

# TOWN COUNCIL

## STAFF REPORT EXECUTIVE DEPARTMENT



<b>MEETING DATE:</b>	June 13, 2018
<b>PROJECT:</b>	Resolution in Support of a Memorandum of Understanding between the Town of Bluffton and American Legion Auxiliary Unit 205 for the Design, Construction and Maintenance of a Veterans War Memorial
<b>STRATEGIC PLAN INTEGRATION:</b>	Strategic Focus Area: Infrastructure Guiding Principle(s): 3; Establish long-term planning, prioritization and investment strategies for future infrastructure and facilities that improve the quality of life for citizens while being financially sustainable.
<b>PROJECT MANAGER:</b>	Scott Marshall, Deputy Town Manager

### **RECOMMENDATION:**

Town Council consider adoption of a Resolution in Support of a Memorandum of Understanding (MOU) between the Town of Bluffton and American Legion Auxiliary Unit 205 for the Design, Construction and Maintenance of a Veterans War Memorial.

### **BACKGROUND:**

The Town of Bluffton FY2019-20 Strategic Plan Action Agenda identifies an initiative titled "American Legion Auxiliary Unit 205-Sponsored Public War Memorial." This initiative is identified as a joint project between the Town of Bluffton and American Legion Auxiliary Unit 205.

The first step in this process is to formalize a partnership with American Legion Auxiliary Unit 205. Exhibit "A" of the Resolution presented as Attachment 1, is a MOU which identifies responsibilities of the Town and Unit 205.

### **RESPONSIBILITIES OUTLINED IN THE MOU:**

1. American Legion Auxiliary Unit 2015 Responsibilities.
  - a. Secure funding, whether public or private, to support the design and construction of the project.
  - b. Act and serve as a liaison to the Town for the purpose of advocating on behalf of Bluffton's and America's service members and veterans, and shall publicize and promote Town-sponsored commemorative events.
2. Town Responsibilities.

- a. Identify portion of Town-owned property in the area of the Historic District to locate the Project.
- b. Use best efforts to secure funding, as necessary for completion, management and continued operation of the Project.
- c. Design and construct the Project.
- d. Operate and maintain the Property.
- e. Expenses related to operations, maintenance and repairs.

**CURRENT STATUS OF PROJECT:**

Project location and scope are still to be determined. Staff anticipation is that Council may choose to integrate the Memorial into the conversion of one of several recently acquired properties to passive parks.

Kay Ranta, the representative from Unit 205 with whom Staff has been working, has indicated her concurrence with the language in the MOU.

**NEXT STEPS:**

1. Pending adoption of the Resolution approving the MOU, Staff will continue to work with Council to identify a suitable location for the Memorial.
2. After a location has been determined, Staff will work with Unit 205 to scope the project in terms of scale, design and cost.

**ATTACHMENTS:**

1. Resolution in Support of a Memorandum of Understanding between the Town of Bluffton and American Legion Auxiliary Unit 205 for the Design, Construction and Maintenance of a Veterans War Memorial with Exhibit "A," Memorandum of Understanding.
2. Suggested Motion Language.

ATTACHMENT 1

RESOLUTION

**IN SUPPORT OF A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE TOWN OF BLUFFTON AND AMERICAN LEGION AUXILIARY UNIT 205 FOR THE DESIGN, CONSTRUCTION AND MAINTENANCE OF A VETERANS WAR MEMORIAL**

**WHEREAS**, the American Legion is the nation's largest wartime veterans service organization, committed to mentoring America's youth, advocating patriotism and honor, and devoted to America's service members and veterans; and,

**WHEREAS**, the residents of Bluffton, through American Legion Auxiliary Unit 205, have expressed to the Town the public's desire for a memorial dedicated to the men and women of the armed services who have served our country and our community; and,

**WHEREAS**, the Parties have expressed the shared goal of facilitating the development and operation of a veterans memorial within the Town of Bluffton, South Carolina, a municipality situated within Beaufort County; and,

**WHEREAS**, the Town's Comprehensive Plan identifies recreational facilities, active and passive parks, and public art as critical components enhancing the quality of life within Bluffton; and,

**WHEREAS**, the Town desires to design, seek financing, develop and construct a veterans memorial on a portion of the Town's property; and,

**WHEREAS**, American Legion Auxiliary Unit 205, through its members and volunteers, desires to assist the Town with the designing, financing, development and construction of the veterans memorial; and,

**WHEREAS**, the Parties involved desire to execute a MOU to establish the rights, obligations, and roles anticipated by each Party for the planning, development and operation phases of the Project; and,

**WHEREAS**, each Party desires to use the MOU as a framework for describing preliminary activities intended by the Parties involved until a more definitive and binding agreement amongst the Parties can be developed and executed.

**NOW, THEREFORE, BE IT RESOLVED THAT THE MEMORANDUM OF AGREEMENT PRESENTED AS EXHIBIT "A" TO THIS RESOLUTION SHALL HAVE THE FULL SUPPORT AND APPROVAL OF THE TOWN OF BLUFFTON TOWN COUNCIL.**

**THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY UPON ADOPTION, SIGNED, SEALED AND DELIVERED AS OF THIS \_\_\_\_\_ DAY OF \_\_\_\_, 2018.**

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Lisa Sulka, Mayor  
Town of Bluffton, South Carolina

ATTEST:

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Kimberly Chapman, Town Clerk  
Town of Bluffton, South Carolina

## EXHIBIT "A" to ATTACHMENT 1

### MEMORANDUM OF UNDERSTANDING *for the* BLUFFTON VETERANS WAR MEMORIAL

THIS MEMORANDUM OF UNDERSTANDING (“*MOU*”) is made and entered into as of the Effective Date by and between THE TOWN OF BLUFFTON, a municipal corporation of the State of South Carolina (the “*Town*”) and THE AMERICAN LEGION AUXILIARY UNIT 205, a 501(c)(3) nonprofit corporation organized and existing pursuant to the laws of the State of South Carolina (the “*Organization*”). The Organization and the Town may from time to time be referred to individually as a “*Party*” and collectively as the “*Parties*.”

The Parties hereto intend this MOU to constitute an outline of the major terms, conditions and understandings of the Parties, which may be set forth more thoroughly in a definitive agreement between the Parties relating to the subject matter of this MOU; however, this MOU shall not and is not intended to be a binding and enforceable agreement of the Parties. This MOU reflects the mutual understandings of the Parties regarding those actions, permits, approvals and/or agreements lawful and necessary to accomplish the location, financing, acquisition, design, development, construction, donation, management, and use of the Bluffton Veterans War Memorial (herein, the “*Project*”). The Parties intend to actively participate and to work together collaboratively, in good faith and with due diligence, to negotiate the terms of the development of the Project. These undertakings are personal to the Parties and neither this MOU nor its terms shall be assigned to any other person or entity without the unanimous consent of the Parties.

#### RECITALS

WHEREAS, the Organization is the nation’s largest wartime veterans service organization, committed to mentoring America’s youth, advocating patriotism and honor, and devoted to America’s service members and veterans; and,

WHEREAS, the residents of Bluffton, through the Organization, have expressed to the Town the public’s desire for a memorial dedicated to the men and women of the armed services who have served our country and our community; and,

WHEREAS, the Parties have expressed the shared goal of facilitating the development and operation of a veterans memorial within the Town of Bluffton, South Carolina, a municipality situate within Beaufort County; and,

WHEREAS, the Town’s Comprehensive Plan identifies recreational facilities, active and passive parks, and public art as critical components enhancing the quality of life within Bluffton; and,

WHEREAS, the Town desires to design, finance, develop and construct a veterans memorial on a portion of the Town’s property; and,

WHEREAS, the Organization, through its members and volunteers, desires to assist the Town with the designing, financing, development and construction of the veterans memorial; and,

WHEREAS, the Parties involved desire to execute a MOU to establish the rights, obligations, and roles anticipated by each Party for the planning, development and operation phases of the Project; and,

WHEREAS, each Party desires to use the MOU as a framework for describing preliminary activities intended by the Parties involved until a more definitive and binding agreement amongst the Parties can be developed and executed.

NOW THEREFORE, the Parties have established the basic tenets of a collaborative working agreement for the development and completion of the Project, and the Parties wish to execute this Agreement to memorialize the essential terms of their agreement, however, without imposing any legal obligation on any Party:

## **ARTICLE I**

### **General Obligations of the Parties**

Section 1.1. Identification of the Property: The Town will use reasonable efforts to identify a portion of vacant Town-owned real property within or in close proximity to Old Town Bluffton Historic District suitable for the development of a veterans memorial (herein, the “**Property**”). The Town shall bear the cost of any survey required to delineate the boundary of the Property to be used.

Section 1.2. Development of the Project: To ensure that the Project is aesthetically pleasing and consistent with the Old Town Master Plan and the Bluffton Comprehensive Plan, the Town, through its staff, contractors, and/or agents, will be responsible for the designing and developing the Project. The design of the Project will comply with all local, state and federal laws, including the Americans with Disabilities Act, the Clean Water Act, and any other such legislation and standards that apply to parks located within the Town of Bluffton. The Town, upon the completion of the initial architectural plans, will provide the Organization with an opportunity to review and comment on the design, character and location of the Project; however, the ultimate decision regarding location, design, scope and character of the Project shall be in the sole discretion of the Town.

Section 1.3. Construction of the Project. The Town shall be responsible for the construction of all improvements and infrastructure necessary for the completion of the Project.

Section 1.4. Funding of the Project. The Organization will secure funding, whether public or private, to support the design and construction of the Project. The Town will use best efforts to secure funding necessary for the completion, management and continued operation of the Project.

Section 1.5. Management of the Project. The Project will be managed by the Town, including ensuring that all needed utilities are provided to the Property, including but not necessarily limited to water and electricity. The Town will be responsible for any expenses related to such utilities, including lateral connection costs, capacity fees, and repairs, if necessary. The Town may also make such rules limiting the use of the Property as it deems necessary.

Section 1.6. Maintenance of the Project. The Town shall be responsible for short-term and long-term maintenance of the Property, including but not limited to keeping the Property clean and ensuring that facilities and structures that are in disrepair will be repaired and/or replaced as determined in the sole discretion of the Town.

Section 1.7. Town Liaison. The Organization shall act and serve as a liaison to the Town for the purpose of advocating on behalf of Bluffton and America’s service members and veterans, and shall publicize and promote Town-sponsored commemorative events, both initial and recurring, which may be held on the Property after the completion of construction of the Project.

(a) *Volunteer Waivers.* Organization shall secure a complete Release from all individuals providing any services to Organization at the Property, whether as volunteers, agents, officers, employees or temporary paid contractors, that completely waives and releases the Town from any and all liability and claims for injury or damage during the Organization's use of the Property and said volunteer, employee, agent or officer's presence on the Property. The Organization shall provide said executed Releases to the Town prior to allowing such individual to use the Premises.

(b) *Non-Discrimination.* Organization shall not discriminate against any employee, volunteer or citizen using the Property because of race, age, color, religion, national origin, sex or disability.

(c) *Maintain 501(c)(3) Status.* Organization shall provide the Town with appropriate documentation of Organization's 501(c)(3) status, and Organization shall be required to maintain such status for the duration of the Project.

Section 1.8. Hold Harmless and Indemnity: The Organization shall release the Town and hold the Town harmless, and shall indemnify the Town against any and every claim, damage, loss, obligation, liability and responsibility, including attorneys' fees and costs, for loss or damage to persons or property occurring on or about the Property occasioned by the use or occupancy of the Property by Organization, or out of any act of Organization, its agents, employees, volunteers or invitees.

Section 1.9. Organization Default; Life of Project. If the Organization fails to comply with any provision contemplated by this MOU and/or incorporated into a final definitive agreement, the Town may terminate all of the Organization's rights or responsibilities related to the Project. Further, the Organization acknowledges that the donation of any improvements does not vest any property rights or interests in the Organization and the Town maintains the absolute right to require the removal or demolition of all or part of the Project at any point as the Town deems fit.

## ARTICLE II Miscellaneous:

Section 2.1. No Partnership or Joint Venture. The Parties shall not, by virtue of this MOU, in any way or for any purpose, be deemed to be partners or joint venturers or members of a joint enterprise with the other Parties.

Section 2.2. Time. Time is of the essence in every particular of this MOU, including, without limitation, obligations for the payment of money.

Section 2.3. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument; provided, however, this MOU shall not be effective until fully executed by all Parties.

Section 2.4. Confidentiality. The Parties hereby agree and acknowledge that the Town, as a statutorily defined "public body," is required to comply with the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the South Carolina Code of Laws; and as such, nothing in this Agreement shall interfere with the Town's rights and responsibilities under said Act.

*[Remainder of Page Intentionally Left Blank. Signature Page and Exhibit(s) to Follow.]*

**IN WITNESS WHEREOF**, the undersigned have caused this MOU to be duly executed and sealed as of the date first stated above.

**ORGANIZATION**

THE AMERICAN LEGION AUXILIARY UNIT 205, a South Carolina nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**TOWN**

THE TOWN OF BLUFFTON, a South Carolina municipal corporation,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

## ATTACHMENT 2

Suggested Language for Motion to Adopt a Resolution in Support of a Memorandum of Understanding between the Town of Bluffton and American Legion Auxiliary Unit 205 for the Design, Construction and Maintenance of a Veterans War Memorial

***“I move to approve the Resolution in Support of a Memorandum of Understanding between the Town of Bluffton and American Legion Auxiliary Unit 205 for the Design, Construction and Maintenance of a Veterans War Memorial, as presented.”***