

MUNICIPAL ORDER 28-2022

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF OWENSBORO AND DAVIESS COUNTY FISCAL COURT CONCERNING RELOCATION OF THE CONFEDERATE MEMORIAL STATUE AND TO EXECUTE A DEED TO DAVIESS COUNTY, KENTUCKY TO EFFECTUATE THE RELOCATION.

WHEREAS, Daviess County Fiscal Court plans to relocate the Confederate Memorial Statue ("statue") currently located on the courthouse lawn; and

WHEREAS, the City is willing to transfer property located in Potter's Field to Daviess County, Kentucky in order to relocate the statue there; and

WHEREAS, the Parties wish to enter into a Memorandum of Agreement providing that Daviess County Fiscal Court is solely responsible for maintaining the statue and further memorializing their specific obligations, a copy of which is attached hereto as Exhibit "A" and incorporated by reference.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and hereby is, authorized and directed to execute a Memorandum of Agreement between the City of Owensboro and Daviess County Fiscal Court concerning relocation of the statue.

Section 2. That the Mayor be, and hereby is authorized to execute a deed conveying a portion of Potter's Field to Daviess County, Kentucky, to provide a location for the statue.

Section 3. That the Mayor, City Manager and other appropriate staff members are hereby authorized and directed to execute any and all other agreements,

instruments, or documents necessary and appropriate to effectuate and implement the purpose of the Memorandum of Agreement.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 6th day of September, 2022.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement"), made and entered into on the ____ day of _____, 2022, between the City of Owensboro, Kentucky, 101 East Fourth Street, P.O. Box 10003, Owensboro, Kentucky 42302-9003 ("City"), and Daviess County Fiscal Court, 212 Saint Ann Street, Owensboro, Kentucky 42303 ("County").

RECITALS

WHEREAS, the City owns real property known both as Potter's Field and as the City Cemetery, which is located east of Elmwood Cemetery, in Daviess County, Kentucky, with a former entrance at the corner of Mill Avenue and East 21st Street, and which has a PVA Parcel Number of: 054-00-00-025-01-000 ("Potter's Field"); and

WHEREAS, County plans to relocate the Confederate Memorial Statue ("statue") currently located on the courthouse lawn; and

WHEREAS, the City and County have reached an agreement regarding the statue's relocation; and

WHEREAS, County will relocate the statue to a portion of Potter's Field, more particularly described in the attached Exhibit "A" (the "Property"), which the City agrees to transfer to County at no cost;

WHEREAS, County shall relocate the statue to the Property and shall maintain the statue at no cost to the City; and

WHEREAS, the City shall grant County an easement to cross over the remainder of Potter's Field for the purpose of maintaining the statue; and

WHEREAS, the City and County are authorized to enter into this Memorandum of Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual benefits to be derived by each party, the City and County agree that:

Section 1. The City shall transfer the Property to the County, at no cost, for the purpose of housing the statue upon its relocation from the Daviess County Courthouse lawn. In the same deed transferring the Property, the City shall also grant to County an easement across the remainder of Potter's Field, for the purpose of maintaining the statue and the Property.

Section 2. The County shall be responsible for the maintenance of the statue and Property; County acknowledges expressly that it shall pay all expenses related to the maintenance of the statue and the Property. City shall pay no expense related to the maintenance of the Property or the statue.

Section 3. The County agrees to defend, indemnify, and hold the City harmless from any and all claims against the City arising from or related to the placement of the statue on the Property, including, but not limited to, any personal injury actions.

Section 4. This Agreement constitutes the City and County's entire agreement concerning the relocation and maintenance of the statue; neither City nor County may modify this Agreement except in a writing signed by the City and County.

Section 5. Severability and Governing Provisions.

If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of this Agreement shall continue in full force and effect. The parties shall promptly meet

and confer in good faith with respect to any provision found to contravene the law and provide an agreeable substitute provision.

CITY OF OWENSBORO, KENTUCKY

By: _____
Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

DAVIESS COUNTY, KENTUCKY

By: _____
Al Mattingly,
Davieess County Judge/Executive

ATTEST:

Jennifer Warren, Fiscal Court Clerk

PREPARED BY:

Claud Porter, County Attorney

Exhibit "A"

A certain tract of land lying south east of the intersection of Mill Avenue and East 21st Street, Daviess County, Kentucky, in the City of Owensboro, and more particularly described as follows:

Unless otherwise stated, any monument referred to herein as an "Iron Pin and Cap" is a set 5/8 inch by 24 inch rebar with a plastic cap stamped "Rhinerson PLS 3526", all bearings referred to herein were taken from a previously recorded plat of survey for Saber Management of Kentucky, LLC (Elmwood Cemetery) by HRG, PLLC Surveying and Engineering dated April 13, 2006 and recorded in the records of the Daviess County Clerk in Plat Book 35, Page 88.

Commencing at a found ½ inch Iron Pipe with a cap stamped "Ky LS 2643", said point being approximately 200.0 feet southeast of the intersection of Mill Avenue and East 21st Street, said point also having GIS coordinates of North-2161247.9, East-1252332.6 (Kentucky Zone South) said point also being a corner to tracts owned by Saber Management of Kentucky, LLC (DB-779, Pg.-915) and the City of Owensboro (DB-Z, Pg.-381), thence leaving the line of Saber Management of Kentucky, LLC going South 8 degrees 08 minutes 32 seconds East 156.04 feet to an "Iron Pin and Cap", said point being "the point of beginning", thence going with a new division line of the City of Owensboro the following courses, South 76 degrees 58 minutes 41 seconds East 6.00 feet to an "Iron Pin and Cap", thence with same South 13 degrees 01 minutes 19 seconds West 6.00 feet to an "Iron Pin and Cap" thence with same, North 76 degrees 58 minutes 41 seconds West 6.00 feet to an "Iron Pin and Cap", thence North 13 degrees 01 minutes 19 seconds East 6.00 feet to the point of beginning containing a total of 36.0 Square Feet, according to a survey performed by James D. Rhinerson, PLS 3526 with the Daviess County Fiscal Court on July 20, 2022 and being that portion of land conveyed to the City of Owensboro, Kentucky by deed in Deed Book "Z", Page 381 in the records of the Daviess County Clerk.

AND BEING a portion of the same real property conveyed to City of Owensboro, Kentucky from W. W. Hays and M. M. Hays, his wife, by a Deed dated July 27, 1873, and recorded in Deed Book "Z", page 381, Office of the Daviess County Clerk.