

**Agreement Between
The City of Wauwatosa and
City of Wauwatosa VFW Post 1465 for
Construction and Dedication of a Veterans Memorial**

This agreement is between the City of Wauwatosa ("City") and City of Wauwatosa VFW Post 1465 ("VFW").

WHEREAS, the City of Wauwatosa owns lands identified by Tax Key #3700420000 located at the western corner of the intersection of Harwood Avenue & Milwaukee Avenue in the City of Wauwatosa (the "City Property"); and

WHEREAS, VFW desires to create a veterans memorial within the City Property honoring all those who have served in the United States of America Armed Forces inclusive of all six branches of the United States military. VFW has offered to raise the necessary funds and to be the contracting responsible party for the construction of the veterans memorial (the "Memorial"), through its own efforts; and

WHEREAS, §62.15(1e) of the Wisconsin Statutes allows municipalities to accept donated improvements on public lands as an exception to the requirements of the public bidding statute; and

WHEREAS, the VFW has agreed that it will dedicate the completed Memorial to the City and that it will become the property of the City upon its completion and acceptance by the City; and

WHEREAS, the parties intend that these provisions be fully incorporated into the terms and conditions of this agreement, and are not mere recitals;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree to the following terms and conditions of this agreement:

Article I – Status of VFW

At the outset and throughout the term of this agreement, VFW shall:

- 1.1 Be organized legally and remain so organized as a legal entity under Chapter 181, of the Wisconsin Statutes.
- 1.2 Maintain a current registration with the State of Wisconsin Department of Financial Institutions, or successor office.
- 1.3 Continue to maintain eligibility for Internal Revenue Service for certification establishing VFW as a tax-exempt entity under Sec. 501(c)(19) of the Internal Revenue Code.
- 1.4 Supply to the City written verification of VFW's compliance with this Article, within 30 days of the City's request for such documentation.

Article II – VFW Obligations Related to Construction Activities

VFW shall:

- 2.1 Be the contracting/responsible party for all of the construction of the Memorial, to be located on City Property pursuant to plans and designs which must be approved by the City's Appropriate approval bodies, including, but not limited to, the Engineering Division, Development Department, and Citizen Boards, where required (the "**Work**"). To this end, VFW shall employ a qualified general contractor to coordinate and oversee the construction of the Memorial. The General Contractor shall be qualified, as determined by VFW and the City.
- 2.2 To the greatest extent possible during construction of the Memorial, VFW will keep the City Property free and clear of all liens. Upon completion of construction and dedication of the Memorial to the City, the Memorial shall be free and clear of all liens, and all necessary lien waivers shall be provided to the City by VFW and it(s) contractor(s).
- 2.3 In addition to those insurance coverages described in Section 5.3 below, provide Property Coverage (Builder's Risk) on a replacement cost basis which shall cover property on the project work sites and property in transit.
- 2.4 Provide workers' compensation coverage and commercial general liability coverage for their employees.
- 2.5 Secure all required City plan reviews and approvals; secure all appropriate permits for construction of the Memorial.
- 2.6 Prepare, or cause to be prepared, a schedule for the performance of the services under this agreement which shall take into consideration the needs of the City and coordination with other projects that may be undertaken in the area of the City Property. This schedule shall include allowances for adequate periods of time required for the City's review of submissions, and for approval of submissions by authorities who may assert jurisdiction over the project.
- 2.7 Ensure compliance with the approved site and building plans, and all applicable codes and regulations applicable to construction of this Memorial.
- 2.8 Provide an ongoing progress report to the City not less than once every calendar month, or at other such times as reasonably requested by the City. To this end, VFW agrees to inspection of the Memorial by representatives of the City during normal business hours or other such hours as work may be occurring at the Memorial site.
- 2.9 Provide to the City a list of contractors and individuals and the value of their donations of cash, materials and services. If any such donors have requested anonymity, the City shall take all precautions available under the Wisconsin Open Records Law to ensure that such anonymity is preserved.
- 2.10 Transfer title and possession of the completed Memorial, free and clear of all liens or encumbrances unless otherwise agreed to in writing by the City, to the City subject to the City's satisfaction that all VFW obligations have been met, including completion of all restoration in and around the Memorial and all punch list items required by the City. All rights to enforcement of warranties and guarantees regarding construction or materials used therein shall be transferred to the City at this time.
- 2.11 Construction of the Memorial shall be completed by 12/31/2026 unless the delay is

beyond the reasonable control of the Contractor or otherwise agreed to by the parties in writing. Delay by the City to approve timely submitted materials shall be considered outside of the reasonable control of the Contractor.

- 2.12 Provide replacement flags at least annually for all flags flown in the Memorial.

Article III – City Obligations

The City shall:

- 3.1 Permit VFW and its general contractor, and all other persons duly authorized by VFW or its contractor, to enter and utilize the City Property in the City of Wauwatosa to such extent necessary for purposes of constructing and equipping the Memorial, pursuant to the terms and conditions of this Agreement.
- 3.2 Waive all applicable City permit fees.
- 3.3 Provide electrical utility service to the Memorial after construction completion.
- 3.4 Upon completion of the Memorial to the sole satisfaction of the City, shall accept transfer and ownership of the Memorial and delegate operational responsibility for the Memorial to the City.
- 3.5 After Memorial completion and acceptance, the City will insure the Memorial under its normal insurance coverages.
- 3.6 Provide City resources, or contract with an appropriate organization, for ongoing operation, management and maintenance of the Memorial.
- 3.7 Name the Memorial and allow VFW to provide appropriate recognition of donors in a manner consistent with the donor recognition plan included in the construction documents.

Article IV – Ownership and Use of Documents and Electronic Data

- 4.1 Drawings, specifications and other documents and electronic data are furnished for use solely with respect to this project. The City shall be permitted to retain copies, including reproducible copies of the drawings, specifications and other documents and electronic data furnished by VFW or its contractors for information and reference in connection with the project subject to the provisions contained in 4.2 and 4.3 below.
- 4.2 The City may use the drawings, specifications, and other documents and electronic data furnished by VFW or its contractors in order to complete or modify the construction of the Memorial.
- 4.3 If VFW or its contractors' default in its obligations to VFW or City, VFW or its contractors shall grant a license to the City to use the drawings, specifications, and other documents and electronic data for the completion of the Memorial.

Article V– Indemnification and Insurance

- 5.1 To the fullest extent permitted by law, VFW and its contractor shall indemnify and hold harmless the City, their employees, elected officials, board members, and consultants from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or

destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of VFW or its contractors, anyone directly or indirectly employed by VFW or its contractors or anyone for whose acts VFW or its contractors may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

5.2 In claims against any person or entity indemnified under this article by an employee of VFW or its contractors, anyone directly or indirectly employed by VFW or its contractors or anyone for whose acts VFW or its contractors may be liable, the indemnification obligation under this article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for VFW or its contractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

5.3 In addition to the Indemnification requirements above, VFW or its contractor shall not commence work until VFW or its contractor has obtained all insurance required below, naming the City of Wauwatosa as an additional insured, and has provided acceptable proof of such insurance to the City.

A. Commercial General Liability coverage at least as broad as Insurance Services Office Forms #CG 00 01 07 98 and #CG 25 03 11 85, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits:

1.	General aggregate limit per project	\$2,000,000
2.	Products-Completed Operations aggregate	2,000,000
3.	Personal and Advertising Injury limit	1,000,000
4.	Each Occurrence limit	1,000,000
5.	Fire Damage limit — any one fire	50,000
6.	Medical Expense limit — any one person	10,000

B. Automobile Liability coverage at least as broad as Insurance Services Office Form #CA 00 01 07 97, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1-Any Auto basis.

C. Umbrella Liability providing coverage at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$10,000.

D. Professional Liability. Each Claim -- \$500,000.00; annual aggregate -- \$1,000,000.00. coverage must continue for 2 years after final payment for services.

Article VI – Miscellaneous Provisions

- 6.1 Time is of the essence with regard to all dates contained in this agreement.
- 6.2 This agreement shall be governed by the laws of the State of Wisconsin.

- 6.3 This agreement shall be binding upon the parties hereto, their heirs, successors and assigns. Subject to para. 6.4 below, no party shall assign this agreement without the written consent of all other parties.
- 6.4 The parties agree that VFW may assign this agreement to a successor organization currently being formed entitled “Friends of Wauwatosa Veterans Memorial, Inc.” After said assignation, VFW will be relieved of its responsibilities under the agreement. Successor organization will meet all requirements set forth in Article I above and be subject to all terms and obligations of this agreement. No further consent will be required for said assignation nor will it affect the validity of this agreement.
- 6.5 This agreement represents the entire agreement between the parties and supersedes any and all prior negotiations, representations or agreements, either written or oral. This agreement may only be amended by written instrument signed by all parties.

Article VII – Termination of Agreement

- 7.1 This agreement shall terminate automatically when the parties have completed their respective obligations under the terms and provisions of this agreement, or when the purposes of this agreement have been fulfilled to the sole satisfaction of the City.
- 7.2 This agreement may be terminated by any party upon fourteen (14) days written notice to the other parties hereto should any party fail to substantially perform in accordance with the terms of this agreement through no fault of the party initiating the termination.
- 7.3 Upon receiving any notice of termination from the other party, the receiving party shall be provided the opportunity to cure any noted defects prior to termination of the notice period.
- 7.4 In the event of termination, VFW shall ensure that its contractors are compensated for services performed to the termination date, together with reimbursable expenses then due. Thereafter, at its sole discretion, the City may assume any contractual relationship it deems necessary to complete construction of the Memorial.

Article VIII – Work by the City; Public Construction Contractors

- 8.1 The City reserves the right to perform construction or operations related to the Memorial with the City’s own employees and to award separate contracts in connection with the Memorial or other construction or operations on the site under conditions identical to the provisions of this Agreement. If VFW or its contractors claim that delay is involved because of such action by the City, VFW or its contractors shall notify the City of such claims and the parties may adjust the contract time accordingly. If VFW or its contractors claims that additional cost is involved because of such action by the City, VFW or its contractors shall notify the City of such claims and the parties may enter into a change order if necessary to account for such additional cost.
- 8.2 VFW or its contractors shall afford the City’s employees or separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate VFW or its contractors’ construction and operations with theirs as required.

Article IX – Notices

Notices required to be given under this Agreement shall be given as follows:

To the City of Wauwatosa:

Director of Public Works
City of Wauwatosa
11100 West Walnut Road
Wauwatosa, WI 53226

With a copy to:

City Attorney
7725 West North Avenue
Wauwatosa, WI 53213

To VFW:

9265 Harding Blvd.
Wauwatosa, WI 53226

This Agreement entered into this ____ day of _____, 2026.

CITY OF WAUWATOSA

City of Wauwatosa VFW Post 1465

Dennis McBride, Mayor

By: _____
Benjamin Hruz, Commander

Deyanira Nevarez, City Clerk

APPROVED AS TO FORM AND
EXECUTION:

Attorney’s Office Representative