

RESOLUTION SUMMARY

RESOLUTION NO: RS2020-19

SPONSOR: Councilmember Ward
Councilmember Kemna (Co-Sponsor)

SUBJECT: Authorizing the City to Execute an Agreement with the Missouri Division of the United Daughters of Confederacy

DATE INTRODUCED: November 2, 2020

DEPARTMENT DIRECTOR(S): _____

CITY ADMINISTRATOR:  _____

Staff Recommendation: Approve.

Summary: Authorizes the City to enter a Settlement Agreement and Release with the Missouri Division of the United Daughters of Confederacy, authorizing them to take possession of the UDC Marker removed from Moreau Drive and Fairmont Boulevard.

Origin of Request: Missouri Division of the United Daughters of Confederacy ("Missouri UDC")

Department Responsible: Law Department

PERSON RESPONSIBLE: RYAN MOEHLMAN

Background Information: The Winnie Davis Chapter of the United Daughters of Confederacy dedicated a marker ("UDC Marker") reflecting General Sterling Price's decision not to attack the City of Jefferson on October 7, 1864. At the October 19, 2020, City Council meeting, a decision was made to remove the UDC Marker. On October 20, 2020, the City removed the UDC Marker and stored it in a City-owned facility. The Missouri UDC is requesting the City return the UDC Marker to the Missouri UDC's possession. This agreement would facilitate the Missouri UDC so taking possession and being responsible for the transportation and delivery thereof, no later than December 31, 2020. This agreement releases the City from any injuries which could be sustained in the transport of the UDC Marker, any damage to the UDC Marker from removing it, and from any other claims to possession of the UDC Marker.

Fiscal Information: None

RESOLUTION

RS2020-19

Sponsor: Councilmember Ward
Co-Sponsor: Councilmember Kemna

A RESOLUTION AUTHORIZING THE CITY TO EXECUTE AN AGREEMENT WITH THE MISSOURI DIVISION OF THE UNITED DAUGHTERS OF CONFEDERACY

WHEREAS, the Missouri Division of the United Daughters of the Confederacy (“Missouri UDC”) desires to take possession of the marker dedicated by the Winnie Davis Chapter of the United Daughters of the Confederacy (“UDC Marker”); and

WHEREAS, on October 19, 2020, the City Council voted to remove the UDC Marker from the public right-of-way and store the marker in a city-owned facility; and

WHEREAS, the Missouri UDC claims to be the successor in interest to the assets of the Winnie Davis Chapter and is requesting the entire UDC Marker, including of the bronze plaque and granite stone, be returned to Missouri UDC for their possession.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JEFFERSON, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor and City Clerk to execute on behalf of the City the Settlement Agreement and Release, substantially in the form attached hereto as “Exhibit A.”

Section 2. The City Council hereby authorizes the City Administrator and other appropriate City Staff to take all such further actions as may be necessary to carry out the intent of this Resolution.

Section 3. This Resolution shall be effective upon passage and approval.

Adopted this 2nd day of November, 2020

Mayor Carrie Tergin

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into by and between the City of Jefferson, Missouri, a municipal corporation (hereinafter "City"), and the Missouri Division of the United Daughters of the Confederacy (hereinafter, the "UDC"), collectively, the "Parties". For the purposes of this Agreement, the Parties shall specifically include the officials, employees, officers and those acting by, for and through the City and the UDC, respectively

WITNESSETH

WHEREAS, the Winnie Davis Chapter of the United Daughters of the Confederacy dedicated a marker (the "Marker"), stating General Sterling Price's decision not to attack the City of Jefferson on October 7, 1864, to the State of Missouri and was accepted by Governor Park on April 7, 1933, and

WHEREAS, the Marker was moved in 1955 from its original location at the intersection of Moreau Drive and Green Berry Road to the city-controlled right-of-way at the intersection of Moreau Drive and Fairmont Boulevard; and

WHEREAS, public input was gathered at meetings of the Historic Preservation Commission and the Human Relations Commission of the City of Jefferson, and the City Council; and

WHEREAS, on October 19, 2020, the City Council voted to remove the Marker from the public rights-of-way and store the marker in a city-owned facility, and

WHEREAS, the Missouri Division of the United Daughters of the Confederacy (the "Missouri UDC") claims that it is the successor in interest to the assets of the Winnie Davis Chapter of the United Daughters and has requested the City to return the marker to the Missouri UDC now that the Marker is no longer in public use, and

WHEREAS, the Parties have agreed upon terms as set forth herein that will allow the Missouri UDC to take possession of the UDC and release the City from all claims related to the UDC Marker, and the parties hereto desire to memorialize those terms as set forth further herein, with the intent to be legally bound hereby:

NOW THEREFORE, in consideration of these premises, and of the joint and mutual covenants contained herein and for other good and valuable consideration, including the settlement of uncertain claims, the adequacy and receipt of which is by all parties hereby acknowledged, the parties, with the intent to be legally bound, agree as follows:

1. **Possession**. The Missouri UDC shall take possession of the entire UDC Marker, consisting of both the bronze plaque and granite stone, prior to December 31, 2020. The Missouri UDC shall bear responsibility for all efforts and costs of pickup, transportation, handling, and storage of the UDC Marker necessary to take such possession. The City shall provide the Missouri UDC access to the facility

where the Marker is being stored during normal business hours or outside business hours by mutually agreed-to appointment. For the life of the Marker, the Missouri UDC and its successors, transferees, and assigns hereby covenants to never donate, dedicate, sell, or otherwise convey the Marker to be placed on public property within Cole County, Missouri, provided nothing in this paragraph shall limit the exhibit of the Marker by a public-owned museum on the premises of such museum

2. **Release.** The Missouri UDC shall release and indemnify, hold harmless, and defend the City, including the City's officers, officials, and employees, from any and all claims, injuries (including death), rights, duties and obligations that arise out of or are related to:
 - a. the ownership of the UDC Marker;
 - b. the pickup, transportation, handling, and storage of the UDC Marker, or
 - c. any physical damage or deterioration sustained by the Marker during its period of public display or as the result of the City's removal, transportation, storage, and handling of the Marker.
3. **Entire Agreement.** This document constitutes the entire and exclusive agreement between and among the parties hereto on the matters set forth herein, and any and all prior or contemporaneous agreements, understandings, promises, representations, warranties and covenants, whether written or oral and whether express, implied, or apparent, are hereby deemed to be superseded by this agreement.
4. **Breach.** Should any of the parties, following the execution hereof, breach any one or more terms of this agreement, then either or both of the remaining parties hereto shall have the right to bring an action to enforce the terms hereof in the Circuit Court of Cole County, Missouri, including by specific performance. Prior to the bringing of said suit, the party claiming breach shall first send, by certified mail, a notice to the breaching party to cure said breach within 10 days. Should the breaching party fail to so cure the breach, then the party or parties seeking to enforce the terms hereof shall be entitled to an award of attorney's fees and costs from the breaching party, should the Court find that such a breach has occurred.
5. **Governing Law.** This Agreement shall be governed by the laws of the State of Missouri
6. **Notification.** Any mailing or notifications required herein shall be sent as follows:

To Missouri Division UDC: c/o President, Gina M. Dixon
29903 State Hwy. Jamesport, MO 64648-7223

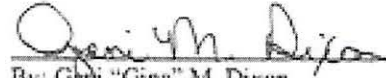
To City: c/o Steven S. Crowell Jr. City Administrator, 320 East McCarty Street,
Jefferson City, MO 65101

Accordingly, in witness of the mutual covenants and obligations contained herein, and with the intent to be bound hereby, the parties hereunto set their hands on the date set forth below.

City of Jefferson, Missouri

Missouri Division of the
United Daughters of the Confederacy

By: Steven S. Crowell, Jr.
City Administrator



By: Gina "Gina" M. Dixon
Title: Missouri Division UDC President 2020-22


Dated: _____

Dated: 10-27-2020

ATTEST:

City Clerk

Approved as to form:



City Attorney