

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH ELKS LODGE #2517 FOR ONGOING MAINTENANCE AND ASSISTANCE RELATED TO THE PROPOSED VETERAN'S MEMORIAL PROJECT.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby authorizes the Mayor to sign an agreement with Elks Lodge #2517 under substantially the same or similar terms and conditions as set forth in "Exhibit A".

Section 2. The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance and Contract.

Section 3. This Ordinance shall be in full force and effect from date of passage and approval by the Mayor.

READ FIRST TIME: September 5, 2024 READ SECOND TIME: September 19, 2024

I hereby certify that the above Ordinance No. 24.60 was duly passed on September 19, 2024, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: 5 Nays: 0 Abstain: 0 Absent: 1

This Ordinance is hereby transmitted to the Mayor for his signature.

9/19/24
Date

Tara Berreth
Tara Berreth, City Clerk

Approved as to form:

Cole Bradbury
Cole Bradbury, City Attorney

I hereby approve Ordinance No. 24.60.

9/19/24
Date

Michael Harmison
Michael Harmison, Mayor

ATTEST:

Tara Berreth
Tara Berreth, City Clerk

EXHIBIT A



CITY OF OSAGE BEACH VETERANS MEMORIAL AGREEMENT

THIS VETERANS MEMORIAL AGREEMENT (the "Agreement") states the terms and conditions that govern the contractual relationship between the City of Osage Beach, Missouri ("**City**") and Elks Lodge #2517 ("**Lodge**"), on the following terms.

I. TERMS

1. **Purpose.** City and Lodge are entering into this agreement to construct a veterans memorial. This agreement shall assign the responsibilities therefor.

- a. "**Memorial**" shall mean a veteran's memorial to be constructed in the roundabout in front of City Hall located at 1000 City Parkway, Osage Beach, Mo. Said memorial will consist of 6 flags representing the 6 branches of the military, 2 statues depicting and/or representing the military and a headstone that will commemorate the memorial. There will be approximately 2000 individual bricks engraved with the name and military branch honoring those who served. Room for expansion will be provided if needed and necessary. It will also include two benches for seated viewing and the memorial will be ADA accessible.

2. Lodge's Obligations.

- a. *Donations.* Lodge hereby agrees to donate the following components of the Memorial to the City:
 - i. Two statues depicting and/or representing the military through multiple decades (estimated value: \$20,000);
 - ii. A headstone that will commemorate the Memorial (estimated value: \$1,500);
 - iii. Six flag poles and six flags representing the six branches of the military (estimated value: \$5,200);
 - iv. Replacement flags on an as-needed basis in perpetuity;
 - v. One thousand blank pavers for the project (estimated value: \$1,400);
- b. *Brick Program.* Lodge will make a brick engraving program available to any member of the military no matter their affiliation with the Lodge. Lodge will donate all such bricks to the City to be installed in the Memorial.

- i. The program details have been made available to the City and any changes thereto shall be first approved by the City. The brick engraving program will allow the Elks Lodge to offset their cost for the bricks that will be donated to the City and offset the cost of replacement flags provided to the city on an as needed basis.
 - ii. The parties agree that the brick program is for the sole purpose of honoring veterans. Because the bricks will constitute government speech, *see Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), the City shall have the authority to reject any bricks inconsistent with the parties' stated purpose of honoring veterans.
- c. *Professionalism.* Lodge will exercise the care and skill ordinarily used by members of the subject profession practicing under similar circumstances (as defined by the appropriate licensing authority, professional standards, and/or relevant industry practices). Lodge understands that it may be perceived as a partner of the City and will ensure its personnel and any subcontractors will conduct themselves in a thoroughly professional and respectable manner while performing its obligations under this Agreement and while on-site. Lodge shall ensure its personnel and any subcontractors comply with all City policies while on-site. Lodge and its personnel and any subcontractors will comply with all reasonable instructions and requests by the City. City property and resources are to be used only in ways that are consistent with their lawful intended purpose.
- d. *Time.* If a specific time of performance of any obligation is provided, that time shall control. If a specific time of performance is not provided, Lodge's obligation to perform such obligation will be for a period which may reasonably be required for the completion thereof. If City has requested changes in the scope or character of the obligation and a specific time was not included in such changes, the time for performance shall be adjusted equitably.
- e. *Licenses, Permits, Taxes.* Lodge must have or obtain a City merchant's license. Lodge shall be responsible for applying for, obtaining, and maintaining all licenses, permits, and other approvals required for itself, including but not limited to the subject matter of this Agreement. Lodge shall be responsible for paying all sales, income, property, and other taxes required to carry on its business.
- f. *Communication.* Lodge will provide timely replies to City's inquiries and requests for information. Lodge's point of contact for this Agreement is: _____
_____.

3. City's Obligations.

- a. *Construction.* City shall be responsible for the following aspects of the Memorial:
 - i. Engineering and construction not otherwise provided by the Lodge;
 - ii. Demolition, grading, and site preparation;
 - iii. General maintenance of the Memorial;
 - iv. All utility costs associated with the Memorial;
 - v. General security of the Memorial.
- b. *Criteria and Direction.* City will provide Lodge with all criteria and full information as to City's requirements under this Agreement, including objectives, design, capacity, performance, and budgetary requirements and limitations.
- c. *Cooperation.* City will examine alternative solutions, reports, drawings, specifications, and other documents presented by Lodge and render timely decisions pertaining to the documents. City will participate in conferences, meetings, bid openings, and other similar actions in furtherance of this Agreement as requested by Lodge.
- d. *Permitting and Approvals.* City will provide timely reviews, approvals, licenses, and permits from where it has jurisdiction over components or phases of the work performed under this Agreement. Such approvals are contingent upon Lodge meeting the requirements therefor.
- e. City will provide timely replies to Lodge's inquiries and requests for information. City's point of contact for this Agreement is: April White, Assistant City Administrator.

II. STANDARD CONDITIONS

The following conditions are standard in all City of Osage Beach contracts and are only to be modified with substantial justification, and then only as much as necessary to accommodate such justification.

- 4. **Appropriations.** The continuation of this Agreement is contingent upon annual appropriation of funds by the Osage Beach Board of Aldermen. In the event the Board of Aldermen shall not budget and appropriate, specifically with respect to this Agreement, on or before January 1, subsequent years of the contract moneys sufficient to make all payments under this Agreement, the City shall not be obligated to make those payments.
- 5. **Pre-Contract Expense.** The City shall not be obligated to pay or liable for any cost incurred by Lodge prior to execution of this Agreement. All costs to prepare and submit a response to this and any other RFQ, RFP, or IFB shall be borne by the proposer.

6. **Assignment or Transfer.** Neither this Agreement, nor any portion thereof, shall be transferred or assigned without formal written approval by the City.
7. **Discrimination Policy.** The City of Osage Beach advises the public that it does not discriminate on the basis of disability, race or color, national origin, religion, age, or sex in employment or the provision of municipal services. Lodge shall not discriminate on any prohibited basis and shall comply with all applicable employment laws.
8. **Laws, Ordinances, and Regulations.** Lodge shall conform to all Federal, State, and local regulations, ordinances, and laws applicable to Lodge, the City, or the subject matter of this Agreement. The City shall not be responsible for any fees, charges, money, or other obligations due as result of from any service provided under this Agreement. Lodge shall conform to all changes made to this Agreement as a result of any ordinance, law and/or directive issued by the Federal, State, or local authority having jurisdiction over this Agreement, Lodge, or the City.
9. **Certifications Regarding Debarment.** Lodge certifies that, except as noted below, it and any other person associated therewith in the capacity of owner, partner, director, officer, or manager (collectively "Principals"), are not presently nor have ever been under suspension, debarment, voluntary exclusion, or determination of ineligibility by any governmental unit or agency (whether federal, state, tribal, local, or other), nor is any such action pending. Lodge further certifies that it and its Principals have not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any manner involving fraud or official misconduct, nor has Lodge or any Principal been party to any public transaction (whether federal, state, tribal, local, or other) terminated for cause or default. Lodge further certifies that any and all exceptions to these representations were disclosed with its bid, and City relied on these certifications as a material inducement into entering this Agreement. Lodge must notify City within thirty days of being debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during the operation of this Agreement.
10. **Grants.** In the event the work provided for herein is being funded, in whole or in part, by a federal, state, local, or private grant, City's obligations herein shall be contingent upon such grant being available for the term of this Agreement. City shall not be obligated to pay any monies funded by grant funds until such funds are received by and available to the City Treasurer. Except as otherwise provided by this Contract, if this Contract is not funded, then both parties are relieved of all of their obligations under this Contract.
11. **E-Verify.** If this Agreement is for an aggregate value in excess of \$5,000.00, Lodge shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection to the contracted services. Lodge shall also sign an affidavit affirming that it

does not knowingly employ any person who is an unauthorized alien in connection to the Work. See R.S.Mo. § 285.530.

12. **Anti-Israel Discrimination.** Lodge certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. See R.S.Mo. § 34.600.
13. **Indemnification by Lodge.** Lodge shall indemnify, save, and hold harmless the City, its employees, and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Lodge or its employees, agents, subcontractors, or assignees arising out of this Agreement.
14. **No Indemnification by City.** Nothing in this Agreement shall be construed to require the City to indemnify Lodge. Such indemnification is illegal under Missouri law. See Mo. A.G. Opinion 138-87 (1987).
15. **Sunshine Law.** All material submitted to the City will likely become public record and will be subject to the Missouri Sunshine Law, R.S.Mo. Chapter 610. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from other materials. Lodge must include justification for the request. The City's obligation to comply with the Sunshine Law supersedes any request by Lodge that material be treated as proprietary or confidential.
16. **Ownership of Work Product.** All documents and other work product created by Lodge under this Agreement shall become the property of City once the invoice for the preparation of such document or work product has been paid.
17. **Termination.** The City reserves the right to terminate this Agreement without cause by giving 30 days' written notice to Lodge. City may terminate this Agreement upon written notice of any violation of this Agreement if such violation is not cured within 7 calendar days of such notice. City may immediately terminate this Agreement for any material violation or any violation which creates a risk to the health, safety, or welfare of any person or property.
18. **Notices.** All formal notices or other documents required by this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at:

For City:
City Clerk
1000 City Parkway

For Lodge:
Secretary
5161 Osage Beach Parkway

City may also serve written notice to Lodge by personal delivery to any of its officers, or employees.

19. **Necessary Documents.** The parties agree to execute and deliver without additional consideration such instruments and documents and to take such further actions as they may reasonably request in order to fulfill the intent of and give effect to this Agreement and the transactions contemplated thereby.
20. **Entire Agreement.** This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them. Without limiting the foregoing, this Agreement expressly supersedes any click-through, browse-wrap, or any other terms related to the subject matter of this Agreement on any website or that otherwise may be presented to or required to be accepted by the City or its employees and contractors while exercising rights under this Agreement.
21. **Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein.
22. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
23. **Governing Law; Venue for Disputes.** This Agreement was made in the State of Missouri and shall be interpreted under and governed by the laws of the State of Missouri. Any action arising out of this Agreement or its subject matter, including both state and federal causes of action, shall be filed in the Circuit Court for Camden County, Missouri or the Associate Division thereof and the parties hereby consent and agree to the exclusive personal and subject-matter jurisdiction of that Court.
24. **WAIVER OF RIGHT TO JURY TRIAL.** THE PARTIES HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT OR TRANSACTION CONTEMPLATED HEREBY OR THEREBY, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY.
25. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement.
26. **Severability.** If any provision in this Agreement shall be found to be void, the other provisions of this Agreement shall survive and remain enforceable.

27. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile or electronic (such as .PDF) copy of this Agreement or a signature thereto shall have the same force and effect as an original.

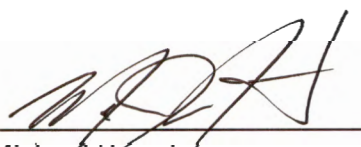
28. **Binding Effect.** This Agreement, subject to the above conditions of assignment, shall be binding upon and inure to the benefit of all parties and their respective legal representatives, successors, heirs, and assigns.

III. ACCEPTANCE

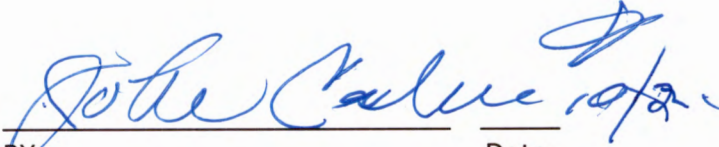
THIS AGREEMENT CONTAINS A WAIVER OF THE PARTIES' RIGHTS TO TRIAL BY JURY. THE UNDERSIGNED HEREBY MUTUALLY RELINQUISH AND WAIVE THEIR RIGHT TO TRIAL BY JURY.

CITY:
CITY OF OSAGE BEACH, MISSOURI

LODGE:
ELKS LODGE #2517



BY: Michael Harmison Date
ITS: Mayor



BY: Date
ITS: CHAIRMAN OF BOARD

Attest:



BY: Tara Berreth 10-2-24
ITS: City Clerk Date