

MAINTENANCE AGREEMENT
ORLANDO VETERANS MEMORIAL PARK

This Maintenance Agreement at Orlando Veterans Memorial Park (“Agreement”) is made and entered into this ____ day of _____, 2018, by and between the City of Orlando, a municipal corporation organized and existing under the laws of the State of Florida (“City”), and the Vietnam War Memorial Preservation Committee, Inc., a Florida non-profit corporation (“Committee”).

RECITALS

A. City owns certain property located within Baldwin Park, north of Lake Baldwin in Orlando, Florida, as more particularly shown in **Exhibit “A”**, attached hereto and incorporated herein, by reference (Park). The Park, known as Orlando Veterans Memorial Park, is approximately 4.227 acres of land in size.

B. The Vietnamese-American Memorial Committee of Florida (now known as The Vietnam War Memorial Preservation Committee, Inc., placed a Monument in the Park per City Policy 211.4.

C. The City has accepted the Monument under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Committee agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein.

2. Term of License. The term of the License shall begin on the date executed by the last party signing this agreement and end five (5) years later unless extended or terminated as provided herein. .

3. Renewal of License. Provided that Committee is not in breach or default of this Agreement, the term of the License may be renewed for additional five year terms upon the mutual, written agreement of the parties. The Families Parks and Recreation Director is authorized to execute such renewals, under the same terms and conditions, on behalf of the City without further approval from the Orlando City Council.

4. Maintenance, Repair, and Restoration

A. Committee shall be solely responsible for the maintenance and repair of the Monument and its related improvements including sidewalks built by Committee leading to the Monument from the pre-existing sidewalks. Committee shall maintain the Monument in a good, safe and sanitary condition throughout the term of this

Agreement. Committee shall insure that no pests, vermin, or noxious odors be caused by the Monument and therefore interfere with the use and enjoyment of the Park by the public, and that any graffiti be promptly removed.

- B. City shall be entitled to inspect the Monument from time to time and notify Committee in writing of any items in a state of disrepair. Committee shall have sixty (60) days from its receipt of the notice to repair the items. If the Monument's conditions of disrepair are a safety hazard to the public as determined by the City's Risk Management Division, the Committee or the City shall reserve the right to temporarily close the Monument to the public for repair within thirty (30) days of notification of such condition(s) and during the duration of the repair as required. Provided however, the Committee shall take no longer than sixty (60) days to repair the Monument or correct a safety issue without written permission from the Parks Division Manager. The failure of Committee to repair the items within such time period shall be a breach of this Agreement and may result in removal of the Monument from the Park at the City's discretion. The failure of City to provide a list of repairs to Committee shall not relieve Committee of its maintenance and repair obligations.
- C. Other than routine maintenance, the Committee may not make any alterations to the Monument and its related improvements without prior written approval of the Parks Division Manager. For the purpose of raising funds for the Monument's maintenance, the Committee reserves the rights to add new donor name plaques as provided in the final design and construction plans approved by the Parks Division Manager. Such additions shall be presented to the Parks Division Manager for the City's records.

5. Utilities. Committee shall be responsible for arranging and paying for the cost of all utilities related in any way to the Monument. No flame or fuel is allowed on site except in the urn during ceremonies.

6. Use and Operation. During the term of this Agreement, Committee shall be solely responsible for the operation of the Monument, including raising and lowering of the Freedom and Heritage flag (the yellow flag with three red stripes) of the Vietnamese American community and maintenance and safe operation of any flame lit in the urn during ceremonies. The Committee agrees to follow and abide by City policy and procedure 211.4, Memorials and Monuments, on inclusion of flags on monuments. The raising, lowering, maintenance and replacement of all flags included in a memorial are the responsibility of the Committee and shall be displayed in conformance with Federal and State policies as stated in the United States Code, Title 4, "U.S. Flag Code" and the State of Florida Division of Administrative Services "Flag Protocol and Display."

7. Use of Park.

- A. The Park is available for use by the general public for public events, in City's sole and absolute discretion. In order to utilize the Park, the Committee must contact the Parks Division Manager sixty (60) days in advance of any planned event and submit

an application for use of the Park in conformance with the then current park reservation procedures. The Committee shall be responsible for paying the normal and customary fees for using the Park.

- B. No additional events may be scheduled in the Park on Pearl Harbor Day, D-Day, Independence Day, Memorial Day and Veterans Day, at which times the Mayor's Veteran's Advisory Council retains exclusive use of the Park. The Committee may elect to be a part of festivities on these days by coordinating with the Mayor's Veteran's Advisory Council.

8. Termination. This Agreement may be terminated:

- A. By Committee for any reason upon thirty (30) calendar days prior written notice to City; or
- B. By City for any reason upon thirty (30) calendar days prior written notice to Committee.
- C. Upon termination by either party for any reason, Committee shall remove the Monument as soon as reasonably possible at its sole cost and expense, but in any event no later than ninety (90) days after termination.
- D. If the Committee opts not to exercise its right to remove the Monument as provided in 10.C. above, City may elect to keep the Monument improvements as part of its Park amenities, move them to another location or remove them and dispose of them in whatever manner it sees fit. If the City elects to keep the Monument on public display, City agrees to keep the statues of the American soldier and the Republic of South Vietnam soldier on display together as originally conceived and intended by Committee. In the event that City elects to retain the Monument improvements, Committee shall have no further right, title or interest therein. Should City so desire, Committee shall provide appropriate documentation to City confirming its conveyance to City of all rights, title and interest in the Monument improvements.

9. Indemnification. Committee hereby agrees to indemnify, defend and hold harmless without limit the City, its elected and appointed officials, agents, employees from and against any and all liabilities, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with this Agreement, including but not limited to the design, construction, operation, maintenance or repair of the Monument.

As a material condition of this Agreement, indemnity and defense of City shall include indemnity and defense for all claims made alleging negligence or any other basis of liability against City, without regard to allegations made or not made against Committee.

10. Insurance

- A. Committee, at its own expense, shall keep in force and at all times maintain during the term of this License, Commercial General Liability Insurance with limits of not less than One (1) Million Dollars (\$1,000,000.00) per occurrence and Two (2) Million Dollars (\$2,000,000.00) annual aggregate, for Bodily Injury (BI) and Property Damage (PD).
- B. City shall be named as an Additional Insured on the insurance policy required hereunder.
- C. Committee shall provide City with a Certificate of Insurance on the policy of insurance and renewals thereof, on an annual basis, in a form(s) reasonably acceptable to City.
- D. City reserves the right to waive or modify any aspect of the insurance requirements in this Agreement, including the addition of new types of coverage, as the result of reasonable and prudent risk management review of the activities upon or associated with the Monument.
- E. Committee shall make its best effort to notify City in writing of any reduction, cancellation or substantial change in its insurance policy or coverage at least thirty (30) calendar days prior to the effective date of said action.
- F. All insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports, who are licensed and authorized to do business under the laws of the State of Florida.

11. Copyright and Reproduction Rights

- A. The Committee expressly reserves every right available to the Committee under the Federal Copyright Act and other applicable statutes to control the making or dissemination of copies or reproductions of the Monument, except the rights which are limited by this Agreement.
- B. The City retains the right to publish and distribute photographs, drawings or other forms of reproductions of the Monument as installed and formally accepted by the City, for reference, promotional, educational and scholarly purposes. The City agrees to make no commercial use of the Monument without the Committee's written consent. If such consent is obtained from the Committee, all reproductions of the Monument by the City shall contain a credit to the Committee that states the Committee's name, year of creation, and the name of the City.
- C. The Committee agrees to include on or in any form of reproduction of the Monument initiated or authorized by the Committee, a credit to the City, stating that the Monument is owned by the City.

D. Committee shall not use City's name or logo in advertising or promoting the Monuments within the Park without City's prior, written consent.

12. Compliance With Laws

- A. Committee shall comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations relating to the Park and the construction and installation of the Improvements pursuant to this Agreement, including, but not limited to, the Florida Building Code (FBC), and the Americans With Disabilities Act (ADA). The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be Committee's sole responsibility.
- B. This Agreement is contingent upon Committee's maintaining all certificates, permits, and other approvals that may be required by any federal, state, or local authority for the operation of the Licensed Premises and the construction of the Improvements on the Licensed Premises. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be Committee's sole responsibility.

13. Condemnation. In the event the Park is taken by eminent domain, this Agreement shall automatically terminate as of the date title to the Park vests in the condemning authority. Such taking shall operate to terminate this Agreement and the terms of Section 10 above shall apply. Committee shall not be entitled to any portion of the award paid for the taking and City shall receive the full amount of such award. Committee hereby expressly waives any right or claim to any portion thereof and all damages, whether awarded as compensation for diminution in value of the Monument or Park, shall belong to City. City will inform Committee of the commencement of any eminent domain proceedings by any governmental authority.

14. Notices. All notices, requests, demands, and other communications required or given hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to City, to: Parks Division Manager
 City of Orlando Parks Division
 1206 W. Columbia Street
 Orlando, Florida 32805

If to COMMITTEE, to: President
 Vietnam War Memorial Preservation Committee, Inc.
 P.O. Box 277625
 Miramar, Florida 33027-7625

15. Assignment/Subletting. Committee shall neither assign this Agreement without the prior written consent of City, which may be withheld for any or no reason.

16. Liens. Committee shall insure that no liens or claims of liens are recorded against Park property due to the construction and installation of the Monument by any party, and the recording of any such lien, unless removed within thirty (30) days of filing, shall be a default by Committee of this Agreement.

17. Unlawful Discrimination. Committee covenants and agrees that no person shall be unlawfully discriminated against in the design, construction, use and operation of the Monument pursuant to this Agreement.

18. No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between City and Committee.

19. Riparian Rights. Committee shall not acquire any riparian rights to Lake Baldwin by virtue of this Agreement or its use of the Park.

20. Miscellaneous.

A. City and Committee represent that each, respectively, has full right, power, and authority to execute this Agreement and enter into this Agreement.

B. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein

C. This Agreement shall be construed in accordance with the laws of the State of Florida. The location for the settlement of any disputes arising out of this Agreement shall be Orange County, Florida.

D. City is a Florida municipal corporation whose limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the limits of liability of City beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of City's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of City's obligations under this Agreement are limited to the payment of no more than the amount limitation per person and in the aggregate contained in Section 768.28, Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

E. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

SIGNATURES BEGIN ON NEXT PAGE

CITY OF ORLANDO, FLORIDA

Attest:

Denise Aldridge, City Clerk

By: _____

Mayor/Pro Tem

Executed on _____, 2018

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of Orlando,
Florida, only.

_____, 2018.

Chief Assistant City Attorney

VIETNAM WAR MEMORIAL PRESERVATION
COMMITTEE, INC., a Florida non-profit
Corporation

By: _____

Name: _____

Title: _____

Witnesses:

(1) Sign: _____

Print Name: _____

(2) Sign: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ___day of _____, 2018,
by _____, the _____ of the Vietnam War Memorial Preservation
Committee, Inc., a Florida non-profit corporation, on behalf of the corporation. He/she is
personally known to me or has produced a valid _____ Driver's License as identification.

Notary Public:
Commission Expires:
(SEAL)