



CITY OF MILWAUKIE

COUNCIL RESOLUTION No. 9-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TERMINATING 2004 AND 2005 AGREEMENTS WITH THE MILWAUKIE PIONEER CEMETERY ASSOCIATION, AUTHORIZING A NEW AGREEMENT WITH THE CEMETERY ASSOCIATION FOR WATER SERVICE TO THE MILWAUKIE PIONEER CEMETERY, AND EXPENDING THE FUNDS BEQUESTED BY LEONA KNUDSEN FOR CARE AND UPKEEP OF THE MILWAUKIE PIONEER CEMETERY.

WHEREAS, Ms. Leona Knudsen (“Knudsen”) died in the spring of 1994, leaving 25% of the residue of her estate (the “Knudsen Estate”) to the City of Milwaukie (the “City”), pursuant to the following bequest (the “Bequest”):

“City of Milwaukie, Oregon, Parks and Recreation Dept., for care and upkeep of Milwaukie Pioneer Cemetery – Twenty-Five percent of the residue of the estate,”
and

WHEREAS, on or around January 20, 1995, the Multnomah County Circuit Court entered an order distributing 25% of the residue of the Knudsen Estate to the City, totaling at the time of distribution approximately \$36,000.00; and

WHEREAS, on February 7, 1995, the City, pursuant to ORS 294.326 (since renumbered ORS 294.338; governing the expenditure of City funds from such Bequests, and requiring a City resolution for the same), passed Resolution 7-1995 (the “Resolution”), creating Expendable Trust Fund 81, thereafter titled the Pioneer Cemetery Maintenance Fund (the “Fund”), limiting the use of the Fund to provide for the care and upkeep of the Milwaukie Pioneer Cemetery (the “Cemetery”); and

WHEREAS, an Expendable Trust Fund does not create a Trust governed by the Oregon Uniform Trust Code (ORS Chapter 130), and is a City budgetary line item that creates a fund used for specified purposes, from which principal and income may be spent for such purposes, and which does not require perpetual accumulation; and

WHEREAS, the Milwaukie Pioneer Cemetery Association, Inc. (the “Association”), an Oregon nonprofit corporation exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code, was formed on December 2, 2003, for the charitable purpose of care and upkeep of the Cemetery and is required by law to utilize funds given to it in accordance with its charitable purposes, according to the direction of its officers and directors, who are bound by fiduciary duties of care and loyalty; and

WHEREAS, by order of the Clackamas County Circuit Court dated April 19, 2004, the Association is also the successor trustee of the Milwaukie Pioneer Cemetery Trust, which Trust is the owner of the Cemetery; and

WHEREAS, pursuant to the terms of those specific agreements between the City and the Association dated May 4, 2004, and January 5, 2005, (the "Agreements"), the Association has been solely responsible for the care, maintenance, and upkeep of the Cemetery from that time to the present day, and the City has provided proceeds from the Fund to the Association to aid in those purposes; and

WHEREAS, the City has determined that the Association is in a more expert, experienced, and efficient position than the City to continue such care, maintenance, and upkeep, and that a single expenditure of the remaining proceeds in the Fund to the Association to aid the Association's continued responsibilities as it, in its best judgment, sees fit, is in the best interests of the City, the Association, and the Cemetery; and

WHEREAS the City is satisfied that the Association, and its officers and directors, are bound by law to use the remaining proceeds of the Fund according to its charitable purposes, and not for private benefit, which purposes are consistent with original Bequest, and the original Resolution establishing the Fund, for such funds to be used solely for the care and upkeep of the Cemetery; and

WHEREAS, the current remaining proceeds of the Fund total \$32,379, and that expenditure of the remaining proceeds of the Fund to the Association requires a City resolution pursuant to ORS 294.338; and

WHEREAS, the City had budgeted materials and service expenditures of only \$10,000 to fund requests from the Association maintaining the balance in contingency for future periods therefore to maintain compliance with budget law council needs to transfer appropriations from general fund contingency to non-departmental materials and services for the balance of funds held (\$22,379);

Now, Therefore, be it Resolved by the City of Milwaukie, Oregon:

Section 1. All agreements between the City and the Association regarding the use of funds and the maintenance of the Cemetery, including specifically those dated May 4, 2004, and January 5, 2005, are hereby terminated.

Section 2. The City Manager is authorized to enter into an agreement with the Association for the provision of water to the Cemetery free of charge under such terms mutually agreeable to the City and the Association.

Section 3. The City hereby expends the amount of \$32,379 from Expendable Trust Fund 81, which amount represents the entirety of proceeds available in such fund, to the Association for the sole purpose of use in accordance with the Association's charitable purpose of care and upkeep of the Cemetery and execute a transfer appropriations from General Fund Contingency to Non-departmental Materials and Services in the amount of 22,379.

Section 4. Expendable Trust Fund 81 is hereby terminated.

Introduced and adopted by the City Council on **February 20, 2018**.

This resolution is effective on **February 20, 2018**.



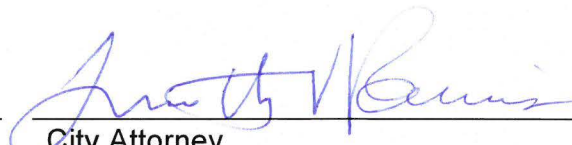
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Scott S. Stauffer, City Recorder



City Attorney