

**City of Marco Island
&
American Legion Post 404
Memorandum of Understanding
Vietnam War Memorial at Veterans Community Park**

This Memorandum of Understanding (“MOU”) is made and entered into this ____ day of April 2024 between the **City of Marco Island, Florida** (the “City”), and **the Marco Island Post 404 the American Legion, Inc.** (the “Legion”). Both parties have mutual interest in developing and maintaining the Veterans Memorial Area at the City of Marco Island Veterans Community Park (the “Park”), located at 901 Park Avenue, Marco Island, Florida. The Legion is committed to raising funds for a Vietnam War statue to honor veterans who served in the Vietnam War.

Both the City and the Legion agree to the following roles and responsibilities:

- Subject to City approval, the Legion will contract directly with third parties to design, assemble, weld, cast, deliver and install a Vietnam War statue to be located at the Park. Any contract for the installation of the statue shall require that the contractor provide commercial liability, worker’s compensation, and automobile liability insurance, naming the City of Marco Island as an additional insured.
- The Legion will pay, at its sole cost and expense, in full for the Vietnam War statue including any required engineering, landscaping, irrigation, lighting, leveling/grading, drainage improvements, new pathways and sidewalks, delivery, and installation. The City of Marco Island will waive all impact and/or building fees.
- The City Council will be the final decision makers, in consultation with the American Legion Post 404, regarding the size, scale, and location of the Vietnam War statue.
- The City, in consultation with the American Legion Post 404, will approve the final statue in its clay form prior to casting in bronze.
- The Legion will notify the City, in writing, no less than thirty (30) days prior to having the vendor deliver and install the Vietnam War statue.
- The Legion will collect funds through fundraising and distribute funds as necessary without utilizing the City finance department or City resources. The City shall have no responsibility for the collection, deposit, or expenditure of any funds collected by the Legion.
- American Legion Post 404 will obtain and retain copyright of the statue. Any Royalties produced from the statue will be maintained by Post 404 and used for future memorials in Veterans Community Park. Any use or images of the statue or any other actions by the City regarding the Vietnam Memorial will not be considered nor will it constitute copyright infringement.
- The American Legion Post 404 will obtain written waiver/release for any applicable rights the artist may possibly claim under the Visual Artist Rights Act to ensure there are no

copyright or patent violations. A copy of the written waiver/release will be provided to the City prior to delivery and installation of the statue at the Park.

- The Legion will transfer ownership of the statue to the City upon completion and dedication of the Memorial. The City will maintain the grounds, statue, walkways, and benches in the area of the Vietnam War statue and entire memorial area.
- Both the City and the American Legion agree to work together to finalize the project to honor veterans of the Vietnam War.

1. Term of the MOU:

Both parties agree that the effective date of this MOU shall be the date on which the City signs the MOU. The term of the MOU shall be for a five (5) year period. Either party may terminate the MOU at any time upon providing thirty (30) days' notice if there is a default of the agreement by either party. Once Legion is notified of default, a thirty (30) day period of cure will be allowed before termination. The MOU may be renewed upon the execution of an amendment to the MOU by both parties.

2 Use of the Park Property:

Any work to alter the landscaping or pathways in order to build and install the Vietnam War statue must be coordinated with City Parks and Recreation staff and will not be scheduled during any special event at the Park. The Legion shall not erect tents or tables for use for fundraising purposes without first obtaining prior approval from the City, including obtaining a City Special Event Permit.

3 Rules and Regulations:

The Legion shall conduct all activities at the Park in conformance with the City of Marco Island Code of Ordinances and any applicable rules and regulations governing activities at the Park.

4. Indemnification:

The American Legion agrees that it is responsible for its individual acts and deeds as well as the acts and deeds of their respective contractors, employees, representatives and agents and it shall indemnify, defend and hold the City harmless from and against all claims, damages, lawsuits, judgments, costs, attorney's fees and expenses directly arising out of or as a direct result of any such deeds or acts with respect to the design, assembly, delivery and installation process of the Vietnam War Memorial.

Both parties agree to execute and abide by the terms of this Memorandum of Understanding with the terms outlined above.

CITY OF MARCO ISLAND, FLORIDA

MARCO ISLAND POST 404, THE
AMERICAN LEGION, INC.

Michael A. McNees, City Manager

Commander, American Legion Post 404

Date

Date