

CITY OF MARSHALL
AGENDA MEMO

PROJECT: Contract with Canson & Canson for the Birthplace of the Boogie Woogie

MEETING DATE: June 11th, 2015

DESCRIPTION: Per the Commission's request staff has drafted the attached contract with Canson & Canson to provide promotion of the Birthplace of the Boogie Woogie for June 15th through December 31st. The contract was developed to provide direction and deliverables so that the Boogie Woogie program can provide the most economic impact to Marshall. The contract pays Canson & Canson per event.

COST: \$19,200

FUNDING: \$10,500 from HOT
\$8,700 from Main Street Departmental

RECOMMENDED ACTION: Authorize Tourism Director to Execute Contract

CITY CONTACT: Sarah E. O'Brien, Tourism & Promotions Director
Obrien.sarah@marshalltexas.net 903-702-9500

ATTACHMENTS: Contract

THE STATE OF TEXAS

COUNTY OF HARRISON

CONTRACT WITH
CANSON & CANSON, CONSULTANTS FOR
THE BIRTHPLACE OF BOOGIE WOOGIE PROJECT
JUNE 15th, 2015

This Contract and Agreement (“Contract”) for promotion and development of tourism events is made and entered into on the date hereinafter last written by and between the City of Marshall, acting by and through its Tourism & Promotions Director, hereinafter referred to as “CITY” and Jack and Nancy Canson d/b/a Canson & Canson, hereinafter referred to as “CONSULTANT.”

WITNESSETH:

WHEREAS, the City of Marshall has undertaken a comprehensive tourism development and downtown revitalization program; and

WHEREAS, the City of Marshall contracted with a qualified and reputable tourism consultant to prepare a branding, development, and marketing action plan to serve as a guide for the comprehensive tourism development program to promote and increase tourism in Marshall; and

WHEREAS, the purposes of the program are to promote Marshall and draw more visitors to Marshall to increase the number of overnight stays by these visitors; and

WHEREAS, the City of Marshall supports the implementation of this plan and the development and promotion of tourism in Marshall; and

WHEREAS, there are numerous activities in Marshall that support the efforts by the community to draw more visitors and tourists to Marshall and increase the number of overnight stays; and

WHEREAS, the events, programs, and exhibits to develop and promote the Birthplace of Boogie Woogie Project are recognized as important components of the plan to draw more visitors to Marshall and increase the number of overnight stays; and

WHEREAS, the City of Marshall desires to retain the services of Canson & Canson, as a consultant, for the purpose of developing and promoting the Birthplace of Boogie Woogie Project through downtown events to contribute to the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, and dance related to the presentation, performance, execution, and exhibition of this important style of music and for the purpose of preservation of this historical and significant style of music, all with the purpose in mind of using the Birthplace of Boogie Woogie Project more fully as part of the comprehensive marketing and advertising programs to advertise and conduct solicitations and promotional programs to attract tourists and convention delegates to Marshall and its vicinity to enhance and promote tourism and the

hotel and convention industry and contribute to the development and attraction of the historic downtown district of Marshall, thereby increasing the number of overnight stays by tourists and visitors; and

WHEREAS, the City of Marshall desires to use the services of Jack and Nancy Canson to continue to develop and implement a comprehensive program that includes artistic components and historic preservation components for the Birthplace of Boogie Woogie Project to further these purposes; and

WHEREAS, the City of Marshall desires to utilize more fully the Birthplace of Boogie Woogie Project as another component of the comprehensive program for the promotion of the arts and preservation of this historic music genre that relates closely to the history of the community to enhance tourism in Marshall and its vicinity; and

WHEREAS, the City of Marshall finds that the Birthplace of Boogie Woogie Project supports tourism and contributes to the programs that aid in promoting Marshall by providing activities for tourists to engage in, thereby providing opportunities to increase the number of overnight stays by tourists and visitors; and

WHEREAS, it is the desire of the City of Marshall to have this agreement with Canson & Canson for the purpose of developing and implementing the Birthplace of Boogie Woogie program as another component of the activities, programs, and events available to tourists in Marshall with the goal of increasing and extending overnight stays by tourists and visitors in Marshall;

NOW , THEREFORE, for and in consideration of the covenants and agreements herein before expressed and hereinafter set forth, the parties herein do covenant and agree as follows:

I.

CONSULTANT shall commence the services to be furnished and performed under this agreement commencing the date of this contract and ending on the 31st day of December, 2015 unless otherwise stated in Exhibit A.

II.

CONSULTANT agrees to use funds received from the Hotel/Motel Occupancy Tax only for those purposes that are authorized by Chapter 351 of the Texas Tax Code. CONSULTANT covenants and agrees that the approval by the CITY of this contract creates a fiduciary duty in the CONSULTANT to maintain such funds as received from the CITY in a manner consistent with the duties and responsibilities of a fiduciary under Texas law.

III.

In order to fund the service to be rendered by the CONSULTANT necessary to carry out any of such purposes are provided in this Contract, CITY shall pay the CONSULTANT not to exceed \$19,200 as provided for by the City of Marshall. Said payment shall be divided and paid in monthly installments of three thousand and No/100 Dollars (\$3,000.00) per month, and (\$1,200.00) payable on the 1st of July, said amount shall be paid to the CONSULTANT on a monthly basis upon approval by the CITY of the CONSULTANT's monthly request for funds. The CONSULTANT shall submit monthly a request for funds based on activities accomplished as outlined in Exhibit A, which is attached hereto and made a part hereof. The CONSULTANT's request shall be accompanied by an activity report to demonstrate that the expenditures of funds are in strict conformity with this contract and the approved work program outlined in Exhibit A. CONSULTANT shall supplement its report with records and documentation as requested by CITY. CITY or its designated representative shall have complete access to all CONSULTANT records related to this contract at any reasonable time to verify that the expenditures of funds are in strict compliance with this contract and the approved budget and work plan that is attached to this contract as Exhibit A.

IV.

The money paid to CONSULTANT as a result of this Contract and Agreement shall be used for no other purpose or purposes than those enumerated on Exhibit A attached hereto and made a part hereof in the amounts for each program as shown thereon, all in compliance with Chapter 351 of the Texas Tax Code. This contract shall not obligate the CITY for any expenditures of funds beyond the amount set out herein, nor shall it obligate the CITY for the expenditure of funds from any other source of funds save and except as that source is stated in this contract. CONSULTANT shall not assign this contract without the written consent of the CITY, first obtained.

V.

It is further agreed by CONSULTANT that the funds so received by it from the CITY shall be deposited to a special fund and not be deposited to its general checking account, and that the records of its disbursements shall be available at all reasonable times for inspection and audit by the CITY or its duly authorized agents and/or representatives and said records shall be made available for inspection and review upon request by any person. The CONSULTANT agrees to make monthly progress reports to the CITY detailing its efforts to attain the goals as outlined herein.

In addition, before making an expenditure of the funds, the CONSULTANT shall specify in a "list" each scheduled activity, program, or event that is: one, directly funded by the Hotel Occupancy Tax or General Fund or has its administrative costs funded in whole or in part by the tax; and two, is directly enhancing and promoting tourism, and the downtown district CONSULTANT shall provide a copy of the "list" to the CITY, which shall provide a copy of the list to the City Secretary of the City of Marshall. If any changes or modifications are made to the list, a revised list shall be provided to the CITY, which shall then provide a copy of the modified list to the City Secretary of the City of Marshall.

VI.

This Contract and Agreement entered into by CONSULTANT and the CITY may be canceled with or without cause by either party acting through said party's designated representative, by giving ten (10) days prior written notice of such termination to the other party. Upon termination no further amounts shall be due and payable.

VII.

For any violation of this agreement, the CITY may require the CONSULTANT to return all or part of any money provided to CONSULTANT under this agreement. In addition, the CITY reserves any and all remedies available at law, in equity, or under this contract for breach of this agreement.

VIII. Responsibilities of the Parties

CONSULTANT shall undertake and complete the tasks as stated in this Contract, including the attached Exhibit "A", (together referred to hereinafter as the "Contract") and in accordance with all terms and conditions stated therein. All of the Deliverables in the Contract must be completed by December 31, 2015 unless otherwise stated in Exhibit A. If necessary, the final installment will be withheld until all of the Deliverables are completed in a workmanlike, professional manner.

A complete inventory of Boogie Woogie assets and artifacts acquired by CONSULTANT during the periods while under contract with the City that are not included in the balance sheet shall be provided.

CITY designates the Tourism & Promotions Director or his designee to act as CITY's representative with respect to the services to be rendered under this Contract. Such person(s) shall have complete authority to transmit instructions, receive information, and interpret and define CITY's policies and decisions with respect to CONSULTANT's services for the Project.

Upon written request, CITY shall assist CONSULTANT by providing CONSULTANT any requested available information pertinent to the Project including reports and any other data relative to the Project and direction on events.

IX. Indemnification

The CONSULTANT shall protect, indemnify and save harmless the CITY and the CITY's agents, officers, employees, subcontractors, or assigns from all claims and liability due to the acts or omissions of the CONSULTANT, its agents, officers, employees, subcontractors, or assigns in the performance of this Contract. The CONSULTANT also agrees to protect, indemnify and save harmless the CITY and the CITY's agents, officers, employees, subcontractors, or assigns from any

and all expenses, including attorney fees, all court costs and awards for damages, incurred by the CITY or the CITY's agents, officers, employees, subcontractors, or assigns in litigation or otherwise resisting such claims or liabilities as a result of any activities of the CONSULTANT, its agents, officers, employees, subcontractors, or assigns in the performance of this Contract.

X. Controlling Law and Venue

Without regard to any rules on conflicts of law, this Contract shall be subject to and interpreted in conformance with the laws of the State of Texas, unless expressly provided otherwise by federal law or regulations. Venue for any action arising hereunder shall lie exclusively in Harrison County, Texas, for actions in state court and in the Eastern District of Texas, for actions in federal court.

XI. Compliance with Laws

The CONSULTANT shall comply with all Federal, State, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Contract, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the CONSULTANT shall furnish the CITY with satisfactory proof of its compliance therewith.

XII. No Third-party Beneficiaries

Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than CITY and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of CITY and CONSULTANT and not for the benefit of any other party.

XIII. Special Provisions

When engaging in arranging, managing, promoting, or speaking about the Birthplace of Boogie Woogie project or handling any activity that is funded under this contract, CONSULTANT is expected to handle themselves in a professional manner at all times and engage in positive behavior. The CONSULTANT is a representative of the City and must conduct themselves in a community minded manner. The CONSULTANT and the CITY are working toward the same end, which is to help Marshall become a destination sought out for overnight stays to allow people to enjoy the activities that are available in the community. The CONSULTANT shall not make negative comments and expressions of animosity about (a) efforts by individuals and organizations to develop and promote Marshall as a destination for overnight stays,(b) the CITY or City Commission or its members, or (c) any group or entity wishing to utilize Boogie Woogie in product development, event production or promotion.

Any other provisions of this Contract or other documents included by reference herein to the contrary notwithstanding, the following provisions shall apply to this Contract and the respective duties and responsibilities of CITY and CONSULTANT affected thereby:

As to the contractual relationship between CONSULTANT and CITY, CONSULTANT is and shall be considered in all things an independent contractor.

TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE SERVICES UNDER THIS CONTRACT.

XIV. Definition of Deliverables and Ownership of Intellectual Property

The term Deliverables as utilized in this Contract shall mean all promotional items prepared under previous contracts with the CITY, including all power point presentations, movies, video programs, websites, advertising materials, facebook pages, social media information, graphics and specifically those items defined as Deliverables in the attached Exhibit "A" pertaining to event development.

All items of intellectual property completed during the time Canson & Canson was or is under contract with the CITY shall belong to the CITY. This would include all of the Deliverables as well as any items which are subject to trademarks or copyrights, including all social media material, videos, pamphlets, or articles written by CONSULTANT. CONSULTANT agrees to deliver all such items to the CITY and, if necessary, execute the appropriate documents to transfer the intellectual property rights to the CITY or to any other organization, upon request by the CITY.

XV. Exhibits

The following exhibit is attached to and made a part of this Contract:

Exhibit "A", Birthplace of Boogie Woogie Program 2015 Work Plan. However, where the terms and provisions of the above referenced exhibit shall conflict with the terms and provisions of this standard contract, this standard contract shall control.

XVI. Entire Contract

This Contract, together with the exhibit(s) identified in Article 14, constitute the entire Contract between CITY and CONSULTANT and supersede all prior or oral understandings.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed by their respective and appropriate officials on this the ____ day of _____, 2015, to be effective on this date for the term herein provided.

ATTEST:

CITY OF MARSHALL

BY: _____
CITY SECRETARY

BY: _____
CHAIRMAN

JACK AND NANCY CANSON

BY: _____
JACK CANSON

BY: _____
NANCY CANSON

EXHIBIT A
TO CONTRACT AND AGREEMENT
CITY OF MARSHALL, TEXAS
AND CANSON & CANSON
FOR THE
BIRTHPLACE OF BOOGIE WOOGIE PROGRAM
JUNE 15, 2015– DECEMBER 31, 2015

Canson & Canson
3109 Victory Drive Marshall, Texas 75672

Marshall, Texas – Birthplace of Boogie Woogie Program
Outline of Deliverables - June 15, 2015 – December 31, 2015

1. Promotion of all entertainment activity in Downtown Marshall via social media, website, press releases, regional media outlets, and PSA's under supervision of Main Street Director under theme "Music in Marshall, Texas – the Birthplace of Boogie Woogie." This will incorporate all forms of arts, entertainment and events happening in Marshall from July 1st through December 31st, including both public and private events.
 - a. \$300 per Month
2. Organize, Coordinate, Promote and Execute 2nd Saturday Concert Series in cooperation with the 2nd Saturday Car Show, on telegraph stage. The event should be coordinated, promoted and executed by Canson & Canson.
 - a. \$1500 (\$500 for July, August, September)
3. Create a Friday Night and/or Sunday Morning Gospel Brunch event downtown in conjunction with the Fire Ant Festival to attract overnight visitors to the event. Canson & Canson will utilize survey methods so that an economic impact report can be generated to guide future endeavors. The event should be coordinated, promoted and executed by Canson & Canson.
 - a. \$3,000 HOT
4. Create at least three additional weekend evening concert events downtown during the contract period creating opportunities for overnight stays. The event should be coordinated, promoted and executed by Canson & Canson.
 - a. \$2400 (\$800 per event)
5. Coordinate a weekly concert event during Wonderland of Lights on Telegraph Stage. Select Thursday, Friday or Saturday evening. The event should be coordinated, promoted and executed by Canson & Canson.
 - a. \$2500 (\$500 per event) HOT
6. Provide copies of all previously researched and produced the Birthplace of Boogie Woogie Materials to the Tourism & Promotions Director for review.
7. A monthly feature story for the contract period July 1st- December 31st should be created. Feature stories can be reviewed by the Tourism Director and both entities

will work together to distribute to statewide and regional media outlets to generate PR buzz and attract visitors.

- a. \$3,000 (\$500 for each story)
8. Canson & Canson will work directly with the Tourism Director to provide direction on a multi day festival event that will be designed to attract overnight visitor's in the 1st Quarter of 2016. Canson & Canson will be responsible for promotion, planning, coordinating and executing the event. Canson & Canson should utilize survey methods approved by the Tourism Director so that an accurate Economic Impact Report may be compiled by Canson & Canson.
 - a. Value \$5,000. HOT