



National Memorial of our country's Fallen from Iraq & Afghanistan Post-9/11/2001.

Patriotic Productions
16213 Lamp Street
Omaha, NE 68118



AGREEMENT

This agreement is entered into as of the date (on page six of this agreement) that the last party executes this Agreement by and between **Patriotic Productions, Inc.**, a non-profit Nebraska corporation (“**P.P.**”) and **City of Avon, Ohio** (the “**Host**”). P.P. and the Host are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. **WHEREAS**, P.P. is a non-profit corporation organized under the laws of the state of Nebraska;
- B. **WHEREAS**, P.P. has ownership of and trademark rights of “Remembering Our Fallen” (ROF), as well as the right to display the national memorial of “Remembering Our Fallen” in locations throughout the United States and its territories;
- C. **WHEREAS**, ROF is a national memorial consisting of 33+ Tribute Towers. Each Tower holds three double-sided banners with photos of our country’s Fallen from The War on Terror since 9/11/2001.
- D. **WHEREAS**, the Host desires to temporarily display ROF at a site yet to be determined in Avon, Ohio, (the “**Display Site**”);
- E. **WHEREAS**, the Host desires ROF to be available for viewing for the period commencing September 2, 2022, and concluding at 6pm on September 5, 2022. These dates will be known as (the “**Display Period**”). ROF will arrive for set up at 8am on September 1, and will be removed after 6pm on September 5; and
- F. **WHEREAS**, the Parties desire to set forth the terms and conditions under which P.P. will provide ROF for display at the Display Site during the Display Period.

In consideration of the foregoing and the mutual agreements set forth herein, the Parties hereto agree as follows:

I. Obligations of Patriotic Productions

- A. **Display**. At its sole cost, P.P. shall provide and arrange for the transport of ROF to and from the Display Site. In addition, P.P. will provide no less than two (2) copies of the ROF Directory of Names to be used in connection with ROF at the Display Site.
- B. **Representatives**. P.P. shall provide a minimum of one (1) representative to accompany ROF during the set up prior to the Display Period and during the take down following the Display Period. The P.P. representative will direct and instruct personnel to be provided by the Host pursuant to Section II.E in the set-up, display, maintenance, security, and take-down of ROF and will be responsible for the means and methods used for such set-up, display, maintenance, security and take-down. In addition, the P.P. representative will provide a general instructive overview of ROF to be used by the local personnel in answering questions from the visitors of ROF.

- C. **Insurance.** P.P. shall maintain insurance on the display and equipment owned and operated by its representatives. P.P. shall provide, as requested, proof of such insurance, however, P.P. will not add any entity as an additional insured.
- D. **Donation Containers.** P.P. may maintain a donation box at the Display Site throughout the Display Period to collect donations or contributions from visitors to ROF. The location of box shall be at the discretion of P.P. All donations collected in the P.P. donation box will be the sole property of P.P. and used to further its charitable purposes. (If not allowed, the tour fee will increase by \$1,500.00.)

II. Obligations of the Host.

- A. **Display.** The Host hereby agrees to display ROF at the Display Site during the Display Period pursuant to and in accordance with the terms and conditions herein.
- B. **Display Site.** The Host shall provide and arrange for the Display Site at which ROF is to be displayed during the Display Period. The Display Site shall also be available one (1) day prior for set up and one (1) day following the Display Period to allow for take down. The Display Period and two additional days shall be at the sole cost and obligation of the Host.
- C. **Display Site Details.** The Display Site shall be an area measuring a minimum of 4,000 square feet. If the Display Site is outdoors, the Host shall provide additional space to accommodate an information tent provided by P.P. (10'x10'). If outdoors, the Display Site must be level and have water available to fill the bases of the towers. (Ideally, a fire truck with hose(s) is the best way to handle this, as each tower base requires 25-30 gallons of water.) If the memorial is available for viewing after daylight hours, it is up to the Host to provide lighting.
- D. **Display Availability.** The Display Site shall be open to the public during applicable operating hours of the Host with volunteer(s) on site to answer questions.
- E. **Volunteers/Services.** The Host shall provide and arrange for services listed below (Section II. F, G, H and J) in connection with ROF at its sole cost and obligation and shall supervise all personnel and/or professional service providers. The Host shall be solely responsible for the actions and/or omissions of all such individuals in connection with ROF, except to the extent that such persons act under and in accordance with the specific instructions of the P.P. representative. Based upon good faith negotiations between the parties, the Host shall be responsible for providing a **minimum of eight people** (volunteers, employees or agents) to assist with ROF, including but not limited to, the setup, display, maintenance and take down of ROF. At least half of these individuals must be able to lift 60 pounds and all must be physically capable of reaching and bending; some will need to climb ladders. Of course, more volunteers are welcome, but no more than 14-18 total.
- F. **Security.** The Host shall provide sufficient and reasonable security for the protection, safekeeping and display of ROF on a 24-hour basis. P.P. will waive the requirement for 24-hour security since this event will be indoors.

G. Promotion. The Host acknowledges and agrees to use its reasonable efforts to promote and protect the purposes, objectives and high level of integrity and reputation of P.P. and ROF. The Host also acknowledges and agrees that it will abstain from and will use its reasonable and best efforts to cause others to abstain from acting in any manner which may be derogatory, offensive, hostile or adverse to the character, reputation or interests of P.P. or ROF, including without limitation, demonstrations, protests, marches, rallies or other assemblages of people, at or near the Display Site, without regard to the objectives or purposes of such assemblages of people. (This does not include ROF ceremonies or activities in conjunction with Host-promoted activities, etc.)

H. Trademark/Logo. “Remembering Our Fallen” is a registered trademark and the ROF logo must be used without change. Any use of the trademark shall be approved by P.P., which will do its best to approve within 24 hours.

I. Contributions/Expenses. The Host shall make a total contribution of **\$7,500.00**. A deposit of \$2,500.00 is due immediately upon the execution of this Agreement to secure the dates requested. The balance of \$5,000.00 is due no less than thirty (30) days prior to the commencement of the Display Period. Check payable to: Patriotic Productions. An additional 6% fee applies if paid by credit card/online.

An Additional Fee for Volunteer Help of **\$1,000.00** will be charged if less than eight volunteers assist in setup and take down.

Accommodations- In addition, no less than five (5) business days prior to the commencement of the Display Period, the Host shall, at its sole cost, arrange and pre-pay for reasonable lodging accommodations (hotel, AirBnB, VRBO – 4-star or higher) for the P.P. representative(s) for the Display Period plus any nights required for setup and take down, unless other negotiations have been made.

(Accommodation nights for one room to include: Aug 31, Sept 1,2,3,4,5.)

J. Authority. The Host hereby represents and warrants that it has the legal right and authority to enter into this Agreement and to perform its obligations hereunder.

III. Indemnification.

P.P. agrees to indemnify the Host (and its respective directors, officers, members, employees, agents and/or representatives) and hold it harmless from any loss, damage or attorney’s fees arising from any claim whether by a third party or not based upon acts and/or omissions that are inconsistent with the duties, obligations, warranties, representations or other agreements made hereunder.

IV. Miscellaneous

A. Title to Property. All rights, title and interests of ROF, including but not limited to, all intellectual property rights, shall remain and be the sole property of P.P. In addition, all donations and contributions made by or left by any persons visiting ROF, whether in the form of property or money, shall be the sole property of P.P.

B. Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes any prior agreements or representations by or among the Parties, written or oral, to the extent they are related in any way to the subject matter hereof.

C. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together, shall constitute one and the same instrument.

D. Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return-receipt requested, postage prepaid, and addressed to the intended recipient, as set forth below:

If to P.P.: Evonne Williams, President
Patriotic Productions
16213 Lamp Street
Omaha, NE 68118

If to Host: Sheri Seroka
City of Avon, Ohio
36080 Chester Road
Avon, OH 44011

E. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the state of Ohio without giving effect to any choice or conflict of law provision or rules that would cause the application of the laws of any jurisdiction other than the state of Ohio. Notwithstanding Paragraph F, below, all disputes arising under this Agreement shall be litigated in the Lorain County Court of Common Pleas or the Federal Court for the Northern District of Ohio, and the parties consent and submit themselves to the jurisdiction and venue of those courts.

F. Resolution of Disputes. If a dispute related to this Agreement or its interpretation arises, the parties will use reasonable efforts to resolve the dispute by direct negotiations. If the parties are unable to resolve such dispute within a reasonable period, then such dispute shall be decided by arbitration in the state of Ohio pursuant to the rules of the American Arbitration Association. All fees and other costs and expenses, payable to the arbitrator, shall be paid equally by the parties to such proceeding, provided that the parties shall be entitled to reimbursement of such fees and costs in such other proportion as the arbitrator may determine.

G. Force Majeure. If performance of this Agreement or any of the obligations hereunder by P.P. is prevented, restricted or interfered with by causes beyond its reasonable control (a "Force Majeure"), and if P.P. gives the Host prompt notice of such event, then the obligations of P.P. shall be terminated to the extent made necessary by such event. A Force Majeure shall include, but not be limited to, acts of God, fire, explosion, vandalism, severe weather conditions, traffic, Orders from a court of competent jurisdiction, COVID-19 or similar virus, acts of the military or the civil authorities, national emergencies, insurrections, riots, wars, changes in laws,

regulations, ordinances, violations, breaches or nonperformance of any terms of this Agreement by the Host (including without limitation this Section IV.H) and/or other similar occurrences.

- H. Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by P.P. and the Host. No waiver by any Party of any default, breach of warranty or covenant hereunder or misrepresentation, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any such occurrence, prior or subsequent.
- I. Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.
- J. Termination.** P.P. shall have the right to terminate this Agreement pursuant to paragraph IV.G. without liability of any kind to the Host. In the event P.P. so terminates this Agreement, P.P. shall promptly return to the Host any contributions made to P.P. pursuant to Section II. J hereof. In the event that Host terminates this Agreement without P.P.'s written consent, P.P. shall keep the deposit, as described in Section II.J.

IN WITNESS WHEREOF, the Parties sign and execute this Agreement as of the day indicated by each below:

HOST ORGANIZATION NAME: City of Avon

Printed Name of Authorized Representative

Title

Signature

Date

PATRIOTIC PRODUCTIONS INC. (P.P.)

Printed Name

Title

Signature

Date