

## VETERANS MEMORIAL PARK LICENSE AGREEMENT

THIS AGREEMENT is made and entered into this 12<sup>th</sup> day of November, 2013, by and between the **CITY OF PENSACOLA**, a municipal corporation of the State of Florida, hereinafter referred to as the "*City*," whose address is 222 W. Main Street, Pensacola, FL 32501, and the **VETERANS MEMORIAL PARK FOUNDATION OF PENSACOLA, INC.**, a Florida Not-For-Profit Corporation, whose current address is 1017 N. 12th Avenue, Pensacola FL 32501, hereinafter referred to as the "*VMP Licensee*."

Whereas, the City is the owner of a large park located adjacent to the Admiral Mason Park along the bay shore in downtown Pensacola, known as the Veterans Memorial Park, and on which is placed various significant memorials, including The Wall South Viet Nam War Memorial, World War I Memorial, World War II Memorial, Korean War Memorial, and the Marine Aviation Memorial Tower, and

Whereas, the "VMP Licensee" has been incorporated as a non-profit corporation for the following purposes relating to such park:

- A. Develop a vision and theme for the Veterans Memorial Park, located along Escambia Bay in downtown Pensacola, hereinafter referred to as the "Park," and utilize and incorporate this theme in decisions and recommendations concerning future growth, expansion, and use of the Park.

B. Develop process and standards for review of organizations that arise around an idea for a new monument or for support of same which will include minimum standards of community involvement, community acceptance and support, financial strength, consistency with the aforementioned theme and vision, ability to perform, and ability to carry support into the future.

C. Develop approval standards for Park events, subject to City approval, which will readily and without hindrance allow and encourage the citizens to use and enjoy the Park.

D. Prepare and submit an annual State of the Park report to the City of Pensacola so that its citizens may be periodically, and formally, apprised of issues affecting the Park. This report shall include, but not be limited to, the most recent outside audit of the Licensee's finances, as required annually by the Corporation's Bylaws, as well as any and all reports submitted to the IRS and the State of Florida.

E. Operate with full transparency, as required by the corporate Bylaws, and in accordance with Florida's Sunshine Law which attaches to its mission as stewards of City property, and

WHEREAS, the City and the VMP Licensee recognize the significance of the Veterans Memorial Park to honor the service and sacrifice of those military veterans who have served the Nation, and

WHEREAS, the City and VMP Licensee intend to have the Veterans Memorial Park serve as a very special place for such reflection and remembrance, and

WHEREAS, the City and VMP Licensee recognize that the grant of a license by the City to the VMP Licensee will facilitate and ensure the means to fulfill the noble intentions regarding the Veterans Memorial Park, and

WHEREAS, the City Council approved this license on the 10<sup>th</sup> of October, 2013,

**WITNESSETH:**

FOR AND IN CONSIDERATION of the mutual benefits and obligations hereinafter set forth, to be kept and performed by the parties hereto, and other good and valuable consideration, the sufficiency of which is hereby expressly acknowledged, the City and the VMP Licensee agree as follows:

1. City grants to VMP Licensee an exclusive license to use the Veterans Memorial Park, a parcel of real property located on Bayfront Parkway adjacent to the intersection with 9th Avenue, (hereinafter called the "Subject Property") owned by the City of Pensacola and more particularly described on Exhibit "A", attached hereto, in furtherance of the intentions and purposes stated above. Nothing herein shall preclude the public from ordinary use and enjoyment of the Veterans Memorial Park in accordance with City, County, and State law, ordinances, and regulations.
2. VMP Licensee may not make any improvements to the subject property unless expressly authorized by the City. VMP Licensee shall not permit any obstruction of the view of motorists on adjacent streets.

3. VMP Licensee shall not be required to pay an annual license fee to the City.

4. VMP Licensee shall maintain the subject property and all improvements upon the subject property in good order and repair and shall ensure that the subject property is safe and attractive for the visiting public. During the full term of this license, VMP Licensee shall keep the subject property open for public enjoyment without charge, except for any period when construction or repair of improvements are in progress, during which period the public shall be kept from the site by the VMP Licensee.

5. VMP Licensee shall retain control over its employees, agents, servants, contractors, and invitees and their activities on or about the subject property and the manner in which said activities shall be undertaken, and to that end VMP Licensee shall not be deemed to be an agent of the City. Reasonable precautions shall be exercised at all times by VMP Licensee for the protection of all persons, including employees, and property. VMP Licensee shall make regular and periodic effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

6. VMP Licensee shall indemnify and hold harmless the City from any and all liability, claims, demands, damages, expenses, fees, fines, penalties, expenses (including reasonable attorney's fees,) suits, proceedings, actions or causes of action, or every kind and nature whatsoever, arising out of or occurring in connection with

subject property by VMP Licensee, its successors, assigns, officers, employees, servants, agents, contractors, or invitees, of whatsoever description, or resulting from any breach, default, non-performance, or violation of any of VMP Licensee's obligations under this agreement. VMP Licensee shall at its own expense defend any and all actions, suits, or proceedings which may be brought against the City or in which the City may be impleaded with others in any such action or proceeding arising out of the use or occupancy of the subject property. This paragraph shall survive the termination of this agreement.

7. It is understood and agreed that VMP Licensee accepts the subject property and the ground under it in its present condition, and no representation as to any portion, part, or section of said property is hereby made by the City, nor does the City warrant or represent that the property is safe or suitable for the purpose for which it is permitted to be used by VMP Licensee.

8. Until the termination of this license is acknowledged in writing by the City, VMP Licensee agrees to purchase and maintain in full force and effect liability insurance coverage, including contractual liability coverage on the subject property, of the type and in the amount as determined by the City as reasonable. Initially, the limits of liability of such coverage shall be at least \$1,000,000.00 combined single limits of liability per occurrence for bodily injury, including death and property damage. The City will give VMP Licensee at least ninety (90) days prior written notice of any increase in the required limits of liability. VMP Licensee will agree to have in force, by the end

of such ninety (90) day period, the newly required limits of liability. Prior to undertaking such activity upon the subject property, VMP Licensee shall provide the City with a certificate of insurance, satisfactory to the City, evidencing the existence of such insurance. Required insurance shall be documented in the Certificate of Insurance which provides that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, non-removal, adverse change, or restriction in coverage. The City of Pensacola shall be named on each Certificate as an Additional Insured, and this License Agreement shall be listed. If required by the City, the VMP Licensee shall furnish copies of the VMP Licensee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificates of Insurance" form equal to, as determined by the City, an ACORD 25. Any wording in a Certificate which would make notification of cancellation, adverse change, or restriction in coverage to the City an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The User shall replace any canceled, adversely changed, restricted, or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change, or restriction. If any policy is not timely replaced in a manner acceptable to the City, the User shall, upon instructions of the City, cease all operations under the Use Agreement until directed by the City, in writing, to resume operations. The Certificate Holder shall be listed as follows: City of Pensacola, Department of Risk Management, P.O. Box

12910, Pensacola, FL 32521-0063. Failure of VMP licensee to provide and maintain the requisite insurance shall be cause for the City to terminate this License Agreement and to retake exclusive possession of the subject property immediately upon giving notice of its intention to do so to VMP Licensee.

9. This agreement, and the license granted hereby, may be terminated by the City Council or the VMP Licensee, with or without cause, by giving written notice to the other party. This license shall be for the sole use and benefit of VMP Licensee. In the event that VMP Licensee receives notice from the City of termination of this license agreement, the City shall not be liable for any claim from VMP Licensee, its legal representatives, successors, or assigns arising out of the termination. VMP Licensee may relinquish its interest in the subject property and may be relieved of its obligations under this agreement by giving notice of his intention to do so to the City. Inasmuch as the property is a memorial park with erected statutes and monuments, the property shall be delivered back by VMP Licensee in the condition it exist at the time of notice of termination, reasonable wear and tear excepted. When the City has acknowledged in writing its satisfaction therewith, this agreement shall be terminated, and the City and VMP Licensee shall have no further obligation arising hereunder. Provided, however, VMP Licensee shall in no event be excused from its obligations with respect to acts or occurrences prior to the termination of this agreement.

10. Without the previous written consent of the City Council, VMP Licensee shall not be permitted to assign this agreement or any estate or interest

therein, sublet, or permit the occupancy of the subject property, or any part thereof, by anyone other than the VMP Licensee. Any consent by the City to any act of assignment, subletting, or occupancy shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the VMP Licensee, or its legal representatives or assigns, to obtain from the City its consent to any other or subsequent assignment, subletting, or occupancy or as modifying or limiting the rights of the City under the foregoing covenants by the VMP Licensee not to assign or sublet without such consent. In any event, no such assignment, subletting, or occupancy shall relieve the Licensee of its obligations hereunder.

11. Venue for any claim, action, or proceeding arising out of this License Agreement shall be Escambia County, Florida.

12. The prevailing party in any action, claim, or proceeding arising out of this license agreement shall be entitled to reasonable attorney fees and costs from the losing party.

13. This agreement shall be governed by and construed in accordance with the laws of the State of Florida.



IN WITNESS WHEREOF, this agreement is executed by the authorized  
representatives of the City and VMP Licensee on the day and year first written  
herein.

CITY OF PENSACOLA,  
A municipal corporation.

By: Ashton J. Hayward  
Ashton J. Hayward, Mayor

P.C. Wu

P. C. Wu, Council President

ATTEST: Erica L. Bennett

VETERANS MEMORIAL PARK  
FOUNDATION OF PENSACOLA,  
INC., a Florida not-for-profit  
corporation.

By: Jack P. Brown  
Its President

JACK P. BROWN

Print

ATTEST:

W.A. Hansen, Jr.  
Secretary (Seal)

W.A. Hansen, Jr.

Print

## ATTACHMENT A

### Legal Description of Veterans Memorial Park Property

All of Lots 1, 2, 3, 4, 20 and 19; portions of Lots 5, 17, and 18 not removed by the new right-of-way on Bayfront Parkway, all located in Block 3, New City Tract; all of the unopened right-of-way of 10th Avenue (100 feet right-of-way), between Romana Street south to Bayfront Parkway; and that portion of the unopened right-of-way of Intendencia Street (80 feet right-of-way), located between the above mentioned 10th Avenue east to Bayfront Parkway.

# Report of City Council Action Items

October 10, 2013



**Members Present:** P. C. Wu, Jewel Cannada-Wynn, Charles Bare, Larry B. Johnson, Sherri Myers, Megan B. Pratt, Brian Spencer, Andy Terhaar, and Gerald Wingate

**Absent:** None

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## REGULAR AGENDA ITEMS

1. AGREEMENT – FLORIDA DEPARTMENT OF TRANSPORTATION – HIGHWAY BRIDGE REPLACEMENT 12<sup>TH</sup> AVENUE BRIDGE

That City Council authorize the Mayor to execute the Off System Agreement FPID ID #43002-1-52-01 between the City of Pensacola and the Florida Department of Transportation (FDOT) associated with the Replacement of Bridge No. 485247 over Bayou Texar on 12<sup>th</sup> Avenue.

*The motion passed unanimously.*

2. VETERANS MEMORIAL PARK LICENSE AGREEMENT

That City Council approve a license agreement between the City of Pensacola and the Veterans Memorial Park Foundation of Pensacola, Inc.

*The motion passed unanimously.*

3. PUBLIC HEARING: EAR-BASED ZONING MAP AMENDMENTS - TANGLEWOOD APARTMENTS AND A PORTION OF THE BAY BLUFFS PRESERVE

That City Council conduct a public hearing on October 10, 2013 to consider the proposed EAR-Based amendments to the City's Zoning Map. **MOTION TO APPROVE**

*The motion passed unanimously.*

### **PROPOSED ORDINANCE NO. 31-13- MOTION TO APPROVE**

**AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY PURSUANT TO AND CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY OF PENSACOLA; AMENDING THE ZONING MAP OF THE CITY OF PENSACOLA; REPEALING CLAUSE AND EFFECTIVE DATE. *Tanglewood Apartments***

*The motion passed unanimously.*

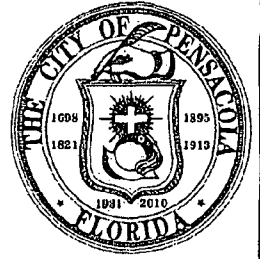
### **PROPOSED ORDINANCE NO. 32-13- MOTION TO APPROVE**

**AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY PURSUANT TO AND CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY OF PENSACOLA; AMENDING THE ZONING MAP OF THE CITY OF PENSACOLA; REPEALING CLAUSE AND EFFECTIVE DATE. *Bay Bluffs Preserve***

*The motion passed unanimously.*

# COUNCIL MEMORANDUM

Council Meeting Date: October 10, 2013



## LEGISLATIVE ACTION ITEM

### SPONSOR:

Ashton J. Hayward, III, Mayor *Ashton*

### SUBJECT:

Veterans Memorial Park License Agreement

### RECOMMENDATION:

That City Council approve a license agreement between the City of Pensacola and the Veterans Memorial Park Foundation of Pensacola, Inc.

### AGENDA:

\_\_\_\_\_ Regular        X   Consent

Hearing Required: Public \_\_\_\_\_ Quasi-Judicial \_\_\_\_\_ No Hearing Required   X  

### SUMMARY:

Late last year, I appointed the Veterans Memorial Park Steering Committee to examine issues pertaining to the Park and to recommend actions to take it into a positive, secure and vibrant future. That committee reported its findings to me in March of 2013. In April, the Steering Committee was tasked to function as incorporators of a new foundation to exercise stewardship of the Park. The Veterans Memorial Park Foundation of Pensacola, Inc. (VMPFP) is now firmly in place and ready to assume its intended role, in partnership with the citizens of our extended community, as steward of the Veterans Memorial Park.

The Veterans Memorial Park Foundation of Pensacola is currently composed of the following individuals: Jack Brown, President; Charlie Switzer, Vice-President; W.A. Butch Hansen, Secretary; Michael Swinehart, Treasurer; John Clark; Joe Denmon; Paul Entrekinn; Dave Glassman; Joe Glover; Jill Hubbs; John Ochs; Roberto Rivera; Roger Rowe; Bill Weeks, City of Pensacola Representative; and Ed Holt, Legal Representative.

The VMPFP proposes that this mission be defined and controlled by a license agreement between the VMPFP and the City of Pensacola. The VMPFP further proposes that this agreement focus the duties and responsibilities of the VMPFP in the following functional areas: Administration and Oversight, Education and Community Outreach, Maintenance and Grounds Keeping, Marketing and Fundraising. Authority exercised by the Foundation would be subject to oversight and final approval by the appropriate departments of the City of Pensacola.

The VMPFP suggests the following breakdown of tasks within the proposed areas, paying special attention to the suggestions contained in the Steering Committee's report of March 5, 2013:

#### **Administration and Oversight:**

1. Develop a Vision and Theme for the Park. Utilize and incorporate this theme in decisions and recommendations concerning future growth or expansion of the Park.

2. Develop standards for review of organizations that arise around an idea for a new monument or for support of same. These will include minimum standards of community involvement, community acceptance and support, financial strength, consistency with the aforementioned theme and vision, ability to perform, and ability to carry support into the future.
3. Develop an approval process for Park events. VMPFP desires that citizens be allowed and encouraged to use and enjoy their Park. Events that require reservation of a significant portion of the Park and which necessarily hinder use of the Park by others will require more stringent review. The approval process for other events should be structured to cause as little hindrance and delay as possible.
4. Prepare and submit an annual State of the Park report to the City of Pensacola so that it citizens may be periodically, and formally, apprised of issues affecting the Park. This report shall include, but not be limited to, the most recent outside audit of the Foundation's finances, as required annually by its Bylaws, as well as any and all reports submitted to the IRS and the State of Florida.
5. Operate with full transparency, as required by our corporate bylaws, and in accordance with Florida's Sunshine Law which attaches to our mission as stewards of City property.

**Education and Community Outreach:**

1. Educate the community, especially our children, about the Park and its mission, holding the sacrifices of those memorialized there as worthy of their gratitude, respect and emulation.
2. Promote incorporation of the Park into the fabric and culture of our community as befitting its rightful place in the hierarchy of our heritage and history.
3. Work with veterans groups to coordinate special observances at the Park to include, but not be limited to, Memorial Day, Independence Day and Veterans Day.
4. Provide help and encouragement to youth groups, social organizations, church groups and others to find creative ways to bring the Park to life.

**Maintenance and Grounds Keeping:**

1. Provide funding and oversight for the ongoing maintenance, preservation, improvement and development of the Park.
2. Coordinate and supervise, by volunteer or by contract labor, efforts necessary to maintain the Park at a pristine level of appearance and cleanliness.
3. Ensure that the Park is kept in an appropriate state of repair, recognizing that less than that dishonors the sacrifices of those that we honor there.
4. Remove or replace the kiosk originally intended to help visitors locate names on Wall South. Provide an alternative consistent with the evolution of technology that is increasingly available to visitors to the Park.
5. Provide for the payment of power and utility bills, and provide for expansion of utility service as necessity warrants.

**Marketing and Fundraising:**

1. Employ all means available for a IRC 501(c)3 corporation to identify and maintain funding for the present and future needs of the Park.
2. Establish an appropriate endowment goal and aggressively pursue its funding.
3. Establish a strong internet presence, to include a first rate website and an aggressive and effective presence in appropriate forms of social media.

4. Work persistently to attract visitors to our "gem on the bay." Provide them with an experience that moves them, and brings them back to Pensacola.
5. Coordinate and cooperate with the marketing efforts of our region's local governments and chambers of commerce in order to enrich the narrative and leverage our respective efforts toward a common and successful end.

**PRIOR ACTION:**

None.

**FUNDING:**

None.

**FINANCIAL IMPACT:**

None.

**STAFF CONTACT:**

Colleen M. Castille, City Administrator; Bill Weeks, City of Pensacola Representative to VMPFP

**ATTACHMENTS:**

- 1) Bylaws for VMPFP
- 2) Veterans Memorial Park License Agreement

**PRESENTATION:**

No.

USER AGENCY

Project \_\_\_\_\_ Contract X Lease \_\_\_\_\_ Other (Check One)

Description: License Agreement w/ Veterans Memorial  
Park Foundation of Pensacola, Inc.

User Agency (Dept): Administration

Agency Contact Person: Colleen M. Castille

Approved By Council: 10/10/13  
(Date, if applicable)

Sent to Contract Administration 10/31/13

CONTRACT ADMINISTRATOR (PURCHASING)

Date Received **10/31 / 13**

N/n Debarment Check

\_\_\_\_ Pending (See comments below): \_\_\_\_\_  
(Signature)

Sent to User Agency . / /

✓ Approved: Mary  
(Signature)

Sent to Risk Management Agency 10/31 / 13

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## RISK MANAGER

Date Received 10/31/13

\_\_\_\_ Pending (See comments below): \_\_\_\_\_  
(Signature)

Sent to User Agency     /     /

✓ Approved: [Signature]  
(Signature)

Sent to Mayor 11/5/2013

Comments: \_\_\_\_\_

\_\_\_\_\_

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## (P3-89) Rev. 9/13