



BOARD OF DIRECTORS AGENDA REPORT

MEETING DATE: **APRIL 27, 2023** ITEM: **8B**

SUBJECT: **Review of and Vote on Whether or Not to Approve Serenity Walk Donation Plan Agreement with Heroes Hall Veterans Foundation**

DATE: April 21, 2023

FROM: Michele Richards, CEO

PRESENTATION BY: Michele Richards, CEO

Action Item

BACKGROUND

At the March 2023 meeting, the Board of Directors voted unanimously to have staff move forward with entering into an agreement with the Heroes Hall Veterans Foundation to coordinate and manage a donation plan to provide engraved pavers and benches for the Serenity Walk at Heroes Hall.

Staff drafted an agreement which was reviewed by legal counsel for both the District and the Foundation. The draft agreement is attached.

RECOMMENDATION

It is the recommendation of staff to approve the Serenity Walk donation plan agreement with the Heroes Hall Veterans Foundation.



**Agreement Between
32nd District Agricultural Association
and
Heroes Hall Veterans Foundation**

This agreement is made and entered into on (INSERT DATE), by and between the 32nd District Agricultural Association, a California state institution aka OC Fair & Event Center (“District”) and the Heroes Hall Veterans Foundation, a registered 501(c)3 nonprofit organization (“Foundation”), collectively referred to as the “Parties.”

Recitals

1. District is a district agricultural association formed under the Food & Agriculture Code as a state institution for the purposes of “[h]olding fairs, expositions and exhibitions for the purpose of exhibiting all of the industries and industrial enterprises, resources and products of every kind or nature of the state with a view toward improving, exploiting, encouraging, and stimulating them.” (Cal. Food & Agric. Code § 3951(a).)
2. Foundation is a California nonprofit public benefit corporation and qualified 501(c)3 tax exempt organization pursuant to the Internal Revenue Service and the California Franchise Tax Board. Foundation was formed for the purpose of conducting or supporting activities for the benefit, or to carry out the purposes, of the District including, but not limited to, raising funds for and assisting in the financing of Heroes Hall, a permanent year-round museum with exhibitions, performances and educational programs that celebrate the legacy of Orange County veterans.
3. District own and operates Heroes Hall, a free, permanent, year-round museum and education center with exhibitions, performances and educational programs that celebrate the legacy of Orange County veterans and others who have served our nation.
4. District is in the process of building a serenity walk near the site of Heroes Hall (the “Serenity Walk”), which will include both hardscape and landscape features to honor veterans.
5. Funds for the Serenity Walk project were approved by the District Board of Directors from District reserves. Foundation contributed \$100,000 to the Serenity Walk project.
6. District and Foundation agree that additional funds are needed to provide benches and engraved pavers throughout the Serenity Walk and that an opportunity should be made available to the general public to purchase these items and donate them as part of the Serenity Walk to honor veterans.



7. The Parties agree to enter into this agreement to define a donation program to provide additional funding for benches and engraved pavers for the Serenity Walk project.

NOW, THEREFORE, in consideration of, and in reliance on the covenants and conditions contained in this Agreement, and for other valuable consideration, the Parties agree as follows:

AGREEMENT

1. District Responsibilities

- A. District will design and build the Serenity Walk at Heroes Hall. The Serenity Walk and all elements included in the walk will remain the property of District. District will be responsible for maintaining the Serenity Walk, including but not limited to all hardscape and landscape elements.
- B. District will select and place benches throughout the Serenity Walk for use by guests who visit Heroes Hall. District will also provide pavers for the walkway in the Serenity Walk, and allow members of the public to symbolically “adopt” benches with a donation of \$2,000 each and pavers for a donation of \$150 each to commemorate veterans.
- C. District and Foundation will work together to further develop guidelines for what should be allowed on paver and bench engraving from the public.
- D. District will assist Foundation with designing marketing materials to promote a donation program for the Serenity Walk. This may include use of District inhouse creative services for design work.
- E. District will promote the donation program on its Heroes Hall web page with a link to Foundation web site and include postings on its social media platforms.
- F. District grants Foundation permission to use its OC Fair & Event Center and Heroes Hall trademarks and logos to promote the donation program. District reserves the exclusive right to review and approve all materials using District marks and logos.
- G. District agrees that Foundation will retain an agreed upon percentage from donation fees collected from the Serenity Walk bench and pavers adoption program to offset the cost of Foundation administrative work associated with the Serenity Walk adoption program.
- H. Operational details will be carried out by District staff in consultation with the Heroes Hall Veterans Foundation.

2. Foundation Responsibilities

- A. Foundation will promote the donation program for Serenity Walk benches and pavers through its web site and other communications channels, and solicit donations from veterans groups and the general public.
- B. Foundation will provide a way for the public to make donations for benches and pavers through the Foundation web site, and manage all orders received.

- C. Foundation will work with an engraver to fulfill donation orders.
 - D. Foundation will provide District with monthly reports detailing donations of bench and paver orders.
 - E. Foundation agrees that all donations for the Serenity Walk must be transferred to District on a monthly basis as orders are received. Foundation will retain an agreed upon percentage from each donation to cover administrative work associated with the Serenity Walk donation program.
3. Agreement Term. Unless earlier terminated by either party, this agreement shall remain in effect for a period of one year beginning on the date the last signature is affixed. This agreement may be extended by the mutual written agreement of the Parties prior to expiration.
 4. Ownership of Serenity Walk Benches and Pavers. At all times, including after expiration of this Agreement, District shall maintain sole ownership and possession of any and all Serenity Walk Benches and Pavers purchased under this Agreement, even if those Serenity Walk Benches and Pavers were purchased with funds solicited by Foundation.
 5. Incorporation of District’s Standard Contract Terms and Conditions. District’s standard contract terms and conditions are attached to this Agreement collectively as Attachment “A” and are expressly incorporated and made part of this agreement by this reference.
 6. Termination. At any time during the term of this Agreement, District, in its sole and absolute discretion, may terminate this agreement, without penalty or cause, by giving notice in writing at least thirty (30) calendar days before the date when such termination shall become effective.
 7. This Agreement is of no force or effect until duly accepted and signed by District and Foundation.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate, by and on behalf of the parties to this Agreement.

For 32nd District Agricultural Association:

Michele Richards, CEO

Date

For Heroes Hall Veterans Foundation:

Nick Berardino, President

Date

EXHIBIT A – GENERAL TERMS AND CONDITIONS

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GTC 04/2017

1. **APPROVAL:**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. **AMENDMENT:**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. **ASSIGNMENT:**

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. **AUDIT:**

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. **INDEMNIFICATION:**

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. **DISPUTES:**

Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. **TERMINATION FOR CAUSE:**

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

EXHIBIT A – GENERAL TERMS AND CONDITIONS (CONT.)

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8. INDEPENDENT CONTRACTOR:

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION:

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS:

Time is of the essence in this Agreement.

EXHIBIT A – GENERAL TERMS AND CONDITIONS (CONT.)

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13. COMPENSATION:

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW:

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS:

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - ii "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

EXHIBIT A – GENERAL TERMS AND CONDITIONS (CONT.)

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16. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS:

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

-End Exhibit A-