

AGREEMENT

THIS AGREEMENT is entered into this 14th day of February, 2023, between Besser Museum for Northeast Michigan, hereinafter referred to as "Owner," and Sommerville-Wilson, Inc. d/b/a Split Rock Studios, Minneapolis, Minnesota, hereinafter referred to as "SRS."

Owner agrees to engage SRS, and SRS hereby accepts such engagement from Owner, to design, fabricate, and install the Gallery Exhibits Renovation at 491 Johnson St, Alpena, MI 49707 as described in the "Scope of Work", Attachment "A", upon the following terms and conditions.

1. **Schematic Design & Design Development**

Schematic Design and Design Development shall be coordinated with the Owner as appropriate, and shall be completed pursuant to the "Project Schedule", Attachment "B". See Attachment "A" for scope of work.

Owner shall give prompt and thorough consideration to all designs, sketches, drawings, proposals, and specifications submitted to the Owner by SRS and shall inform SRS of its decisions within a reasonable time so as not to delay or interrupt the work and schedule of SRS.

2. **Pre-Production, Production Shipping and Installation.**

Upon approval by the Owner, SRS shall commence pre-production, then production of the Exhibit. The Exhibit shall include all components identified within approved line-item estimates at end of Design Development. Pre-production, production, installation will be supervised by SRS project managers and the lead builder, who may engage subcontractors as deemed necessary and appropriate. All Exhibit production work is exclusive to SRS and will be performed by SRS employees except as appropriate. Installation of the Exhibit as described in Attachment A shall be undertaken by SRS under the supervision of its own personnel.

Upon performance of the production and installation, SRS shall provide the Owner with a complete set of construction drawings, maintenance and cleaning instructions, and product information. Production and installation shall be completed in accordance with the "Project Schedule", Attachment "B", as modified during the project. See Attachment "A" for scope of work.

3. **Title.**

Title to all work and any materials incorporated therein shall pass to the Owner either upon delivery to the Owner or upon payment, whichever occurs first. Title to partially completed work shall pass at the time of any payment by the Owner for the percentage of work completed as of the date of such payment. SRS shall, at the request of the Owner, execute such instruments as may be reasonably necessary to effectuate these terms.

4. **Warranties.**

SRS hereby provides warranties as follows:

- a. SRS warrants a one (1) year guaranty of workmanship from the date of substantial completion of installation for all exhibits and mechanical devices supplied as a part of this Agreement.
- b. SRS warrants that the materials and equipment furnished pursuant to this Agreement will be of high quality, free from defects, and new unless otherwise required or permitted, that the work will conform to the requirements of all contract documents, and will be of such quality so as to pass without objection by the museum community as fit for use as museum exhibits.
- c. SRS warrants that its services will be in compliance with the requirements of all regulatory authorities with jurisdiction to prescribe and enforce standards or regulations with respect to the project and with all applicable local, state, and federal laws, statutes, ordinances, codes, orders, rules, and regulations.
- d. SRS warrants that it will deliver any and all Exhibit work designed and fabricated pursuant to this Agreement in safe condition, and free of liens or encumbrances.
- e. If applicable, electronics will be covered by the warranties provided by the original manufacturer of such equipment. SRS will assign each such Manufacturer's warranty to the Owner.

SRS warranties do not cover normal maintenance, cleaning, lubrication or normal wear and tear of the Exhibit, nor damage resulting from abuse, improper maintenance, or operation of the Exhibit by the Owner nor by casualty, vandalism, "Acts of God" or conduct of unrelated third parties.

The natural character of materials used in new exhibit construction can cause various changes, primarily shrinkage and minor cracking. These do not represent a defect in materials or workmanship. During the course of seasonal changes, relative amounts of moisture evaporate from the materials and minor settlement or shrinkage can occur. This is normal and usually slight in nature and SRS cannot be held responsible for the building humidity control or levels.

5. Price and Payment.

In consideration of services undertaken by SRS and described in this Agreement, Owner shall remit payment in the sum of \$1,000,000, exclusive of sales tax, allocable pursuant to the "Cost Breakdown" as set forth in Attachment "C" incorporated herein by reference.

Terms of Payment shall be as described in the "Payment Schedule" as set forth in Attachment "D." Payments shall be remitted by the Owner to SRS within 30 days of receipt of billing by the Owner. Further detail regarding pricing for this contract can be found in the "Cost Breakdown", Attachment "C". SRS certification for payment shall constitute a representation that the work has progressed to the point indicated, that to the best of knowledge, information, and belief, the quality

of work is in accordance with contract documents, and that all lien waivers and certificates required have been furnished in proper form.

SRS requires that all invoices (excluding shipping and installation) be paid in FULL prior to Installation.

6. Late Payment.

All invoices are due net-30 as of the invoice date. The Parties agree that if the Owner fails to make any payments set forth in the contract, a late payment penalty will be charged at the rate of 2% per month, imposed immediately after payment is due.

7. Change Orders.

The Owner may request changes in the work after the production phase has begun, including deletions, additions, or revisions, which fall within the general scope of the Agreement. Upon consultation and mutual agreement by the parties, the contract price and completion schedule shall be adjusted accordingly and equitably. Change orders shall be memorialized by written form signed by authorized representatives of both parties. SRS shall have no authority to unilaterally initiate changes in the work after the production phase of the project has begun without prior approval of the Owner. Any additional work related to this contract is exclusive to SRS unless mutually agreed upon.

8. Termination.

The Owner shall allow commencement of design development, production, and installation phases contingent upon the Owner's approval of work submitted by SRS at the conclusion of each precedent phase. The Owner shall be authorized to terminate this Agreement at the end of any phase if the Owner determines for cause that approval should not be granted. In each instance, SRS shall be promptly compensated for all work performed and undertaken in performance of this Agreement and for its costs and expenses occasioned by such termination.

9. Project Coordination.

SRS shall incorporate and coordinate its work with that of any Architect and/or Builder, as appropriate, as designated by the Owner, and agrees to use its best efforts to cooperate and reasonably coordinate their activities with those of the Architect and/or Builder as necessary to effectuate completion of the project work.

10. Subcontractors.

SRS, at its option, may use one or more subcontractors to complete any of its production obligations under the Agreement. SRS shall submit the identity, roles, and deliverables of any subcontractor to the Owner as requested by the Owner. SRS shall prepare all subcontracts or documents for subcontractor's use as necessary.

11. Relationship of Parties.

SRS shall be considered an independent contractor in connection with this Agreement and shall not be deemed an employee. SRS shall have the authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written consent.

12. Access to Site.

SRS shall be provided access to the site at intervals appropriate to the stage of installation and the status of the project work. The total number of visits to the site shall not be limited in number; it is the intention of the parties that SRS shall make as many such visits as are required to fulfill the responsibilities of SRS hereunder. The Owner shall take all reasonable precautions to provide work premises of a safe and sound condition with a minimization of hazards to life and property, and the Owner shall provide appropriate premises insurance and other indemnity for the protection of SRS, its personnel, and its contract work. During installations SRS anticipates working potentially up to 12 hours a day and 7 days a week. Exhibit furniture installation including casework, graphics, AV, and artifacts will commence when the client has Certificate of Occupancy.

13. Project Delay.

The Owner shall discharge all responsibilities including progress review, access to site, delivery of approvals, timeliness of payment and related obligations, so as not to occasion delay to SRS. Any such delays shall extend the deadline for completion by a like period of time and potentially increase the contract sum commensurate with costs, expenses, and compensatory, consequential, and economic damages, including, but not limited to, a storage rate of \$2.00 per square foot a month and transportation costs and fees, occasioned by such delay. Storage rate can change based on storage availability within SRS' facility. For the duration of this contract, SRS offers the Owner 2 months of free storage for the completed exhibits once an installation month has been established and SRS has started fabrication. SRS will not be held liable for damage of fully fabricated or crated exhibits either stored at SRS, or outside of SRS, due to any Owner delay/s out of SRS' control.

14. Exclusivity of Obligations.

SRS shall not obligate the Owner for the payment of any money or for the performance of any obligation without the Owner's prior written consent. The Owner shall have no contractual or employment relationship with any consultants, subcontractors, employees, or others who may be hired or used by SRS in performance of the work pursuant to this Agreement.

15. Arbitration.

The Owner and SRS agree that, in the event of any disputes concerning the performance of this Agreement and/or interpretation of its terms, and upon demand by either party hereto, any such dispute shall be submitted to arbitration in accordance with the American Arbitration Association at its offices in Minneapolis, Minnesota or elsewhere upon the mutual consent of the parties.

16. Insurance.

SRS shall procure and maintain appropriate insurance coverage in the form of commercial general liability, worker's compensation, employer's liability, and automobile public liability as appropriate. The Owner shall provide and maintain All Risk Builder's Risk Property Insurance for coverage upon the project site in structure in which SRS work is to be installed in an amount equal to 100% of the insurable value thereof. Any proceeds of such insurance shall be payable jointly to the Owner and SRS as their interests may appear. The Owner and SRS waive all

rights against each other with respect to damage or casualty covered by such insurance, except for such rights as they may have to proceeds of the insurance.

17. Representations of SRS.

SRS represents to the Owner that it is not in default under any law or ordinance, or under any Order of any Court or federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality wherever located; its operations are in compliance with all applicable laws, permits, and ordinances, and there are no claims, actions, suits, or proceedings pending, or threatened, against or affecting SRS or any shareholder thereof, at law or in equity, or before any governmental agency, which might result in any material adverse change in the financial condition or business of SRS or which would question the validity of propriety of this Agreement or any of the actions to be taken in accordance with this Agreement.

18. Image Release.

The Owner grants permission to Split Rock Studios, its agents, and employees the unrestricted right to reproduce project photographs and/or videos for the purpose of publication, promotion, advertising or trade, in any manner or in any medium. The Owner hereby releases Split Rock Studios and the organization's legal representatives for all claims and liability relating to said images or video.

19. Miscellaneous.

The Owner and SRS, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party to this Agreement with respect to all covenants of this Agreement. Neither party to this Agreement shall either assign, sublet, or transfer (by operation of law or otherwise) any interest in this Agreement without the prior written consent of the other, nor shall SRS assign any monies due or to become due under this Agreement without the prior written consent of the Owner. Any assignments without such prior written consent shall be void.

20. Communication.

Day-to-day communications between SRS and Owner will be between Mike Otis, SRS's Project Manager and Christine Witulski of Besser Museum.

21. Formal Approvals.

Contracts and/or written and electronic approvals shall be returned and signed in a timely manner by the Owner's representative, Christine Witulski.

22. Approvals.

Written and/or electronic approvals, by the Owner, of design submittals, details, images, text, construction drawings and all other elements related to the services and deliverables being provided by SRS within the terms of this contract are required within seven (7) business days following each formal design phase (i.e. SD1, SD2, DD1, DD2, Pre-Production) submittal, unless otherwise negotiated between the Owner and SRS. Failure to notify SRS in writing of any issues or complaints within the time periods provided herein shall be deemed an approval by the Client and SRS. Each graphic and construction drawing submittal will have an

allowance of two rounds of review (one round to request edits, one round to confirm edits have been made); subsequent reviews/submittals may be subject to additional costs.

23. Accounts Payable / Invoicing Information.

Company Name: Besser Museum

Address: 491 Johnson St, Alpena, MI 49707

Phone number: 989.340.6543

AP contact: Christine Witulski

Email AP Contact: cwitulski@bessermuseum.org

Can we email invoices: YES NO

Sales tax exempt*: YES NO

*If your organization is exempt from paying state sales tax, please submit a Sales Tax Exemption Certification with the signed contract as SRS is required to have one on file. A letter from the IRS stating that your organization is exempt is not acceptable.

24. Complete Agreement.

This Agreement represents the entire and integrated agreement between the Owner and SRS and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both the Owner and SRS.

25. Force Majeure.

Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to global pandemic, fire, floods, embargoes, acts of war, acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God, omission or delay in acting by any governmental authority or other party.

WHEREFORE, the parties have executed this Agreement on the date above written.

**SOMMERVILLE-WILSON, INC.
D/B/A SPLIT ROCK STUDIOS**

By Isaiah Boehlert Date: _____

Its President

Besser Museum, OWNER

By Christine Witulski Date: _____

Its Director

Attachment "A" **Scope of Work**

Split Rock Studios will provide Schematic Design, Design Development, Pre-Production and Production/Installation services for the Gallery Renovation at 491 Johnson St, Alpena, MI 49707. We will warranty the finished exhibits for one year from the date of completion.

Project Kick-off Meeting

1. Conduct Exhibit Planning Kickoff

- a. Introduce key SRS team members and meet core Client team
- b. Tour exhibit space (if existing) and/or local points of interest as needed
- c. Review work to date (e.g., architectural drawings, master plan, collections catalog)
- d. Discuss goals, objectives, and exhibit themes
- e. Identify main message and prioritize exhibit topics
- f. Brainstorm exhibit approaches and ideas
- g. Discuss possible interactives and AV elements, if applicable
- h. Review potential exhibit materials and content reference materials
- i. Designate client representative(s) to review project deliverables
- j. Identify any other project partners (e.g., architect, GC, government agency)
- k. Review overall project budget and timeline

2. Deliverable*

- a. Project Brief, including current overview of project and any additional project considerations and understandings

3. Client

- a. Review Project Brief and provide any feedback for SRS

Schematic Design I

1. Deliverables*

- a. Exhibit Plan
 - i. Project overview
 - ii. Key considerations in exhibit design and interpretation
 - iii. Exhibit narrative and overview of exhibit content
 - iv. Design approach and preliminary color palette
 - v. Preliminary floor plan and traffic flow analysis
 - vi. Conceptual sketches/renderings for major exhibit elements
 - vii. Proposed interactive and AV descriptions, if applicable
- b. Cost Proposal with high-level budget analysis by exhibit area
- c. Feedback Form for consensus feedback

2. Presentation

- a. Walk through and discuss Exhibit Plan elements
- b. Discuss budget, if appropriate as defined by client
- c. Review feedback process
- d. Review project schedule, SRS process, and next steps

3. Client

- a. Review all deliverables and discuss feedback as a group
- b. Complete Feedback Form providing consensus direction for SRS; feedback will be incorporated into Schematic Design II deliverables

Schematic Design II

1. Deliverables*

- a. Design Book
 - i. Scaled floor plans including individual exhibit areas, with major elements identified
 - ii. Elevation/scale drawings of key components
 - iii. Updated design approach and color palette
 - iv. Graphic approach, including color palette, fonts, and hierarchy
- b. Content Manual
 - i. Updated exhibit narrative and priority exhibit content
 - ii. Updated interactive and AV descriptions, if applicable
 - iii. Preliminary graphic hierarchy with target word counts, grade level, and tone
- c. Cost Proposal with budget by exhibit area
- d. Feedback Form for consensus feedback

2. Presentation

- a. Review each deliverable
- b. Walk through and discuss all exhibit components
- c. Discuss budget, if appropriate as defined by client
- d. Review project schedule, SRS process, and next steps

3. Client

- a. Review all deliverables and discuss feedback as a group
- b. Complete Feedback Form providing consensus direction for SRS; feedback will be incorporated into Design Development I deliverables

Design Development I

1. Deliverables*

- a. Design Book
 - i. Detailed floor plans and elevations/scale drawings of all exhibit components
 - ii. Proposed exhibit materials, color choices, and finishes
 - iii. Applied graphic approach (initial graphic typical)
 - iv. Preliminary interactive and AV treatments, if applicable
- b. Content Manual
 - i. Detailed exhibit and content outline, including descriptions of all components, including any interactive and AV elements
 - ii. Text intent with headlines and draft images for interpretive graphics
 - iii. Sample text for at least one graphic
 - iv. Preliminary image matrix
 - v. Preliminary artifact matrix, if applicable
 - vi. Preliminary project bibliography
- c. Cost Proposal with line-item detail for each exhibit component
- d. Feedback Form for consensus feedback

2. Presentation

- a. Review each deliverable
- b. Walk through and discuss all exhibit components
- c. Discuss budget, if appropriate as defined by client
- d. Review project schedule, SRS process, and next step

3. Client

- a. Review all deliverables and discuss feedback as a group
- b. Complete Feedback Form providing consensus direction for SRS; feedback will be incorporated into Design Development II deliverables

Design Development II

1. Deliverables*

- a. Design Book
 - i. Final floor plans
 - ii. Final elevations/scale drawings of all exhibit components
 - iii. Final exhibit materials, color choices, and finishes board
 - iv. Final graphic approach with graphic typicals
 - v. Final treatments for interactive and AV, if applicable
- b. Content Manual
 - i. Detailed exhibit and content outline, including descriptions of all components, including any interactive and AV elements
 - ii. All graphic text drafted and images selected
 - iii. Final image matrix
 - iv. Final artifact matrix, if applicable
 - v. Final project bibliography
 - vi. Art reference package to show artistic style/intent, if applicable
- c. Final Cost Proposal with line-item detail for each exhibit component
- d. Feedback Form for consensus feedback
- e. Preliminary GC Package, if applicable
 - i. Building modifications, including but not limited to demolition, electrical and data needs, wall finishes, and paint

2. Presentation

- a. Review each deliverable
- b. Walk through and discuss all exhibit components
- c. Discuss budget, if appropriate as defined by client
- d. Review project schedule, SRS process, and next step

3. Client

- a. Review all deliverables and discuss feedback as a group
- b. Complete Feedback Form providing consensus direction for SRS; feedback will be incorporated into construction drawings and graphic layouts during Pre-Production

* All design deliverables will be submitted electronically via PDF. If printed and bound books are requested, SRS can supply up to 5 copies for a fee of \$500 per submittal.

Pre-Production

1. SRS

- a. Provide submittal and production schedule
- b. Complete all design and content revisions required for production; revisions reflected in construction drawings and graphic layouts
- c. Lay out all graphic production files; generate printed proofs as needed; inspect for content errors and technical quality
- d. Acquire permissions and high-resolution scans for images to be used in exhibits
- e. Review exhibit space and document any problems affecting exhibit installation
- f. Provide production color and material samples, if applicable
- g. Provide construction drawings with production details for all exhibit structures including technical specifications for client review and approval
- h. Provide AV technical drawings, if applicable
- i. Develop any specialty items
- j. Coordinate building modifications with client, architect, and GC through final GC package, drawings, meetings, discussions, and templates

2. Client

- a. Review and approve construction drawings
- b. Review and approve graphic layouts
- c. Review and approve AV storyboards, scripts, and matrixes, if applicable

Production

1. SRS

- a. Output and mount final production graphics
- b. Fabricate all exhibit components based on approved construction drawings
- c. Produce interactive and AV programs (e.g., filming, programming) and move into post-production, if applicable
- d. Acquire any AV hardware; install AV software and test system operation, if applicable
- e. Provide progress photos of exhibit fabrication
- f. Perform ongoing supervision of subcontractors, if applicable
- g. Host site visits at SRS for on-site review meetings with client
- h. Coordinate building modifications with client, architect, and GC through drawings, meetings, discussions, and templates

2. Client

- a. Attend on-site review meeting(s) as able

Installation

1. SRS

- a. Coordinate dates, access, and on-site considerations for installation
- b. Finish any remaining minor building prep work
- c. Deliver exhibits; set up staging area for unloaded exhibit elements
- d. Provide on-site art direction, if applicable
- e. Install all large structures, such as platforms, walls, cases, large graphic panels, and murals
- f. Install smaller graphics, AV equipment, models, and interactive exhibits
- g. Clean work site of debris and dust; clean artifact cases; install artifacts and perform all other conservation requirements; seal cases
- h. Aim and adjust exhibit lighting fixtures, if applicable
- i. Complete walk-through inspection of completed exhibits
- j. Develop punch-list; correct any punch-list items
- k. Train staff in exhibit operation and maintenance

2. Client

- a. Walk through completed exhibits with SRS
- b. Participate in exhibit operation and maintenance training
- c. Sign substantial completion forms; warranty starts

Close-out and Warranty

1. SRS

- a. Submit closeout package
 - i. Maintenance manual
 - ii. Warranty information from SRS
 - iii. Digital graphic production files
 - iv. As-built production drawings
 - v. Final written materials
- b. Arrange for final project photography

Attachment "B"
Project Schedule

Subject to change

Schedule based on a signed contract by [Month, X, XXXX]

Kick-off Meeting	[signed date of contract- date]
SRS provides meeting notes (Project Brief)	[Week of Month X, XXXX]
SCHEMATIC DESIGN PHASE	[date - date]
Schematic Design I Presentation	[Week of Month X, XXXX]
Client provides consolidated written comments	One week after presentation
Schematic Design II Presentation	[Week of Month X, XXXX]
Client provides written comments, approval to proceed	One week after presentation
DESIGN DEVELOPMENT PHASE	[date - date]
Design Development I Presentation	[Week of Month X, XXXX]
Client provides consolidated written comments	One week after presentation
Design Development II Presentation	[Week of Month X, XXXX]
Client provides written comments, approval to proceed	Three weeks after presentation
PRODUCTION AND INSTALLATION PHASE	[date - date]
Pre-Production	[date - date]
Client approves all graphic files for production	[Week of Month X, XXXX]
Production	[date - date]
Production Review Meeting/s at SRS	[Optional]
Installation	[date - date]

*All deliverable dates are dependent on the timely return of client feedback and completion of prerequisite deliverables.

**Project Schedule is subject to change based on modifications to scope of work.

**Attachment "C"
Cost Breakdown**

Besser Museum Gallery Renovation

1. Schematic Design and Kick-off	\$75,000.00
2. Design Development	\$125,000.00
3. Pre-Production, Production & Installation	\$800,000.00
4. Project Total	\$1,000,000.00

Clarifications and Exclusions

¹ Final schedule of values will be provided at the end of the Design Development phase

² Project fees are generated based on an overall project value of \$1,000,000. Increases or decreases to project scope may result in proportional changes to project fees.

³ Once Production costs are estimated, the pricing is valid for 90 days on a revolving basis. SRS may need to re-estimate applicable exhibitry based on fluctuations in materials, supply chain delays, and labor costs outside of SRS' control.

Attachment "D" Payment Schedule

SCHEMATIC DESIGN PHASE

- \$5,000.00 down payment and completion of kick-off meeting
- \$35,000.00 Upon completion of Schematic Design I
- \$35,000.00 Upon presentation of Schematic Design II
- \$75,000.00 Total payment for Schematic Design

DESIGN DEVELOPMENT PHASE

- \$60,000.00 Upon completion of Design Development I
- \$65,000.00 Upon presentation of Design Development II
- \$125,000.00 Total payment for Design Development

- \$80,000.00 10% down payment upon start of pre-production

PRE-PRODUCTION, PRODUCTION, & INSTALLATION PHASE

Schedule of Values will be provided upon completion of Design Development.
Pre-Production and production will be billed monthly upon percent complete.