

ORDINANCE NO. 6-14

AN ORDINANCE
AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
WITH THE U. S. MARSHALS MUSEUM, INC. FOR
CERTAIN SERVICES FOR INHABITANTS OF THE CITY OF FORT SMITH

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The Mayor is hereby authorized to execute, his signature being attested by the City Clerk, that certain agreement with the U. S. Marshals Museum, Inc. providing for the payment by the City to the U. S. Marshals Museum, Inc. up to a maximum of **\$50,000** during calendar year 2014 for services provided to the City that shall consist of maintaining the national fundraising campaign which facilitates the continued planning, design, and construction of the U. S. Marshals Museum on the Arkansas riverfront in downtown Fort Smith.

SECTION 2: It is hereby declared and determined by the Board of Directors that the agreement authorized by Section 1 above deals with providing services in an exceptional situation where competitive bidding procedures are not feasible so that such competitive bidding procedures are hereby waived with reference to such agreement.

Passed and approved this 7th day of January, 2014.

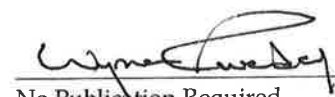
APPROVED:


Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM


No Publication Required

Ord. 6-14

AGREEMENT

THIS AGREEMENT made and entered into this 7th day of January, 2014, by and between the City of Fort Smith, Arkansas ("City"), and the U. S. Marshals Museum, Inc. a national, non-sectarian, incorporated, organization with the local social, cultural, and economic development benefits to the city, state, region, and nation.

WITNESSETH:

WHEREAS, the U.S. Marshals Museum, Inc. has possession and control of physical facilities suitable for providing to the City's residents certain services, as enumerated in paragraph one (1) below, which services fulfill a governmental function to provide for the health, safety, and welfare of the City's inhabitants; and

WHEREAS, the parties desire to provide a program of such services and facilities for the City's inhabitants;

NOW, THEREFORE, it is agreed by the parties that in exchange for the mutual covenants and agreements set forth below;

1. The U. S. Marshals Museum, Inc. will provide to the City and its inhabitants, for the year 2014, services which will enhance the health and welfare of the City and its inhabitants. The service shall consist of maintaining the national fundraising campaign which facilitates the continued planning, design, and construction of the United States Marshals Museum on the Arkansas riverfront in downtown Fort Smith.

2. In consideration for the providing of the services described in the preceding paragraph, the City agrees to pay the U.S. Marshals Museum, Inc. the total sum of \$50,000 in equal quarterly installments of \$12,500 each on or before February 15, May 15, August 15 and November 15, 2014.

3. It is agreed by the U.S. Marshals Museum, Inc. that the City shall have the right, at all reasonable times, to inspect the facilities and programs being provided by the U.S. Marshals Museum, Inc. under this Agreement, and shall have the right, at all reasonable times, to inspect the financial and other records of the U.S. Marshals Museum, Inc.. After inspection or investigation, the City shall have the right to notify the U.S. Marshals Museum, Inc., in writing, of any deficiencies in the program and/or facilities provided under this Agreement, and, if such deficiencies are not cured within thirty (30) calendar days from the date of such written notice, the City shall have the absolute right to terminate this Agreement and not make any further payment. To assist the City in monitoring its activities, the U.S. Marshals Museum, Inc. shall, on a quarterly or more frequent basis, provide to the City Administrator, or his/her designated agent, a report of the U.S. Marshals Museum, Inc. financial and service activities during the period preceding such report.

4. Furthermore, the City shall have the right to cancel this Agreement and not make any further payment upon the happening of any of the following:

- a. Any substantial damage to or destruction of the U.S. Marshals Museum, Inc. facilities within the City by fire, wind, or other casualty; or

b. A determination by the Board of Directors that the services provided hereunder are no longer needed as a governmental function, or, otherwise, a determination by the Board of Directors that the City, for whatever reason, no longer desires to have such services provided by the U.S. Marshals Museum, Inc.; or

c. A determination by the Board of Directors that the U.S. Marshals Museum, Inc. its employees, or agents, in the providing of the services hereunder, have violated the City's policy against discrimination on the basis of age, sex, religion, race, national origin, political affiliation, handicap, veteran status, or have violated the City's policy in favor of a drug-free work place.

In addition to any of the other rights of cancellation stated herein, either party shall have the right to cancel this Agreement because of the breach by the other party of that party's obligations hereunder, such cancellation to be effective as of the date of the breach. Failure by either party immediately to declare the contract canceled by reason of a particular breach shall not preclude a party from raising that breach subsequently as a reason for cancellation. Should the Agreement be canceled, for any reason, the U.S. Marshals Museum, Inc. understands and agrees that the City shall immediately cease paying any further monies under this Agreement, and agrees additionally the U.S. Marshals Museum, Inc. will refund to the City, on a pro-rated basis, monies paid by the City for services not rendered by the U.S. Marshals Museum, Inc.

5. The U.S. Marshals Museum, Inc. shall indemnify and hold harmless the City, its officers, boards, commissions, employees, and agents, against and from any and all claims (including, but not limited to, any based on 42 U.S.C. subsection 1983), demands, causes of action, actions, suits, proceedings, damages (including, but not limited to, damages to City property), cost of liabilities (including the City's cost with respect to its employees and cost of defending any and all such actions and proceedings described herein), arising out of or pertaining to the providing of services hereunder by the U.S. Marshals Museum, Inc.

6. It is agreed by the parties that there will be no assignment or transfer of this Agreement, nor of any interest in this Agreement.

7. The parties to this Agreement agree that it is not a contract of employment, but is, instead, a contract to fulfill a specific governmental purpose. Accordingly, in the performance of this Agreement, the U.S. Marshals Museum, Inc. shall be considered an independent agent, and neither it nor its employees or agents shall be considered employees or agents of the City.

8. Because the U.S. Marshals Museum, Inc. will be receiving monies from the City under this Agreement, the U.S. Marshals Museum, Inc. understands that its records and meetings may become subject to the provisions of the Arkansas Freedom of Information Act.

9. It is understood and agreed by the parties that, if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of Arkansas, the entire Agreement shall be null and void.

10. This Agreement shall not be specifically enforceable in equity, by either party; nor shall any injunction be applied for or issued at the instigation of either party in case of dispute or alleged breach of this Agreement.

11. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties.

12. This Agreement is executed on the City's behalf by its officials as set forth below pursuant to Ordinance No. 6-14 adopted on January 7, 2014.

13. This Agreement is executed on behalf of the U.S. Marshals Museum, Inc. by its authorized representative set forth below who represents that he has full legal authority to bind the U.S. Marshals Museum, Inc.

IN WITNESS WHEREOF, the parties have set their hands and seals this 7th day of January, 2014.


City of Fort Smith


By: 
Mayor

Attest:


City Clerk

U. S. Marshals Museum, Inc.

By: 
President and CEO

Attest: 
Secretary