

RESOLUTION NO. 2785

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING A KOREAN WAR MEMORIAL INTERPRETIVE CENTER AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND THE KOREAN WAR MEMORIAL FOUNDATION OF OREGON.

WHEREAS, the City of Wilsonville (“City”) currently owns and maintains the Oregon Korean War Memorial on a portion of the City property known as Town Center Park; and

WHEREAS, Town Center Park also contains a City facility that houses the City’s Parks and Recreation Department (“Parks Building”), with a street address of 29600 Park Place Court, Wilsonville, Oregon 97070; and

WHEREAS, the Korean War Memorial Foundation of Oregon (“Foundation”) is interested in constructing a Korean War Memorial interpretive center within the Parks Building to showcase artifacts and history pertaining to the Korean War (“Interpretive Center”); and

WHEREAS, the City is willing to allow the Foundation to construct the Interpretive Center within a designated area of the Parks Building (approximately 350 square feet), at Foundation expense, with the City’s contribution being only the space; and

WHEREAS, representatives of the City and the Foundation will coordinate regularly regarding design and construction within the Parks Building for the Interpretive Center; and

WHEREAS, after the Interpretive Center is fully constructed, the Foundation will donate the Interpretive Center, including all contents and artifacts therein, to the City; and

WHEREAS, thereafter the City will own, manage, and maintain the Interpretive Center, and anticipates operating the Interpretive Center for a period of fifteen (15) years, but may extend that period at its sole discretion.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The above recitals are incorporated as if fully set forth herein.
2. The City of Wilsonville authorizes the City Manager to execute, on behalf of the City of Wilsonville, a Korean War Memorial Interpretive Center Agreement, which agreement is in substantially similar form to **Exhibit A** attached hereto.
4. This Resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 3rd day of February 2020, and filed with the Wilsonville City Recorder this date.


TIM KNAPP, MAYOR

ATTEST:


Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

Exhibit:

A. Korean War Memorial Interpretive Center Agreement

KOREAN WAR MEMORIAL INTERPRETIVE CENTER AGREEMENT

This Korean War Memorial Interpretive Center Agreement (“Agreement”) is entered into on this ____ day of _____ 2020 (“Effective Date”) between the CITY OF WILSONVILLE, a municipal corporation of the State of Oregon (hereinafter “the City”) and THE KOREAN WAR MEMORIAL FOUNDATION OF OREGON, an Oregon non-profit corporation (hereinafter “the Foundation”).

RECITALS

WHEREAS, the City currently owns and maintains the Oregon Korean War Memorial on a portion of the City property known as Town Center Park; and

WHEREAS, Town Center Park also contains a City facility that houses the City’s Parks and Recreation Department (“Parks Building”), with a street address of 29600 Park Place Court, Wilsonville, Oregon 97070; and

WHEREAS, the Foundation is interested in constructing a Korean War Memorial interpretive center within the Parks Building to showcase artifacts and history pertaining to the Korean War (“Interpretive Center”); and

WHEREAS, the City is willing to allow the Foundation to construct the Interpretive Center within a designated area of the Park Building (approximately 350 square feet), at Foundation expense, with the City’s contribution being only the space; and

WHEREAS, after the Interpretive Center is fully constructed, the Foundation will donate the Interpretive Center, including all contents and artifacts therein, to the City; and

WHEREAS, thereafter the City will own, manage, and maintain the Interpretive Center.

NOW, THEREFORE, incorporating the above Recitals as if fully set forth below, it is understood and agreed:

AGREEMENT

- 1. Term.** The Term of this Agreement will be from the Effective Date through completion of construction and acceptance of the Interpretive Center donation from the Foundation by the City. Once construction has been completed, including successful completion of all punch list items, the Foundation will donate all improvements and Artifacts (defined below) to the City. Upon acceptance of that donation, the City will own and anticipates it will operate the Interpretive Center for a period of fifteen (15) years. This Agreement will terminate when the City accepts the donation but any unsatisfied obligation of either party shall survive termination of this Agreement. The Interpretive Center will not open to the public until the donation to the City has occurred.

2. **Transfer to the City.** Completion of construction and transfer of the Interpretive Center to the City must occur no later than June 30, 2023. As of July 1, 2023 (or sooner if construction is completed and donation has occurred), the City will own and operate the Interpretive Center pursuant to the obligations set forth herein.
3. **Interpretive Center Artifacts.** All items to be put on display in the Interpretive Center (“Artifacts”) will be obtained and catalogued by the Foundation. Names, addresses, emails, and other contact information for each donor of an Artifact(s) will be catalogued with that specific Artifact (“Donor Registry”). Once placed in the Interpretive Center, the City will own and control all Artifacts, properties, and fixtures contained therein, with full authority concerning what is displayed and how displayed, or not displayed. When Artifacts are accepted for inclusion in the Interpretive Center by the Foundation, the Foundation must obtain a written Donation Receipt from each donor, acknowledging that the Artifact is being donated and will be owned by the City of Wilsonville and the donor shall no longer have any legal right thereto. The Receipt of Donation form must be reviewed and approved by the City. If the City does not wish to retain any of the Artifacts at any time, the City will make a reasonable effort to contact the donor of the Artifact. Contact will be made by using the Donor Registry information supplied by the Foundation, by mailing and emailing (if an email is provided) the listed donor, if a donor is listed, and advising the donor that the Artifact can be reclaimed for a period of 60 days from the date of the letter. If the donor does not respond, the City will be free to dispose of the Artifact as it sees fit. If the Foundation still exists, the City will also notify the Foundation and, if the donor does not reclaim the Artifact, the Foundation may claim the Artifact.
4. **Interpretive Center Improvements/Scope of Construction.** The Foundation is responsible for all costs associated with construction of the Interpretive Center and installation of all fixtures needed for display in the Interpretive Center. The Foundation will retain a contractor responsible for the design and construction of the Interpretive Center (“Contractor”). The City will be named by the Foundation and the Contractor as an additional insured, as more particularly described below. The contract will be between the Foundation and the Contractor (“Contract”).
5. **Project Management.** The Project Managers for the Foundation are Greg Caldwell (Primary) and David Penaflor (Secondary). The Project Manager for the City is Brian Stevenson. The Contractor is employed by the Foundation but the Foundation authorizes the City’s Project Manager to speak directly to the Contractor and to issue a stop work order if the Contractor is materially violating the terms of this Agreement or is creating any health or safety violation on or about the City’s property.
6. **Communication.** The Foundation’s Project Manager shall coordinate regularly (not less than bi-weekly) with the City’s Project Manager regarding construction progress and issues encountered. At a minimum, this will consist of a telephone call but may include in-person meetings with the Contractor, as requested by the Foundation or the City. Prior to commencement of any construction, a construction kick-off meeting will be held, with the Foundation’s Contractor and architect, the Foundation’s Project Manager, and the City’s Project Manager all present.

7. **Design.** The City's Project Manager shall review and approve or reject all proposed design changes prior to those changes being made. The Foundation will forward, in electronic form, all relevant design change documents, and the City's Project Manager shall respond as soon as possible, but no later than four (4) business days beginning with the business day following the submission to the City of all relevant materials. Similarly, any other additional communications between the City and the Foundation concerning design changes shall be as timely as possible but no later than four (4) business days.
8. **Review Bid and Construction Contract.** To help ensure the Project does not exceed the agreed upon scope or time frame, the City's Project Manager will review all designs and bids prior to the commencement of construction. The Foundation will forward, in electronic form, all bid and construction documents to the City's Project Manager. The City's Project Manager will respond as soon as possible, but no later than four (4) business days beginning with the business day following the submission to the City of all relevant materials. The Foundation's Project Manager will address any questions, concerns, or issues raised by the City as soon as possible, but no later than four (4) business days beginning with the business day following the submission to the City.
9. **Review Change Orders.** Prior to the commencement of work on items requiring a change order, the Foundation's Project Manager shall submit electronically the requested change order to the City's Project Manager. The City's Project Manager shall review and approve or deny the requested change order no later than four (4) business days beginning with the day after submission to the City.
10. **All Construction Costs.** The Foundation anticipates the cost for design and construction of the Interpretive Center to be One Hundred Twenty-Six Thousand Dollars (\$126,000), but all costs, regardless of the amount, are solely the responsibility of the Foundation. The Contractor and all subcontractors must sign a full lien waiver in favor of the City prior to commencement of construction.
11. **Construction Timeline.** The Foundation shall provide the City's Project Manager with a construction timeline prior to commencing construction, for review and approval by the City's Project Manager. The Foundation will forward, in electronic form, all relevant schedule documents and the City's Project Manager shall respond as soon as possible, but no later than four (4) business days beginning with the business day following the submission to the City of all relevant materials. Similarly, any additional communications between the City and the Foundation concerning the construction timeline shall be as timely as possible but at the most four (4) business days. Any changes to the construction timeline must be approved, in writing, by the City following the same submittal requirements and review and approval timeline as the original timeline. Full lien waivers must be given to the City prior to the start of any construction. Construction work within the Parks Building cannot exceed four (4) months, measured from the first date construction begins. Construction of the Interpretive Center must be completed within that four (4) month period and no later than June 30, 2023.

12. **Permits.** The Foundation is solely responsible for obtaining all necessary permits and paying all fees, charges, and costs associated with the design and construction of the Interpretive Center.
13. **Substantial Completion.** The City and the Foundation will coordinate an inspection walk-through to create a single punch list. Substantial completion means that the Interpretive Center is constructed and is ready to use, with only minor punch list items remaining that do not significantly impact the Parks Building or the Interpretive Center or their use.
14. **Final Completion.** Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed within thirty (30) days thereof, and then a final walk-through will occur by the parties to confirm all punch list items have been completed. Upon final acceptance by the City, the Interpretive Center will be owned and maintained by the City and will be open to the public.
15. **Ongoing Maintenance.** The City will maintain the Interpretive Center and its improvements in good condition, respectful of its solemn high purpose.
16. **Changes to Interpretive Center, Notification.** Before making any significant changes in the structure or operation of the Interpretive Center, the City agrees to notify and consult with the Foundation. If the Foundation ceases to function as an organization or is dissolved before making any significant changes in the structure or operation of the Interpretive Center, the City agrees to notify and consult with those past officers or members of the Foundation, not to exceed three (3) in number, whose names and addresses are furnished to the City by the Foundation. Notwithstanding the foregoing, the City's final decision shall be binding. The City anticipates it will operate the Interpretive Center for a period of fifteen (15) years but may extend that period in its sole discretion.
17. **Public Interpretive Center.** The Interpretive Center will be operated and maintained in honor of the American veterans who served during the Korean War (sometimes called "the Forgotten War"). The Interpretive Center is for the use and benefit of the public, including the Oregon veterans of the Korean War, their families and descendants. It is also for the use and benefit of the officials and dignitaries of the Republic of Korea in whose country the war was waged.
18. **Use of Interpretive Center, Regulations.** The Interpretive Center will generally be open to the public, free of charge, at all times that the Parks Building is open to the public. The City may adopt reasonable rules governing use of the Interpretive Center. The City will require the advance scheduling of special events and services at or including the Interpretive Center, and if an event or service will require special services from the City such as parking, security measures, or cleanup, the City will charge the permittee a reasonable fee for such services.
 - 18.1. **Special Events.** The Foundation may arrange, by submitting a Special Events Permit to be approved by the City, to hold events within or including the Interpretive Center. If the event will require the Parks Building to be open outside of the normal hours of

- operation, the Foundation will be required to reimburse the City for its actual cost of having an individual working as a building monitor during any event outside of the Parks Building normal operating hours. The Foundation must limit the number of special events, whether within or outside normal business hours, to no more than ten (10) per year.
- 18.2. Field Trips. Field Trips must be coordinated and approved, in writing, by the City no less than two (2) weeks prior to the proposed date of the field trip. Field trips that occur within the Parks Building are limited to two (2) hours.
- 19. Default**. In the event of a breach of this Agreement, the parties shall have available to them any and all remedies available at law or in equity. Failure to complete construction on or before June 30, 2023 will be a material breach of this Agreement and will result in termination of this Agreement, unless the City agrees, in its sole discretion, to extend the time for construction.
- 20. Miscellaneous Provisions**.
- 20.1. Integration. This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or representations.
- 20.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.
- 20.3. No Assignment. The Foundation may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.
- 20.4. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws.
- 20.5. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.
- 20.6. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.
- 20.7. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

- 20.8. Modification. This Agreement may not be modified except by written instrument executed by the Foundation and the City.
- 20.9. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.
- 20.10. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 20.11. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.
- 20.12. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement.
- 20.13. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.
- 20.14. Interpretation. As a further condition of this Agreement, the City and the Foundation acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.
- 20.15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original contract but all of which together shall constitute one and the same instrument.

20.16. Authority. Each party signing on behalf of the Foundation and the City hereby warrants actual authority to bind their respective party.

THE KOREAN WAR MEMORIAL
FOUNDATION OF OREGON

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney
City of Wilsonville, Oregon