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BRIDGE TO THE FUTURE

# CITY OF OMRO

Omro, Wisconsin

## OMRO VETERAN'S MEMORIAL AGREEMENT

CITY OF OMRO  
&  
DAUGHERTY-HAMILTON  
AMERICAN LEGION POST 234  
OMRO, WISCONSIN



# TABLE OF CONTENTS

TABLE OF CONTENTS .....	2
1. DEFINITIONS .....	4
2. TERM OF AGREEMENT .....	4
3. TERMINATION .....	4
4. OWNERSHIP AND USE OF PREMISES .....	5
5. INSURANCE .....	5
6. MAINTENANCE OF MEMORIAL GROUNDS AND STRUCTURES .....	6
7. UTILITIES AND SUPPLIES.....	7
8. DONATIONS AND FUND RAISERS .....	7
9. ADVERTISING .....	8
10. COMPLIANCE WITH LAW.....	8
11. REPRESENTATIONS AND WARRANTIES .....	8
12. INDEMNIFICATION .....	9
13. FORCE MAJEURE.....	9
14. EMINENT DOMAIN.....	10
15. RELATIONSHIP OF PARTIES .....	10
16. NOTICES .....	10
17. GENERAL .....	10
18. SIGNATURES IN EXECUTION OF AGREEMENT .....	12

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&

DAUGHERTY-HAMILTON  
AMERICAN LEGION POST 234  
OMRO, WISCONSIN



OMRO VETERAN'S MEMORIAL AGREEMENT (this "Agreement") entered into as of this 3<sup>RD</sup> day of October 2006, by and between the CITY OF OMRO, a Wisconsin municipal corporation having offices at 205 S. Webster Avenue, Omro, Wisconsin 54963, henceforth referred to as City of Omro, and the DAUGHERTY-HAMILTON AMERICAN LEGION POST 234, a non-profit organization comprised of veterans of military service in support and recognition of children, youth, veterans, and veteran families in need, with offices located at 204 E. Main Street, Omro, WI 54963, henceforth referred to as Legion Post 234.

## WITNESSETH

WHEREAS, the City of Omro owns and maintains a municipal park located at 515 E. Main Street, Omro Wisconsin 54963, more particularly described as Scott Park: Section 17, Township 18 North, of Range 15 East, Lots 1,2,3,4,5,6 and 7 Block E; and

WHEREAS, with the July 5, 2005 adoption of resolution number RES:050705-I 'Approval of Legion Post 234 Veteran's Memorial Design Concept for Scott Park', the Common Council of the City of Omro authorized the site plan and design concept of the Omro Veteran's Memorial to be placed in Scott Park; and

WHEREAS, such resolution also authorized construction upon city park property at the site of the current flagpole along the north side of Scott Park on E. Main Street; and

WHEREAS, such resolution also resolved that the construction process and maintenance of the memorial site shall be funded solely with monies made available through donation and fund raising efforts of the Daugherty-Hamilton American Legion Post 234; and

WHEREAS, the City of Omro and Legion Post 234 are ready, willing and able to enter into an agreement for the continued maintenance of the Omro Veteran's Memorial on city owned property on the terms and conditions as set forth in this agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **1. DEFINITIONS**

A. As used in this Agreement, the following terms have the following meanings:

- (a) "Premises" shall mean the site of the Omro Veteran's Memorial in Scott Park, Omro, Wisconsin.
- (b) "Term" shall mean a calendar year increment of this Agreement.

## **2. TERM OF AGREEMENT**

A. The term of this initial Agreement shall commence on the 3<sup>rd</sup> day of October 2006 and expire on December 31, 2006. Each successive term shall be on a calendar year basis beginning on the 1<sup>st</sup> day of January and expiring on the 31<sup>st</sup> day of December.

- (a) Said Agreement shall continue hereafter in perpetuity for additional terms until such time as Legion Post 234 is disbanded or no longer performs any material obligations under this Agreement.
- (b) The term of this Agreement may be altered, changed, extended or otherwise modified as mutually agreed to in writing by both parties to the Agreement.

## **3. TERMINATION**

A. This Agreement may be terminated:

- (a) At the option of the City of Omro in the event that Legion Post 234 is disbanded or no longer performs any material obligations under this Agreement.
- (b) At the option of either party, in the event that any material portion of the Omro Veteran's Memorial shall be condemned, fully or partially destroyed or damaged by natural disaster or fire.

B. Termination of this Agreement shall be without prejudice to any outstanding obligations of the parties accrued hereunder through the effective date of termination, and any claims for damages arising out of the event or cause constituting the basis for such termination, including, without limitation, in the event of Legion Post 234's breach, the City of Omro's right to require the immediate payment of all material obligations for the remainder of the Term.

#### **4. OWNERSHIP AND USE OF PREMISES**

- A. The City of Omro shall retain ownership of the park property upon which the memorial stands and shall declare ownership of the Omro Veteran's Memorial upon its completion.
- B. For and in consideration of the conditions hereinafter stated, Legion Post 234 agrees to construct the Omro Veteran's Memorial per the specifications and site plan as authorized and approved by the Common Council of the City of Omro.
- C. Legion Post 234 shall construct the Omro Veteran's Memorial upon city park property at the site of the current flagpole along the north side of Scott Park on E. Main Street.
- D. Neither party shall construct or place additional objects or monuments in addition to the original site plan and design concept without the express written consent of both parties.
- E. Legion Post 234 may use the site for conducting veteran or military service appreciation ceremonies at their discretion.
- F. Legion Post 234 shall have complete control of its activities and the right to operate said premises provided that Legion Post 234 is in compliance with the remaining terms of this Agreement. It is agreed, however, that Legion Post 234 shall conduct with and work in cooperation with the City of Omro or its duly designated committees to achieve full utilization of the premises for the benefit of all parties and the general public.
- G. Legion Post 234 agrees that the premises shall remain part of a municipal owned public park and therefore, shall remain available and open, at no fee, to the general public at all times.

#### **5. INSURANCE**

- A. The City of Omro agrees to secure the property insurance coverage for the Omro Veteran's Memorial with an insurance company of the city's choosing.
- B. The City of Omro will not be required to secure flood insurance on the Omro Veteran's Memorial. Nor will the city be required to carry Worker's Compensation coverage for volunteers or members of Legion Post 234.
- C. Legion Post 234 agrees to reimburse payment of any and all cost of such insurance premiums from the endowment fund balance made available by the Oshkosh Foundation.

- D. The prorated premium shall be calculated based on the Statement of Values annual property value of the Omro Veteran's Memorial multiplied by the same rate as the city's property insurance premium percentile indicator.
- E. Legion Post 234 agrees to reimburse the City of Omro for the insurance premium in one annual payment at 30 days net of receipt of invoice from the City of Omro.
- F. Legion Post 234 agrees to secure, if necessary, any liquor liability insurance coverage and Temporary Class "B" Liquor License if selling alcoholic beverages on city property. Such insurance and license fees shall be the sole responsibility of Legion Post 234. The liquor liability policy shall list the City of Omro as additional insured on the Certificate of Insurance Coverage in a coverage amount of at least \$50,000.00.
- G. Legion Post 234 agrees that it will not use or permit upon said premises, any person, place, thing, or any activity that will invalidate any policies of insurance now or hereafter carried on said premises and property.

## **6. MAINTENANCE OF MEMORIAL GROUNDS AND STRUCTURES**

- A. Legion Post 234 shall be responsible for any and all costs associated with capital maintenance and improvements deemed necessary to secure the safety and good repair of the memorial and premises.
- B. Maintenance shall be done in accordance with normal operating maintenance procedures of the Parks Department.
- C. Notwithstanding the etching and placement of additional veteran names upon the monuments, Legion Post 234 shall make no alterations or capital improvements in or to said premises without prior written consent of the City of Omro, under penalty of forfeiture of this Agreement and damages.
- D. Legion Post 234 shall keep said premises, structures, decorative landscaping, lighting, etc. in good repair at its own expense, subject to the terms herein.
- E. Legion Post 234 shall be responsible for keeping pathways and sidewalk areas in or about the Omro Veteran's Memorial clean and free from waste and rubbish and shall provide for removal of snow and ice in accordance with city ordinances. This maintenance shall be at the expense of Legion Post 234.

- (a) In the event that Legion Post 234 fails to clean or maintain the premises to the satisfaction of the City of Omro, the city reserves the right to facilitate the cleanup and/or maintenance deemed to be reasonably necessary. Before any remedial action is taken, the City of Omro will provide written notification of any unsatisfactory condition to Legion Post 234 and allow reasonable time to correct the unsatisfactory condition. In the event that the City of Omro deems it necessary to take such remedial action, Legion Post 234 shall be liable to the city for all costs incurred by the city in cleaning and/or maintaining the premises.
  - (b) Legion Post 234 shall comply with all reasonable requests of the Omro Building and Zoning Inspector concerning conditions of the property and maintenance.
- F. The City of Omro shall provide for maintenance and snow/ice removal of the adjacent public sidewalk along E. Main Street.
- G. The City of Omro shall be responsible for general turf (lawn) maintenance of the park property around the perimeter of the Omro Veteran's Memorial, including, but not limited to lawn mowing, weed control, fertilization, aeration and stormwater drainage.
- H. The City of Omro may inspect the premises for maintenance and repair needs at its discretion.

## **7. UTILITIES AND SUPPLIES**

- A. Legion Post 234 shall furnish, at its own expense, all electrical wiring installation, continued electrical utility service, including but not limited to the operation expense of all electrical and lighting devices within and focusing on any portion of the Omro Veteran's Memorial or flagpole.
- B. Legion Post 234 shall furnish, at its own expense, all flags/banners representing armed services and POW/MIA.
- C. If Legion Post 234 is unable to provide the American flag for the memorial flagpole, the City of Omro will provide for up to three 4' x 6' American flags per year.

## **8. DONATIONS AND FUND RAISERS**

- A. Legion Post 234 shall be solely responsible for conducting fund raising drives and shall retain all revenues gained by such means.

- B. All donations to the Daugherty-Hamilton American Legion Post 234 shall be the property of Legion Post 234 to use at their discretion.

## **9. ADVERTISING**

- A. Legion Post 234 and the City of Omro shall both have the rights to advertise the presence of the Omro Veteran's Memorial as a tourism attraction for the City of Omro and surrounding area.
- B. The City of Omro may use photos, depictions, sketches or drawings of the Omro Veteran's Memorial, and related ceremonies, in city publications and/or on the city website, [www.omro-wi.com](http://www.omro-wi.com) at their discretion.
- C. Both parties agree to hold the site of the veteran's memorial as sacred ground and honor the integrity of the memorial and what it represents to all citizens and veterans throughout the country by using good judgment and reverence in all decisions regarding the memorial site advertisement.

## **10. COMPLIANCE WITH LAW**

- A. Each party hereby agrees to comply with all laws, ordinances, rules and regulations of any federal, state, county, city, township, municipality or other government authority in connection with the exercise of the rights and performance of the obligations hereunder.
- B. Legion Post 234 shall comply with all laws, ordinances, rules and regulations applicable to maintaining the Omro Veteran's Memorial.
- C. Legion Post 234 shall comply with all laws, ordinances, rules and regulations applicable to its use.

## **11. REPRESENTATIONS AND WARRANTIES**

- A. The City of Omro hereby represents and warrants that:
- (a) It has all necessary rights, licenses and authorization to carry out the terms of this Agreement;
  - (b) It has full power and authority to enter into this Agreement and to make and perform its covenants, representations and undertakings contained herein; and
  - (c) The individual who has signed this Agreement on behalf of the City of Omro has been duly authorized to do so.



B. Legion Post 234 hereby represents and warrants that:

- (a) It has all necessary rights, licenses and authorization to carry out the terms of this Agreement;
- (b) It has full power and authority to enter into this Agreement and to make and perform its covenants, representations and undertakings contained herein; and
- (c) The individual who has signed this Agreement on behalf of Legion Post 234 has been duly authorized to do so.

## **12. INDEMNIFICATION**

- A. Each party shall defend, indemnify and hold harmless the other party and its officers, directors, employees and agents from and against any and all costs, claims, damages, losses, liabilities and expenses including, by not limited to reasonable attorney's fees, arising out of or related to any breach or non-performance by the indemnifying party of any of its obligations under this Agreement.
- B. Furthermore, each party mutually agrees to indemnify and refund to each other all such sums, which the respective party may be obligated or adjudged to pay, including attorney's fees and costs, on such actions, claims, or demands within thirty (30) days after written request for such indemnification.
- C. Failure to comply with the terms of indemnification as outlined herein may result in termination of this Agreement at the option of the non-breaching party.

## **13. FORCE MAJEURE**

- A. Neither party shall be liable to the other because of any failure to perform under this Agreement to the extent that such failure is caused by fire, earthquake, flood or any other acts of God, governmental regulations or restrictions, governmental taking, vandalism, strike, labor stoppage or any other cause or condition, whether similar or dissimilar to any foregoing, beyond the reasonable control of such party.
- B. Any termination under this Section 16 shall be without prejudice to the outstanding obligations of the parties accrued hereunder prior to the effective date of termination.

## **14. EMINENT DOMAIN**

- A. In the event of any governmental taking of the premises or any portion thereof, or of the land or any portion thereof on which the memorial premises is situated, any and all condemnation awards and other proceeds for the land shall be the sole property of City of Omro. The memorial property shall be the sole property of Legion Post 234 and may be relocated at their discretion.

## **15. RELATIONSHIP OF PARTIES**

- A. Nothing herein contained shall be deemed to create any relationship of joint ventures, partners, principal and agent, or otherwise between the parties
- B. Neither party shall have the right, or shall purport in any manner, to create any obligation on behalf of the other party.

## **16. NOTICES**

- A. Any notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given when delivered personally, two (2) business days after being deposited with a recognized overnight courier service with all charges prepaid or billed to the sender, or three (3) business days after being mailed by certified mail, return receipt requested, addressed to the party being notified at the address of such party first set forth above, or at such other address as such party may hereafter and therefore have designated by notice; provided, that any notice and change of address shall not be effective until its receipt by the party to be charged therewith.

## **17. GENERAL**

- A. Neither this Agreement nor any of the terms or conditions hereof may be waived, amended or modified except by means of a written instrument duly executed by the party to be charged therewith.
- B. Any waiver or amendment shall only be applicable in the specific instance, and shall not constitute or be construed as a waiver or amendment in any other subsequent instance.
- C. No failure or delay on the part of either party in respect of any enforcement of obligations hereunder shall in any manner affect such party's right to seek or effect the enforcement at any other time or in respect of any other required performance.

- D. Neither this Agreement, nor any rights or obligations hereunder, may be assigned by either party without prior written consent of the other party.
- E. The captions and paragraph headings used in this Agreement are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement or any of the provisions hereof.
- F. This Agreement and all matters or disputes relating to the validity, construction, performance or enforcement hereof, shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- G. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party, which consent may be withheld in such other party's sole and absolute discretion.
- H. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original hereof, but all of which together shall constitute on and the same instrument.
- I. In the event of any dispute under or arising out of this Agreement, the prevailing party in such dispute shall be entitled to recover from the non-prevailing party or parties, in addition to any damages and/or other relief that may be awarded, its reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with prosecuting or defending the subject dispute.
- J. This Agreement constitutes the sole and entire agreement and understanding between the parties hereto as to the subject matter hereof, and supersedes all prior discussions, agreements and understandings of every kind and nature between them as to such subject matter.
- K. This Agreement is intended for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns, and no other person or entity shall have any right to rely on this Agreement or to claim or derive any benefit herefrom absent the express written consent of the party to be charged with such reliance or benefit.
- L. If any of the provisions of this Agreement is held to be invalid or unenforceable, either in its entirety or by virtue of its scope or application to given circumstances, such provision shall thereupon be deemed modified only to the extent necessary to

render same valid, or not applicable to given circumstances, or exercised from this Agreement, as the situation may require; and this Agreement shall be construed and enforced as if such provision had been included herein as so modified in scope or application, or had not been included herein, as the case may be.

**18. SIGNATURES IN EXECUTION OF AGREEMENT**

IN WITNESS WHEREOF, the parties have executed this Agreement and affixed their seals as of the day and year first set forth above.

**CITY OF OMRO**

Robert R. Breu Date: 10-10-06

Mayor Robert R. Breu

Linda K. Kutchenriter Date: 10-10-06

Administrator Linda K. Kutchenriter

Barbara Van Clake Date: 10/10/06

Witness:

**DAUGHERTY-HAMILTON AMERICAN LEGION POST 234 OMRO WISCONSIN**

\_\_\_\_\_ Date: \_\_\_\_\_  
Commander John Hoeft

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

Document Drafted by: Barbara Van Clake, CMC, WCMC,  
City of Omro Deputy Clerk / Treasurer

Content Approval: Lud Wurtz,  
City of Omro Attorney