

Office Use Only

MASTER CONTRACT NUMBER:

C2023-0165

**PUBLIC SERVICE AGREEMENT BY AND BETWEEN THE CITY OF BRANSON,
MISSOURI AND THE SPIRIT OF AMERICA ART MUSEUM, 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 Spirit of America Art Museum, Incorporated (hereinafter referred to as (“SAAMI”).

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 SAAMI to provide paid services and programs in the community and SAAMI desires to be engaged to perform said services and programs for the City; and

WHEREAS, SAAMI shall feature America’s Wall of Honor with the Spirit of America Patriot Village during Veteran’s Week in Branson on or about the week of November 5th through 12th, 2023; and

WHEREAS, the event highlights the honorable service of first responders and 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 recognizes the need, honors the sacrifice, and appreciates the service of those who serve and have served for our Police Department; and

WHEREAS, the City recognizes the need, honors the sacrifice, and appreciates the service of those who serve and have served for our Fire Department; 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 event should bring many people to the area thereby enhancing tourism in the City; and

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

WHEREAS, SAAMI is and has been since 2019 a verified IRC Section 501(c)(3) dedicated to honoring through the art display and production of America's Wall of Honor; and

WHEREAS, the Board of Aldermen has authorized expenditure of the City's general funds to the SAAMI for expenses incurred for advertising, marketing and production of America's Wall of Honor, such funds not in any case to exceed one hundred thousand dollars (\$100,000.00).

NOW, THEREFORE, for the consideration herein expressed the City agrees to commit one hundred thousand dollars (\$100,000.00) for advertising, marketing and production expenses relating to America's Wall of Honor with the Spirit of America Patriot Village.

1. **SERVICES AND PROGRAM.** SAAMI shall provide the services and programs, identified in Exhibit A, during the week of Veteran's Day.
2. **PAYMENT.** The City shall pay an amount not to exceed One Hundred Thousand Dollars and no cents ("(\$100,000.00) to SAAMI for the services noted on Exhibit A as "City Funded" to be performed by SAAMI during the term of the Agreement. The City shall deliver to SAAMI a memorandum detailing the specific funding source, funding amount, and allowable uses of the funds for the services to be provided. Upon approval by SAAMI, funds may be deposited by the City with SAAMI and utilized only for the stated purposes. In addition to the payment by the City to SAAMI for the services, the City shall provide general administrative staff assistance to SAAMI from time-to-time as additional consideration for SAAMI providing the services and programs 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 SAAMI for the America's Wall of Honor with the Spirt of America Patriot Village. 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 SAAMI 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 SAAMI 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 America's Wall of Honor with the Spirt of America Patriot Village and/or any entities or individuals associated with or participating in the America's Wall of Honor with the

Spirit of America Patriot Village. SAAMI 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 SAAMI.

5. **INSURANCE.** The SAAMI shall procure and maintain all insurance (if applicable) to satisfy requirements, and to protect the City from any liability exposure resulting from America's Wall of Honor with the Spirit of America Patriot Village.
6. **TERM OF AGREEMENT.** The term of this Agreement shall commence on the date above and shall end on July 1, 2024.
7. **TERMINATION OF AGREEMENT.** The parties mutually agree to the following:
 - a. Termination for breach. Failure of the SAAMI 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 SAAMI 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 SAAMI 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 SAAMI Association 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 SAAMI.
 - 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.** SAAMI 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 SAAMI, 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

America's Wall of Honor
Dan Stuenzi
4917 F Street
Omaha, NE 68117

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 SAAMI agrees to provide the City a signed affidavit stating that the SAAMI does not knowingly employ any person who is an unauthorized alien in connection with this contract.
16. **COMPLIANCE WITH LAWS.** SAAMI shall comply with all applicable state and federal laws and City ordinances in providing the services pursuant to this Agreement.
17. **MISSOURI IMMIGRATION LAW AFFIDAVIT.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.
18. **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

ATTEST:

Hillary Briand
City Clerk

Date

SPIRIT OF AMERICA ART MUSEUM, INC.

By: DocuSigned by:
Daniel P. Stuenzi 7/20/2023
98899792A0E54E7...
(Signature) Date

By: DocuSigned by:
Scott Berryman 7/20/2023
B37B3D247E4B460...
(Signature) Date

APPROVED AS TO FORM

DocuSigned by:
[Signature] 7/20/2023
261AD63D59A4441...
City Attorney Date

EXHIBIT A

America's Wall of Honor with the Spirit of America Patriot Village during the preferred week of Veteran's Day in November, 2023.