees & Expenses

1. The Fox Theatre will provide assistance and grant funding not to exceed \$20,000.00 for their funding of the project. Any funds that exceed the Fox Theatre investment in this project will be provided by the City of Canton. Any matching funds necessary to complete the project will be provided by City of Canton and are to be provided by a cash match.
2. The funds are provided to the City of Canton (“Contractor”) to perform the scope of work for only the grant project approved. The scope of work is only amended through consultation with the Director of Community Partnerships. The Fox Theatre does not select or approve any vendor for the scope of work. Please inform all vendors that work must meet the stipulations set forth in this Agreement to all “Contractors” and that work must meet the “Secretary of Interior’s Standards for Rehabilitation” unless separately agreed upon by both parties. Note that additional information related to the standards may be found here: <https://www.nps.gov/tps/standards/rehabilitation/rehab/stand.html>.

Exhibit C - Funding Options

1. The Fox Theatre will issue two payments following appropriate documentation provided by the City of Canton. These payments will be on or after the following:

December 1, 2024	\$10,000.00
June 30, 2025	\$10,000.00

Any excess funds that are not applied toward the project (should the project budget change) must be returned to the Fox Theatre if that amount exceeds \$3,000. Please notify the Fox Theatre by May 31, 2025, if project funding changes.

Exhibit D – Marketing

1. The Fox Theatre requires that all organizations receiving funding embrace opportunities to market individual Fox Theatre grants. That should include the following, but not limited to, the following commitments: social media, the venue’s marquee, a performance-distributed program of at least four performances before June 30, 2025, and on the website of the organization. All these activities may commence between October 1, 2024, and June 30, 2025.

Exhibit E – Fox in a Box

1. Our Fox in a Box program is available for your communities, and we require our grantees to take advantage of the in-person (Metro-Atlanta) or virtual version (statewide) through referrals. This free, interactive program is available for K-5 elementary students and focuses on how notable events in the Fox Theatre’s timeline intersect with key classroom lessons.

The Fox Theatre requires that all funded organizations contact a minimum of three elementary schools in their city and/or county and share Fox in a Box information by providing referrals for the program. Organizations must provide evidence of such communication, including copies of emails, with their Final Year Report. For any questions or promotional materials, please contact Maggie Fuller directly (Maggie.Fuller@foxtheatre.org or 404.881.2024).