

BILL NO. 2924

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE DOWNTOWN BRANSON MAIN STREET ASSOCIATION (DBMA) AND THE CITY OF BRANSON, MISSOURI

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:

Section 1: The Board of Aldermen hereby authorizes the Mayor to execute an Agreement with Downtown Branson Main Street Association (DBMA) substantially in the form attached as Exhibit "A".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 27th day of September 2004.


Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this ____ day of _____, 2004.

Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

Sandra L. Williams, C.M.C.
City Clerk



Daniel R. Wichmer
City Attorney

CONTRACT

THIS CONTRACT made and entered into this _____ by and between the City of Branson, Missouri (hereinafter referred to as the "City"), and the Downtown Branson Main Street Association Inc.(DBMA), a not-for-profit Missouri corporation, (hereinafter referred to as the "CONTRACTOR").

W-I-T-N-E-S-S-E-T-H:

WHEREAS, the Contractor desires to provide services to the City in accordance with the Contractor's proposal and at a cost not to exceed Sixty Six Thousand Seven Hundred and Fifty dollars (\$66,750.00) during the first contract year, with the funding level for the second contract year to be determined upon renewal by the Board of Alderman, and

WHEREAS, the City of Branson desires certain contractual services for the purpose of implementing a plan for the revitalization of Downtown Branson, and

WHEREAS, The City desires to have DBMA provide these services in order to facilitate economic development and historic preservation in the downtown area.

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

Section 1: Term. This is a two-year (2) contract, to be reviewed and approved annually by the Board of Aldermen. The services of the Contractor shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion.

Section 2: Scope of Services. The City will engage the services of the Contractor to establish and perform services, which are more particularly described below. If the Contractor engages subcontractors to perform any of the service under this Contract, the Contractor is not relieved of its duties under the Contract and the City reserves the right to approve any subcontractor prior to it performing any work.

DOWNTOWN MAIN STREET ASSOCIATION (DBMA) RESPONSABILITIES. DBMA agrees to perform and deliver the following services and activities, for the accompanying amounts, during the term of the agreement as approved by the Board of Alderman pursuant to section (3) of this agreement.

a. Implement and Establish a Historical and Cultural Attraction.

- Grant Research and Training.....\$1,200.00
Training and materials only.
- Staff training in museum development.....\$1,200.00
Training and materials only
- Collecting and Storing historical artifacts of Branson History.....\$8,800.00
Materials only

Implement and Establish a Historical and Cultural Attraction (Continued)

- Contract with National Main Street for a facilitator of a vision session.....\$1,300.00
Facilitator plus expenses
- Public Meeting for vision session.....\$250.00
Media Services
- Basic outline of visioning sessions.....\$600.00
Produce outline
- Hold public meeting regarding outcome of vision sessions.....\$300.00
Media Services
- Grant's preparation and writing.....\$250.00
Printing and Materials

ANTICIPATED CONSULTANT FEES.....**\$13,900.00**

b. Conduct a Local Media Campaign & Public Relations.

- Bi-Weekly press releases on progress.....\$1,200.00
Newspaper
- Visually attractive construction signage.....\$450.00
Signage
- Direct Mail to the community.....\$4,500.00
Printing and Mailing
- Progress of accomplishments in the newspaper.....\$3,600.00
Newspaper
- Promotion invitation for historical artifacts.....\$350.00
Newspaper

ANTICIPATED CONSULTANT FEES.....**\$10,100.00**

c. Develop a signage regulation plan for Downtown

- Research to determine needs and scope of signage plan.....\$2,400.00
Consultant research
- Investigate & visit other signage ordinances in cities similar.....\$2,800.00
Consultant research
- Public meeting held with business & property owners.....\$450.00
Materials and Media
- Drafts created by consultant with directive from City Staff.....\$350.00
Printing and Materials

ANTICIPATED CONSULTANT FEES.....**\$6,000.00**

d. Develop a "Streetscape Plan".

- Contract with National Main Street for a facilitator of visioning session.....\$3,000.00
Facilitator & expenses
- Public Visioning session held.....\$650.00
Printing and Media
- Basic outline of visioning sessions.....\$3,500.00
Report and outline developed
- Formalize streetscape project from visioning sessions.....\$4,800.00
Consultant Research
- Hire Architectural firm.....\$13,500.00
Architectural fees

Develop a "Streetscape Plan" (Continued).

- Public Hearing Held (CDBG Requirement).....\$500.00
 Printing and Media
- Plan 90 days for CDBE grant application preparation process.....\$4,800.00
 Research & grant administration
- Plan 90 days for T-21 grant application preparation process.....\$4,800.00
 Research and grant administration

ANTICIPATED CONSULTANT FEES.....**\$35,550.00**

e. Facade Renovation – Infrastructure Transportation Improvements.

- Design workshops held.....\$1,200.00
 Design Materials

ANTICIPATED CONSULTANT FEES.....**\$1,200.00**

Section 3: Compensation. In consideration of the services performed by DBMA, the City will make payments as follows:

- a) All services, activities and funding requests shall be acknowledged and approved by the Board of Alderman prior to the commencement of such service, activity or funding.
- b) Funds will be used for services and materials related to this contract and not for existing DBMA salary costs. Funds will not be used for existing DBMA operational and overhead costs.
- c) The Board of Alderman may, at any time and for any reason, reduce or disapprove the dollar amounts as stated in section (2). The CITY recognizes that changes in authorized funding may result in the necessity to reduce or increase the scope of services as defined in section (2 a – e)).

Section 4: Contract Administration. The City designates the City Administrator (or his designated alternate) as its representative to whom all communications relating to the work performed under this Contract shall be directed by the Contractor.

The Contractor designates its President (or his designated alternate) as its representative for all work performed under this Contract.

The aforementioned representatives of both the City and the Contractor shall have primary responsibility and authority on behalf of each respective party to administer this Contract and to agree upon procedures for coordinating the efforts of both parties under this Contract.

Section 5: Copyrights. The Contractor shall defend, indemnify and hold the City harmless from any and all claims or causes of action, including attorney's fees and legal expenses, arising out of or based upon any alleged infringement of any copyright or any alleged invasion of infringement of any right of any third party in connection with the Contractor's performance of work hereunder.

Section 6: Reports.

a. **Monthly Reports.** The Contractor shall submit an administrative progress report to the City on a monthly basis, which described the work performed during the month. This report shall be a synopsis of the activity undertaken.

b. **Other Reports.** The Contractor shall submit to the City such other reports as may be requested or are necessary to inform the City of immediate problems which require City action.

c. **Annual Report.** The Contractor shall submit to the City a year-end report accounting for the use and expenditure of all monies and funds received for the City of Branson.

Section 7: Personnel. The Contractor's personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder will be performed by the Contractor or under its direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

Section 8: Key Personnel and Program Organization. The Contractor will perform all of its services under this Contract through a staff under the direction of its designated representative, who will be responsible for the management, scheduling, planning and coordination of the work, and for communications between the Contractor and the City, and for the over all fulfillment of all obligations of the Contractor under this Contract.

Section 9: Commencement of Work. Services of the Contractor shall commence on November 1

Section 10: Payment. Payments for all services, activities and funding requirements shall be acknowledged and approved by the Board of Aldermen prior to the commencement of such service, activity or funding.

a. Requisitions for expenditures included in the budget approved by the Board of Aldermen will be paid through the City's accounts payable system. Requisition forms received per the City's processing schedule will be processed and checks will be written and mailed to the Contractor to reimburse it for such expenditures.

b. Each requisition must be signed by the Contractor's designated representative verifying that the services covered are for work actually performed, item purchased or services rendered by third parties to the Contractor for matters covered under this Contract and will be accompanied to the extent possible by paid invoice for such work, items or services.

Section 11. Termination. If, through any cause, the Contractor shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants agreement or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination within 15 days of the City's discovery of said failure or violation unless the failure or violation is corrected within said 15 day period.

Section 12. City-Conflict of Interest. No salaried officer or employee of the City, and no member of the Board of Aldermen shall have a financial interest, direct or indirect, in the Contract, provided, however, that said officers and employees may subscribe as members of the Contractor.

Section 13. Right of Audit.

a. Contractor's Books and Records. The Contractor shall keep accurate reports other records showing in full detail the costs for which the Contractor claims payment. The City may examine, at any time during regular business hours, such reports and other records at the Contractor's office, and the Contractor agrees that it will produce such records whenever required by the City. In addition to any other audits the City deems appropriate, the City shall have the right to conduct an annual audit of the Contractor's books and records to determine if the expenditures of the Contractor were made in accordance with the budget approved the Board of Aldermen. Any expense incurred by the Contractor to prepare the records for audit will be at the expense of the Contractor.

b. Subcontractor's Books and Records. The Contractor agrees to include the substance of this Section in all subcontracts to be performed, giving the City the right to audit the books and records pertaining to any such subcontract.

Section 14. Insurance. During the performance of all work under this Contract or any subcontractors hereunder, the Contractor and its subcontractors shall maintain the following coverage: Proof of this coverage will be provided annually to the City, or more often if the insurance coverage is of a lesser term than one year. The Proof of Coverage (Certificate of Insurance) shall name the City as additional insured, except in the case of Worker's Compensation Coverage.

a. Worker's Compensation-as required by law.

b. Commercial Comprehensive General Liability-with a minimum coverage amount of \$2,000,000 per single occurrence with no aggregate limit.

c. Commercial Automobile Liability, including owned, non-owned, and hired cars, with minimum limits of \$1,000,000 bodily injury and property damage combined.

All coverage evidence required in this Contract must have a 30 day notice of cancellation on the Certificate of Insurance. All Certificates of Insurance shall be sent to the City finance department two weeks in advance of the lapse of the prior Certificate of Insurance.

Section 15. Discrimination. The Contractor agrees, in the performance of this Contract, not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, age, handicap, or political opinion or affiliation, against any employee of the Contractor or applicant for employment, and shall include a similar provision in all subcontractors let or awarded hereunder.

Section 16. Independent Contractor. The Contractor is an independent contractor with respect to all services performed hereunder, and nothing contained herein shall constitute or designate the Contractor or any of its agents or employees as agents or employees of the City.

The Contractor and its agents, employees and subcontractors shall not be entitled to any of the benefits established for the employees of the City, nor be covered by the Worker's Compensation Program for the City.

Section 17. Indemnification and Liability. The parties mutually agree to the following:

a. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, whether or not caused by or resulting from City's negligence, arising out of or in any way connected with a breach of Contract.

b. The Contractor shall defend, indemnify and hold the City harmless from and against any and all claims, losses and causes of action arising out of any claims or causes of action, including but not limited to personal injuries, death, or damage to property which are incurred by the Contractor, or any third party arising out of or in any way connected with services performed by the Contractor pursuant to this Contract.

c. The Contractor assumes full responsibility for relations with subcontractors, and shall defend, indemnify and save harmless the City from and against any and all liability, suits claims, damages, costs (including attorney's fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with this Contract, notwithstanding any possible negligence (whether sole, concurrent or otherwise) on the part of the City, its agents or employees.

Section 18. Applicable Laws. The Contractor agrees to comply with all laws of the United States of America, the State of Missouri, and the City of Branson, Missouri, which are applicable to work being performed by the Contractor under this Contract.

Section 19. Jurisdiction. The parties mutually, agree that jurisdiction and venue for the purposes of any action resulting from this Contract by the parties shall be in Taney County, Missouri.

Section 20. Notices. All notices required or permitted hereunder and required to be in writing may be given by first class mail and addressed as follows:

To the City: City of Branson
 110 West Maddux, Suite 205
 Branson, Missouri 65616

To the Contractor: Downtown Branson Main Street Association Inc.
 P.O. Box 1034
 Branson, MO 65615

The date of delivery of any notices shall be the date falling on the second full day after the day of its mailing.

Section 21. Contingencies. This Contract is contingent upon the Contractor maintaining a not-for-profit corporation, as defined by the Internal Revenue Code in Section 501(c) (3) or (6).

Section 22. Refunds. At the termination of this Contract, the Contractor shall pay to the City any refunds received by the Contractor from vendors or subcontractors for services performed or purchases made under the Contract and for which the Contract has been reimbursed hereunder.

APPROVED BY THE CITY OF BRANSON, MISSOURI, ON THE _____

_____.

CITY OF BRANSON, MISSOURI

Louis E. Schaefer, Mayor

ATTEST:

Approved as to form:

Sandra L. Williams, C.M.C.
City Clerk

Daniel R. Wichmer, City Attorney

APPROVED BY Downtown Branson Main Street Association Inc., ON

_____.

DOWNTOWN BRANSON MAIN STREET
ASSOCIATION INC.

By: _____

Name: _____

Title: _____