

AN ORDINANCE APPROVING THE PUBLIC SERVICE AGREEMENT WITH THE VETERANS MEMORIAL GARDEN, INC. FOR MAINTAINING THE BEAUTY OF THE BRANSON VETERANS MEMORIAL GARDEN AND AUTHORIZING THE MAYOR TO EXECUTE THE DOCUMENTS RELATED THERETO.

WHEREAS, the Branson Veteran's Memorial Garden was founded by Ben Kinel in 2007 located on the corner of Roark Valley Road and 76 Country Boulevard that runs solely on donations; and

WHEREAS, the garden is a living landscape high on a hill with four flags flying, a bronze sculpture of World War II soldiers and has compelled many visitors who have driven by through the honoring of Veterans; and

WHEREAS, "flag" is one of the foundation pillars of Branson and the Branson Veterans Memorial Garden has requested financial support from the City to keep this garden thriving and operational for both the citizens and visitors of Branson; and

WHEREAS, the Board of Aldermen desires to partner with the Branson Veterans Memorial Garden by providing financial support.

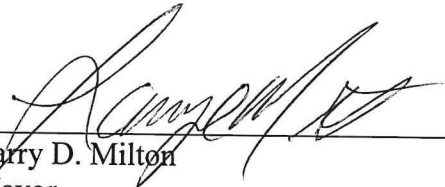
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: The Board of Aldermen hereby approves the Public Service Agreement with the Veterans Memorial Garden, Inc. for maintaining the beauty of the Branson Veterans Memorial Garden as specified in the related specifications and substantial conformity with the terms shown on Exhibit "1" attached in the amount not to exceed \$5,000.00 and incorporated by this reference as set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Administrator, and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.


Read, this first time on this 24th day of September, 2024.

Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this 8th day of October, 2024.



Larry D. Milton
Mayor


ATTEST:



Hillary Briand

City Clerk

APPROVED AS TO FORM:



City Attorney

Office Use Only
MASTER CONTRACT NUMBER:
C2024-0238

**PUBLIC SERVICE AGREEMENT BY AND BETWEEN THE CITY OF BRANSON,
MISSOURI AND THE VETERANS MEMORIAL GARDEN, INC. AGREEMENT**

THIS AGREEMENT, made as of this date, _____, between the City of Branson, a municipal corporation (hereinafter referred to as the “**City**”), and the Veterans Memorial Garden, Inc. (hereinafter referred to as (“**Garden**”).

WHEREAS, municipalities in Missouri are authorized by Section 70.220 RSMo. to contract and cooperate with any private person, firm, association or corporation for the planning, development, or operation of a common service provided that the subject and purposes of any such contract or cooperative action is within the scope of the powers of such municipality; and

WHEREAS, the City has authority to undertake such actions and provide such services as are necessary to provide for and promote the public health, safety, and general welfare of the City and its citizens; and

WHEREAS, the City desires to provide certain services and programs as outlined in this Agreement that serve and promote the public health, safety, and general welfare; and

WHEREAS, it is in the best interests of the City to utilize the services of the Garden to provide paid services and programs in the community and the Garden desires to be engaged to perform said services and programs for the City; and

WHEREAS, the Garden shall feature maintain the garden in its state of beauty to enhance the veterans memorial sculptures that enhance the continued support of the City for members of the armed forces who served our country; and

WHEREAS, the garden highlights the honorable service of the veterans to this country; and

WHEREAS, the City is a world-class city devoted to tourism and patriotism; and

WHEREAS, the City recognizes the need, honors the sacrifice, and appreciates the service of those who serve and have served our military; and

WHEREAS, the City is proud to employ 46 Veterans who have or are currently serving in our country's military and we are honored to have their continued service to our local community through their varying roles at the City of Branson; and

WHEREAS, the garden should continue to bring people to the area thereby enhancing tourism in the City; and

WHEREAS, the event is an opportunity to honor the noble service the military in the City; and

WHEREAS, the Garden is and has been a verified IRC Section 501(c)(3) dedicated to honoring veterans through the garden; and

WHEREAS, the Board of Aldermen has authorized expenditure of the City's general funds to the Garden for expenses incurred for maintaining the garden, such funds not in any case to exceed five thousand dollars (\$5,000.00).

NOW, THEREFORE, for the consideration herein expressed the City agrees to commit five thousand dollars (\$5,000.00) for the garden expenses relating to the Branson Veterans Memorial Garden.

1. **SERVICES AND PROGRAM.** The Garden shall provide the services identified in Exhibit A.
2. **PAYMENT.** The City shall pay an amount not to exceed Five Thousand Dollars and no cents (\$5,000.00) to the Garden for the services noted on Exhibit A as "City Funded" to be used by the Garden during the term of the Agreement. The City shall deliver to the Garden a memorandum detailing the specific funding source, funding amount, and allowable uses of the funds for the services to be provided. Upon approval by the Garden, funds may be deposited by the City with the Garden and utilized only for the stated purposes. In addition to the payment by the City to the Garden for the services, the City shall provide general administrative staff assistance to the Garden from time-to-time as additional consideration for the Garden providing the services identified in Exhibit A.
3. **RELATIONSHIP OF THE PARTIES.** This Agreement does not create a joint venture, partnership or any other relationship between the parties. It is the express purpose of this Agreement to memorialize a one time, non-renewable conveyance of funds from the City of Branson to the Garden for the Branson Veterans Memorial Garden. It is understood that all permits required by the City if applicable will need to be obtained.
4. **LIABILITY AND INDEMNITY.** The parties mutually agree to the following:
 - a. In no event shall the City be liable to the Garden for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this Agreement. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this Agreement.
 - b. The Garden shall defend, indemnify, and hold the City harmless from and against all claims, losses, and liabilities arising out of personal injuries, including death, and damage to property which are caused by, associated with or in any way connected to the Branson Veterans Memorial Garden and/or any entities or individuals associated with or participating in the Branson Veterans Memorial Garden. The Garden further agrees to defend, indemnify, and hold the City harmless from and against any claims, losses and liabilities arising out of the award of this Agreement to the Garden.
5. **INSURANCE.** The Garden shall procure and maintain all insurance (if applicable) to satisfy requirements, and to protect the City from any liability exposure resulting from Branson Veterans Memorial Garden.
6. **TERM OF AGREEMENT.** The term of this Agreement shall commence on the execution date of this Agreement to a date ending one year after the execution date contingent upon annual budget appropriations.

7. **TERMINATION OF AGREEMENT.** The parties mutually agree to the following:

- a. Termination for breach. Failure of the Garden to fulfill their obligations under this Agreement in a timely and satisfactory manner shall constitute a breach of the Agreement, and the City shall thereupon have the right to immediately terminate the Agreement. The City shall give written notice of termination to the Garden by U.S. mail or by hand delivering a copy of the same. City shall be refunded the full amount of all monies paid by the City in the event that City terminated this Agreement. The Garden shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the Agreement.
- b. Right to terminate in the absence of breach. The City may terminate this Agreement for any reason, by serving notice of intent to terminate upon the Garden by the means specified in the preceding paragraph. Such notice shall specify the date of termination, but in no event shall the City terminate the Agreement under this provision upon less than thirty (30) days' notice to the Garden.
- c. Surviving Terms. Notwithstanding any provisions to the contrary, provisions pertaining to liability and indemnity shall survive the termination of this Agreement.

8. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto and signed by both parties.

9. **RECORDS.** The Garden shall maintain records documenting the services provided pursuant to this Agreement, including an itemization of the work performed and an accounting of funds expended. A copy of said records shall be provided to the City by the Garden, upon request by the City.

10. **SEVERABILITY.** If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. **CONSENT.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

12. **NOTICE.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

City of Branson
Attn: City Administrator
110 W. Maddux Street
Suite 210
Branson, MO 65616

Veterans Memorial Garden, Inc.
Jana Evans
3000 Green Mountain Drive, Suite 107
Box 132
Branson, MO 65616

13. **ATTORNEY'S FEE.** The parties agree that if the enforcement of this Agreement is turned over to an attorney, the prevailing party shall be entitled to have their reasonable attorney's fee paid by the other party.
14. **VENUE.** The parties agree that venue of any claims, disputes, causes of action, and suits concerning or arising out of the terms, conditions, provisions, obligations, requirements, or duties of either party under this Agreement shall be the Circuit Court of Taney County, Missouri.
15. **MISSOURI IMMIGRATION LAW AFFIDAVIT.** Pursuant to 285.530.2 of the Missouri Revised Statutes, the Garden agrees to provide the City a signed affidavit stating that the Garden does not knowingly employ any person who is an unauthorized alien in connection with this contract.
16. **COMPLIANCE WITH LAWS.** The Garden shall comply with all applicable state and federal laws and City ordinances in providing the services pursuant to this Agreement.
17. **COUNTERPARTS AND SIGNATURE.** The Agreement may be executed in counterparts. The delivery of signatures to this Agreement by facsimile transmission and/or electronic verified shall be binding as original signatures.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

THE CITY OF BRANSON, MISSOURI

Larry D. Milton
Mayor

Date

VETERANS MEMORIAL GARDEN, INC.

Signed by:
By: Jana Evans 9/17/2024
77DE26C523C0496
(Signature) Date

ATTEST:

Hillary Briand
City Clerk

Date

DocuSigned by:
By: DMall 9/17/2024
FD32G562E83G4EA
(Signature) Date

APPROVED AS TO FORM

Signed by:

261AD63D59A4441 9/16/2024
City Attorney Date

EXHIBIT A

Maintain the beauty of the Branson Veterans Memorial Garden throughout the growing seasons.