

# **AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into this 18th day of June, 2019, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and the Veterans Memorial Museum, a non-profit public benefit corporation, whose address is 2425 Fresno Street, Fresno, California 93721, hereinafter referred to as "CONTRACTOR".

## **WITNESSETH:**

WHEREAS, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 desires to honor Fresno County's veterans and preserve its military history through partially funding the CONTRACTOR herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

## **1. OBLIGATIONS OF THE CONTRACTOR**

A. The CONTRACTOR will devote and expend the COUNTY's funds herein for the

1 promotion, improvement, operation or maintenance of the Veteran's Memorial Building located in Fresno,  
2 California, with the continued recognition of all veterans of all wars with special emphasis for those that  
3 have either joined the service from Fresno County or presently reside here. CONTRACTOR shall keep  
4 records of expenditures related to the aforementioned activities.

5       2.     OBLIGATIONS OF THE COUNTY

6             A.     COUNTY shall provide funding to the CONTRACTOR in the amount of \$20,000.  
7 Said amount shall be paid following execution of this Agreement, allocation of adequate funds by the  
8 Board of Supervisors for the fiscal year beginning July 1, 2019, and receipt of a valid and proper invoice  
9 sent to: The Fresno County Administrative Office, 2281 Tulare Street, Room 304, Fresno, CA 93721.

10       3.     TERM

11             The term of this Agreement shall be from July 1, 2019, to and including June 30, 2020, unless it is  
12 earlier terminated as provided herein. The County Administrative Officer or his or her designee is  
13 authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S satisfactory  
14 performance.

15       4.     TERMINATION

16             A.     Non-Allocation of Funds - The terms of this Agreement, and the services to  
17 be provided hereunder, are contingent on the approval of funds by the appropriating government  
18 agency. Should sufficient funds not be allocated, the services provided may be modified, or this  
19 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written  
20 notice.

21             B.     Breach of Contract - The COUNTY may immediately suspend or terminate this  
22 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 23                     1)     An illegal or improper use of funds;  
24                     2)     A failure to comply with any term of this Agreement;  
25                     3)     A substantially incorrect or incomplete report submitted to the COUNTY;  
26                     4)     Improperly performed service.

27             In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach  
28 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such

1 payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default.  
2 The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any  
3 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were  
4 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund  
5 any such funds upon demand.

6 C. Without Cause - Under circumstances other than those set forth above, this  
7 Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an  
8 intention to terminate to CONTRACTOR.

9 5. COMPENSATION/INVOICING: COUNTY agrees to pay CONTRACTOR and  
10 CONTRACTOR agrees to receive compensation as follows: \$20,000 (twenty thousand dollars).

11 In no event shall services performed under this Agreement exceed \$20,000 during the term of this  
12 Agreement. It is understood that all expenses incidental to CONTRACTOR'S performance of services  
13 under this Agreement shall be borne by CONTRACTOR.

14 6. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations  
15 assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that  
16 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all  
17 times be acting and performing as an independent contractor, and shall act in an independent capacity and  
18 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.  
19 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which  
20 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer  
21 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the  
22 terms and conditions thereof.

23 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and  
24 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

25 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right  
26 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable  
27 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In  
28 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating

1 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all  
2 other regulations governing such matters. It is acknowledged that during the term of this Agreement,  
3 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

4 7. MODIFICATION: Any matters of this Agreement may be modified from time to time by the  
5 written consent of all the parties without, in any way, affecting the remainder.

6 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement  
7 nor their rights or duties under this Agreement without the prior written consent of the other party.

8 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at  
9 COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and  
10 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or  
11 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its  
12 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including  
13 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,  
14 or corporation who may be injured or damaged by the performance, or failure to perform, of  
15 CONTRACTOR, its officers, agents, or employees under this Agreement.

16 10. INSURANCE

17 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third  
18 parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, policies of insurance in  
19 sufficient amounts to cover CONTRACTOR's liabilities related to General Liability, Automobile and  
20 Worker's Compensation. This insurance shall not be cancelled or changed without a minimum of thirty (30)  
21 days advance written notice given to COUNTY.

22 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,  
23 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the  
24 foregoing policies, as required herein, to the County of Fresno, County Administrative Officer, 2281 Tulare  
25 Street, Room 304, Fresno, California 93721 stating that such insurance coverage have been obtained and  
26 are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for any  
27 premiums on the policies and that this insurance shall not be cancelled or changed without a minimum of  
28 thirty (30) days advance, written notice given to COUNTY.

1 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein  
2 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this  
3 Agreement upon the occurrence of such event.

4 All policies shall be issued by admitted insurers licensed to do business in the State of California,  
5 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A  
6 FSC VII or better.

7 11. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during business  
8 hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination  
9 all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR  
10 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data  
11 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

12 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to  
13 the examination and audit of the California State Auditor for a period of three (3) years after final payment  
14 under contract (Government Code Section 8546.7).

15 12. NOTICES: The persons and their addresses having authority to give and receive notices  
16 under this Agreement include the following:

17 COUNTY

18 County of Fresno  
19 County Administrative Officer  
20 2281 Tulare Street, Room 304  
21 Fresno, CA 93721

CONTRACTOR

Veterans Memorial Museum  
2425 Fresno Street  
Fresno, CA 93721

21 All notices between the COUNTY and CONTRACTOR provided for or permitted under this  
22 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by  
23 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by  
24 personal service is effective upon service to the recipient. A notice delivered by first-class United States  
25 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,  
26 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one  
27 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,  
28 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by

1 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is  
2 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the  
3 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the  
4 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section  
5 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,  
6 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,  
7 beginning with section 810).

8 13. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall  
9 only be in Fresno County, California.

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

12 14. DISCLOSURE OF SELF-DEALING TRANSACTIONS

13 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit  
14 or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status  
15 to operate as a corporation.

16 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions  
17 that they are a party to while CONTRACTOR is providing goods or performing services under this  
18 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party  
19 and in which one or more of its directors has a material financial interest. Members of the Board of  
20 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a  
21 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and incorporated herein by  
22 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or  
23 immediately thereafter.

24 15. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the  
25 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous  
26 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and  
27 understanding of any nature whatsoever unless expressly included in this Agreement.

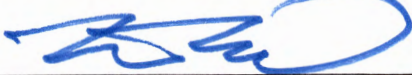
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year  
2 first hereinabove written.

3  
4 VETERANS MEMORIAL MUSEUM

COUNTY OF FRESNO

5   
6 (Authorized Signature)

  
Nathan Magsig, Chairman of the Board of  
Supervisors of the County of Fresno

7 CEO/Director Bob Specht

8 Print Name & Title

9 Veterans Memorial Museum

10 2425 Fresno Street, Fresno,

11 California 93721

12 Mailing Address

13 ATTEST:  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

14  
15  
16 By:   
17 Deputy

18  
19  
20  
21  
22  
23  
24 FOR ACCOUNTING USE ONLY:

25 ORG No.: 2540

26 Fund No. 0001

27 Subclass No. 10000

28 Account No.: 7845

Requisition No.: