

AGREEMENT FOR VETERANS MEMORIAL MUSEUM

THIS AGREEMENT is made and entered into this 12th day of September, 2017, between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as the "COUNTY," and the Veterans Memorial Museum, a non-profit public benefit corporation, hereinafter referred to as "VETERANS MUSEUM."

WITNESSETH:

WHEREAS, the VETERANS MUSEUM is an association of those whose valor has been recognized by award of our nation's two highest decorations: The Medal of Honor of the Navy, Army or Air Force; or the Army Distinguished Service Cross, Navy Cross or Air Force Cross; and

WHEREAS, organized on April 23, 1890, the VETERANS MUSEUM is the nation's senior organization of veterans chartered by public law 224, an act of Congress, and approved by the President on August 4, 1955; and

WHEREAS, the VETERANS MUSEUM operates the Fresno Veteran's Memorial Building, which is physically located at 2425 Fresno Street, Fresno, California, and is dedicated to displaying objects associated with our country's wars of the past; and

WHEREAS, since its beginning, the VETERANS MUSEUM has concentrated on recognizing all military veterans of all wars, with emphasis on those that have either joined the service from Fresno County, or presently reside here; and

WHEREAS, a corridor of flags recognizing each of the U.S. Military Services and Fresno County veterans groups has been put on display along the entry to the Fresno Veteran's Memorial Building and a "Lobby of Honor" displays medals with a listing of the Fresno County recipients; and

WHEREAS, the COUNTY is desirous of honoring Fresno County's veterans and preserving its military history through partially funding the VETERANS MUSEUM herein.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

I. VETERANS MUSEUM's DUTIES

A. The VETERANS MUSEUM will devote and expend the COUNTY's funds herein for the promotion, improvement, operation or maintenance of the Veteran's Memorial Building located in Fresno, California, with the continued recognition of all veterans of all wars with

1 special emphasis for those that have either joined the service from Fresno County or presently
2 reside here. VETERANS MUSEUM shall keep records of expenditures related to the
3 aforementioned activities.

4 II. COUNTY'S DUTIES

5 A. COUNTY shall provide funding to the VETERANS MUSEUM in the amount
6 of \$20,000. Said amount shall be paid upon execution of this Agreement and receipt of a valid and
7 proper invoice sent to: The Fresno County Administrative Office, 2281 Tulare Street, Room 304,
8 Fresno, CA 93721.

9 III. AUDITS AND INSPECTIONS

10 The VETERANS MUSEUM shall at any time during business hours, and as often as
11 the COUNTY may deem necessary, make available to the COUNTY for examination all of its
12 records and data with respect to the matters covered by this Agreement. The VETERANS
13 MUSEUM shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of
14 such records and data necessary to ensure that the VETERANS MUSEUM is in compliance with
15 the terms of this Agreement.

16 If this Agreement exceeds Ten Thousand and No/100 Dollars (\$10,000.00), VETERANS
17 MUSEUM shall be subject to the examination and audit of the Auditor General for a period of three
18 (3) years after final payment under contract (Government Code Section 8546.7).

19 IV. INDEPENDENT CONTRACTOR

20 In performance of the work, duties and obligations assumed by VETERANS
21 MUSEUM under this Agreement, it is mutually understood and agreed that VETERANS MUSEUM,
22 including any and all of the VETERANS MUSEUM'S officers, agents, employees, and volunteers
23 will at all times be acting and performing as an independent contractor, and shall act in an
24 independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or
25 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or
26 direct the manner or method by which the VETERANS MUSEUM shall perform its work and
27 function. However, COUNTY shall retain the right to administer this Agreement so as to verify that
28 the VETERANS MUSEUM is performing its obligations in accordance with the terms and

1 conditions thereof. VETERANS MUSEUM and COUNTY shall comply with all applicable
2 provisions of law and the rules and regulations, if any, of governmental authorities having
3 jurisdiction over matters the subject thereof.

4 Because of its status as an independent contractor, VETERANS MUSEUM waives
5 any and all employment rights and benefits available to County employees. VETERANS MUSEUM
6 shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-
7 required employee benefits. In addition, VETERANS MUSEUM shall be solely responsible and
8 save COUNTY harmless from all matters relating to payment of VETERANS MUSEUM'S
9 employees, including compliance with Social Security, withholding, and all other regulations
10 governing such matters. It is acknowledged that during the term of this Agreement, VETERANS
11 MUSEUM may be providing services to others unrelated to the COUNTY or to this Agreement.
12 VETERANS MUSEUM hereby represents and warrants to COUNTY that all personnel staff
13 presently, and for the foreseeable future, performing duties at the VETERANS MUSEUM are
14 volunteers and as such, neither receive nor have any reasonable expectation of receiving any
15 benefits that are made available to COUNTY employees.

16 V. INSURANCE PROVIDED BY CONTRACTOR

17 Without limiting the COUNTY's right to obtain indemnification from VETERANS
18 MUSEUM or any third parties, VETERANS MUSEUM, at its sole expense, shall carry such policies
19 of insurance in sufficient amounts to cover VETERANS MUSEUM's liabilities relating to General
20 Liability and Worker's Compensation.

21 VI. INDEMNIFICATION

22 The VETERANS MUSEUM shall hold the COUNTY, its officers and employees,
23 harmless, and indemnify and defend the COUNTY, its officers and employees, from any and all
24 costs and expenses (including attorneys fees and costs) claims, suits, damages, and losses
25 occurring or resulting to any person, firm, or corporation who may be injured or damaged by the
26 VETERANS MUSEUM, its officers, employees, volunteers or subcontractors, in connection with
27 the VETERANS MUSEUM's performance of or failure to perform this Agreement. The provisions of
28 this Section VI shall survive the termination of this Agreement.

1 VII. MODIFICATION

2 This Agreement may be amended with the mutual written consent of the parties
3 hereto.

4 VIII. TERM AND TERMINATION

5 A. Term - The term of this Agreement shall be from October 1, 2017, to and
6 including June 30, 2018, unless it is earlier terminated as provided herein.

7 B. Termination - Non-Allocation of Funds - The terms of this Agreement, and
8 the services to be provided hereunder, are contingent on the approval of funds by the appropriating
9 government agency. Should sufficient funds not be allocated, the services provided may be
10 modified, or this Agreement terminated at any time by giving the VETERANS MUSEUM thirty (30)
11 days advance written notice.

12 C. Termination – Without Cause - This Agreement may be terminated by either
13 of the parties upon the giving of thirty (30) days written notice to the other party prior to the date of
14 termination.

15 D. Breach - COUNTY, upon giving written notice to VETERANS MUSEUM, may
16 immediately suspend or terminate this Agreement in whole or in part, where in the determination of
17 COUNTY there is on the part of VETERANS MUSEUM any of the following:

- 18 1. An illegal or improper use of funds;
19 2. A failure to comply with any term of this Agreement;
20 3. A substantially incorrect or incomplete report submitted to COUNTY; or
21 4. Improperly performed service.

22 In no event shall any payment by COUNTY to VETERANS MUSEUM under this
23 Agreement constitute a waiver by COUNTY of any breach of this Agreement by VETERANS
24 MUSEUM, or any default which may then exist on the part of VETERANS MUSEUM. Neither shall
25 such payment impair or prejudice any remedy available to COUNTY with respect to the breach or
26 default. COUNTY shall have the right to demand of VETERANS MUSEUM the repayment to
27 COUNTY of any funds disbursed to VETERANS MUSEUM under this Agreement, which in the
28 judgment of COUNTY were not expended in accordance with the terms of this Agreement.

1 VETERANS MUSEUM shall promptly refund any such funds upon demand.

2 E. Return of COUNTY funds. Notwithstanding anything to the contrary in this
3 Agreement, in the event of any early termination of this Agreement, VETERANS MUSEUM shall,
4 within thirty (30) days thereof, return to COUNTY the prorated portion of COUNTY funds that
5 COUNTY has provided herein to VETERANS MUSEUM, based on the remaining number of full
6 months that otherwise would have accrued during the term of this Agreement.

7 IX. ASSIGNMENT

8 The VETERANS MUSEUM may not assign or transfer its rights, or delegate,
9 transfer, or sub-contract its obligations, under this Agreement, unless authorized in writing by
10 COUNTY.

11 X. DISCLOSURE OF SELF-DEALING TRANSACTIONS

12 Members of the VETERANS MUSEUM's board of directors shall disclose any self-
13 dealing transactions that they are a party to while VETERANS MUSEUM is providing goods or
14 performing services under this Agreement. A self-dealing transaction shall mean a transaction to
15 which the VETERANS MUSEUM is a party and in which one or more of its directors has a material
16 financial interest. Members of the VETERANS MUSEUM board of directors shall disclose any self-
17 dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction*
18 *Disclosure Form* (**Exhibit A**, which is attached hereto and incorporated herein by this reference)
19 and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
20 immediately thereafter.

21 XI. GOVERNING LAW

22 Venue for any action arising out of or relating to this Agreement shall only be in
23 Fresno County, California.

24 The rights and obligations of the parties and all interpretation and performance of
25 this Agreement shall be governed in all respects by the laws of the State of California.

26 XII. ENTIRE AGREEMENT

27 This Agreement constitutes the entire Agreement between the VETERANS
28 MUSEUM and COUNTY with respect to the subject matter hereof and supersedes all previous

1 negotiations, proposals, commitments, writings, advertisements, publications, and understandings
2 of any nature whatsoever unless expressly included in this Agreement.

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1 IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year
2 first hereinabove written.

3 VETERANS MEMORIAL MUSEUM

COUNTY OF FRESNO

4
5 BY: Robert E. Spicht

BY: Brian Pacheco

6 TITLE: CEO / Director

Brian Pacheco
Chairman
Board of Supervisors

7 Mailing Address:
8 2425 Fresno Street
9 Fresno, CA 93721

10 APPROVED AS TO LEGAL FORM:

ATTEST:

11 Daniel C. Cederborg
12 County Counsel

Bernice Seidel, Clerk
Board of Supervisors

13 BY: James J. Lund

14 BY: Susan Bishop, Deputy

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17 APPROVED AS TO ACCOUNTING FORM:

18 Oscar Garcia, CPA
19 Auditor-Controller/Treasurer-Tax Collector

20 BY: Oscar J. Garcia

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23 FUND: 0001
24 SUBCLASS 10000
25 BUDGET: 2540
26 ACCOUNT: 7845
27 FISCAL YEAR: 2018
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