

No. 05-19-00774-CV

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS

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IN THE COURT OF APPEALS
FOR THE FIFTH JUDICIAL DISTRICT OF TEXAS
AT DALLAS

LISA MATZ
Clerk

In re **RETURN LEE TO LEE PARK,**
WARREN JOHNSON, and KATHERINE GANN,

Relators.

From the 14th District Court of Dallas County, Texas
Cause No. DC-18-05460

**RESPONSE TO PETITION FOR
WRIT OF INJUNCTION AND APPENDIX**

CHRISTOPHER J. CASO
Interim City Attorney

-PATRICIA M. DE LA GARZA
Chief of Litigation

JAMES B. PINSON
Chief of Appellate Section

NICHOLAS D. PALMER
Deputy Chief of Appellate Section

CHARLES S. ESTEE
State Bar No. 06673600
charles.estee@dallascityhall.com
Assistant City Attorney

City Attorney's Office
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

Telephone: 214-670-3519
Telecopier: 214-670-0622

ATTORNEYS FOR RESPONDENTS

LIST OF PARTIES AND COUNSEL

Pursuant to Texas Rules of Appellate Procedure 7.2(a) and 52.4(a), Respondents hereby amend and supplement Relators' Identity of Parties and Counsel with the following information:

Respondents:

Eric Johnson is substituted for Mike Rawlings.

Chad West is substituted for Scott Griggs.

Carolyn King Arnold is substituted for Dwaine R. Caraway.

Jaime Resendez is substituted for Rickey D. Callahan.

Adam Bazaldua is substituted for Kevin Felder.

Paula Blackmon is substituted for Mark Clayton.

Cara Mendelsohn is substituted for Sandy Greyson.

David Blewett is substituted for Philip T. Kingston.

Respondents' Additional Counsel:

James B. Pinson (appellate)
Texas Bar No. 16017700
james.pinson@dallascityhall.com

Nicholas D. Palmer (appellate)
Texas Bar No. 16017700
nicholas.palmer@dallascityhall.com

Office of the Dallas City Attorney
1500 Marilla Street, Room 7DN
Dallas, Texas 75201
214-670-3519 / fax 214-670-0622

TABLE OF CONTENTS

LIST OF PARTIES AND COUNSEL..... ii

INDEX OF AUTHORITIES.....v

RECORD REFERENCES vi

RESPONSE TO ISSUE PRESENTED vii

1. The request for injunctive relief regarding the Lee statue is moot because the sale of the Lee statue is complete and possession has already been transferred.

2. Injunctive relief is not necessary to protect the Court’s appellate jurisdiction regarding the Confederate Monument, because Respondents are not threatening to sell or destroy the monument or otherwise moot the appeal.

STATEMENT OF FACTS2

ARGUMENT3

I. The only proper purpose of a writ of injunction is to preserve this Court’s appellate jurisdiction.....3

II. Relators’ claims regarding the sale of the Lee statue are moot.....4

III. Respondents are not threatening to sell or destroy the Confederate Monument or otherwise moot the appeal regarding the monument.....6

IV. In the alternative, a bond should be required.7

CONCLUSION8

PRAYER8

CERTIFICATION10

CERTIFICATE OF COMPLIANCE.....10

CERTIFICATE OF SERVICE10

APPENDIX

Order entered July 1, 2019..... Tab 1

Purchase Agreement and Bill of Sale (SOPR Tab 2) Tab 2

Contract for Services (SOPR Tab 3)..... Tab 3

Supplemental Plea, *Carter v. City of Dallas* (SOPR Tab 4)..... Tab 4

Affidavit of Lynn Rushton (SOPR Tab 5)..... Tab 5

INDEX OF AUTHORITIES

CASES

<i>Carter v. City of Dallas</i> , No. DC-19-07054 (14th Dist. Ct., Dallas County, Tex.)	5
<i>City of El Paso v. Waterblasting Techs., Inc.</i> , 491 S.W.3d 890 (Tex. App.—El Paso 2016, no pet.)	4
<i>Dallas Morning News v. Fifth Court of Appeals</i> , 842 S.W.2d 655 (Tex. 1992) (orig. proceeding)	4
<i>EMW Mfg. Co. v. Lemons</i> , 724 S.W.2d 425 (Tex. App.—Fort Worth 1987, orig. proceeding)	3
<i>In re Carter</i> , No. 05-19-00691-CV, 2019 WL 2482626 (Tex. App.—Dallas June 14, 2019, orig. proceeding) (mem. op.)	5
<i>In re Shields</i> , 190 S.W.3d 717 (Tex. App.—Dallas 2005, orig. proceeding)	4, 6
<i>Johnson v. Rawlings</i> , No. 3:19-CV-180-C (N.D. Tex.)	3
<i>Madison v. Martinez</i> , 42 S.W.2d 84 (Tex. Civ. App.—Dallas 1931, writ ref'd)	4, 6
<i>Ott v. Bell</i> , 606 S.W.2d 955 (Tex. Civ. App.—Waco 1980, no writ)	4
<i>Powell v. McCormack</i> , 395 U.S. 486 (1969)	4

RECORD REFERENCES

Respondents will use the following forms to refer to the Supplemental Original Proceeding Record:

- 1SOPR means Supplemental Original Proceeding Record Tab 1.
- 2SOPR means Supplemental Original Proceeding Record Tab 2.
- 3SOPR means Supplemental Original Proceeding Record Tab 3.
- 4SOPR means Supplemental Original Proceeding Record Tab 4.
- 5SOPR means Supplemental Original Proceeding Record Tab 5.

RESPONSE TO ISSUE PRESENTED

1. The request for injunctive relief regarding the Lee statue is moot because the sale of the Lee statue is complete and possession has already been transferred.

2. Injunctive relief is not necessary to protect the Court's appellate jurisdiction regarding the Confederate Monument, because Respondents are not threatening to sell or destroy the monument or otherwise moot the appeal.

IN THE COURT OF APPEALS
FOR THE FIFTH JUDICIAL DISTRICT OF TEXAS
AT DALLAS

In re RETURN LEE TO LEE PARK,
WARREN JOHNSON, and KATHERINE GANN,

Relators.

RESPONSE TO PETITION FOR WRIT OF INJUNCTION

TO THE HONORABLE COURT OF APPEALS:

Pursuant to the Order entered July 1, 2019 (App. Tab 1), Respondents, the City of Dallas (“the City”) and Eric Johnson, Chad West, Adam Medrano, Casey Thomas II, Carolyn King Arnold, Jaime Resendez, Omar Narvaez, Adam Bazaldua, Tennell Atkins, Paula Blackmon, Adam McGough, Lee Kleinman, Cara Mendelsohn, Jennifer Staubach Gates, and David Blewett (collectively, the “Council Members”),¹ file this response to the petition for writ of injunction of Relators, Return Lee to Lee Park, Warren Johnson, and Katherine Gann, to show that the petition is moot regarding the statue of Robert E. Lee because the sale of the Lee

¹ On June 17, 2019, a new City Council was inaugurated and eight new Council Members replaced previous members.

statue is complete and possession has already been transferred, and also to show that no injunctive relief is necessary to protect the Court's appellate jurisdiction regarding the Confederate Monument, because Respondents are not threatening to sell the monument, but intend only to disassemble, remove, and archivally store the monument. The Court should deny the petition.

STATEMENT OF FACTS

Relators claim there has been a rushed effort to dispose of City-owned symbols of the Confederacy. It has been a nearly two-year process with over a dozen public meetings of the City Council and City committees, task forces, and commissions. (*See* 1SOPR 108-58, 475-504, 887-914.) Relator Warren Johnson has brought two unsuccessful lawsuits trying to force the City to continue displaying City-owned statues honoring the Confederacy at City-owned parks.

After the events in Charlottesville, Virginia, in the summer of 2017, at a public noticed meeting, the Dallas City Council voted on September 6, 2017, to remove a statue of Robert E. Lee located in Oak Lawn Park. (1SOPR 116-18.)² On September 14, 2017, the Lee statue was removed and placed in storage. (*Id.* at 504.) Relators filed this lawsuit six months later. (*Id.* at 17.) Meanwhile, the City held a series of

² On that day, a different group of plaintiffs filed suit in federal court to prevent the removal of the Lee statue and other Confederate symbols. The case was subsequently dismissed, the court holding plaintiffs lacked common law standing and taxpayer standing. *Patterson v. Rawlings*, 287 F. Supp. 3d 632 (N.D. Tex. 2018).

public meetings to consider what to do with the Lee statue and other Confederate symbols including the Confederate Monument located in Pioneer Cemetery Park. (*Id.* at 494-501.) Warren Johnson spoke at one or more of these meetings. (*Id.* at 912.) Final judgment was entered in this case on April 3, 2019.³ (*Id.* at 917.) The trial court granted the City’s and Council Members’ plea to the jurisdiction and, in the alternative, their summary judgment motion. (*Id.* at 362-63.)

ARGUMENT

I. The only proper purpose of a writ of injunction is to preserve this Court’s appellate jurisdiction.

Relators assert that an injunction is necessary both to preserve the status quo and to preserve the Court’s jurisdiction. However, an appellate court does not have the power to issue a temporary injunction “merely to preserve the status quo pending appeal” or “to prevent damage to an appellant,” and “the power to grant a temporary writ of injunction to prevent damages which would otherwise flow to a litigant who has an appeal pending rests exclusively with the district judge.” *EMW Mfg. Co. v. Lemons*, 724 S.W.2d 425, 426 (Tex. App.—Fort Worth 1987, orig. proceeding). An appellate court has no original jurisdiction to grant writs of injunction except to protect its jurisdiction over the subject matter of a pending appeal or to prevent an

³ On January 24, 2019, Warren Johnson filed suit in federal court regarding City-owned Confederate symbols. *Johnson v. Rawlings*, No. 3:19-CV-180-C (N.D. Tex.). The case was dismissed with prejudice on May 24, 2019.

unlawful interference with the enforcement of its judgments and decrees. *See Ott v. Bell*, 606 S.W.2d 955, 957 (Tex. Civ. App.—Waco 1980, no writ). “A court of appeals may issue . . . a writ to prevent an appeal from becoming moot.” *In re Shields*, 190 S.W.3d 717, 719 (Tex. App.—Dallas 2005, orig. proceeding) (citing *Dallas Morning News v. Fifth Court of Appeals*, 842 S.W.2d 655, 657 (Tex. 1992) (orig. proceeding); *Madison v. Martinez*, 42 S.W.2d 84, 86 (Tex. Civ. App.—Dallas 1931, writ ref’d)).

The question before the Court in this original proceeding is whether the Court’s jurisdiction will be interfered with or destroyed in the absence of a writ of injunction pending resolution of Relators’ appeal. The answer is no, because Relators’ claims regarding the Lee statue are already moot and because Respondents are not threatening to sell or destroy the Confederate Monument.

II. Relators’ claims regarding the sale of the Lee statue are moot.

Mootness is a jurisdictional issue and occurs when the issues presented are no longer live. *Powell v. McCormack*, 395 U.S. 486, 496 (1969); *City of El Paso v. Waterblasting Techs., Inc.*, 491 S.W.3d 890, 895-98 (Tex. App.—El Paso 2016, no pet.). Relators seek injunctive relief regarding the Lee statue “if the City of Dallas still has the Lee statue” (Pet. 5), but the statue has already been sold and delivered, mooting any controversy relating to that statue.

On May 22, 2019, at a public noticed meeting, the City Council authorized the sale of the Lee statue. (App. Tab 2, 2SOPR 13.) The City retained an auctioning service that placed the statue for sale by auction with bidding closing on June 5, 2019. (*Id.* at 14-15.) The winning bid was in excess of \$1.4 million. (*Id.* at 14.) On June 12, 2019, at a public noticed meeting, the City Council confirmed the sale. (*Id.* at 4-12.) The purchaser assumed the risk of loss on June 12, 2019 (App. Tab 2, 2SOPR 8). In compliance with the terms of the purchase agreement, the purchaser took possession of the statue on or before June 30, 2019, and removed it to an unknown location outside of the DFW metroplex.⁴ (App. Tab 2, 2OPR 8; App. Tab 5, 5OPR 1.) The Purchase Agreement and Bill of Sale has been completed and performed. (App. Tab 5, 5OPR 1.) A true and correct copy of the Purchase Agreement and Bill of Sale is contained in Tab 2 of the Supplemental Original Proceeding Record.

There are no live issues regarding the sale of the Lee statue. Any claim regarding the sale is moot. For this reason, the Court should deny Relator's petition as to the Lee statue.

⁴ On May 17, 2019, the attorney who represents Relators in this matter filed suit against the City on behalf of a different set of plaintiffs. *Carter v. City of Dallas*, No. DC-19-07054 (14th Dist. Ct., Dallas County, Tex.). The lawsuit focused on the Confederate Monument. The district court denied the requests for temporary restraining order and temporary injunction. This Court has denied a request for mandamus relief brought by the same plaintiffs. *In re Carter*, No. 05-19-00691-CV, 2019 WL 2482626 (Tex. App.—Dallas June 14, 2019, orig. proceeding) (mem. op.).

III. Respondents are not threatening to sell or destroy the Confederate Monument or otherwise moot the appeal regarding the monument.

To preserve appellate jurisdiction, a writ of injunction may issue to prevent the sale of property, *In re Shields*, 190 S.W.3d at 719, or the destruction of the subject matter of the appeal, *Madison v. Martinez*, 42 S.W.2d at 86. Relators seek injunctive relief “to protect the Confederate Monument” (Pet. 5), but Respondents are not threatening to sell or destroy the Confederate Monument. Respondents intend only to have the monument safely removed and archivally stored.

The Confederate Monument was originally installed in Old City Park in 1896 and was moved to Pioneer Plaza in 1961. (4SOPR *61, 115.) On February 13, 2019, at a public noticed meeting, the Dallas City Council voted to take all steps necessary to remove and transfer to storage the Confederate Monument and to procure a contract for its disassembly, removal, and transfer to storage. (1SOPR 904-06.) On June 25, 2019, the City executed a Contract for Services with Phoenix I Restoration and Construction, Ltd. (the “Contractor”) whereby the City will pay an amount not to exceed \$480,000.00 for the Contractor’s services for the removal, relocation and archival storage of Confederate Monument. (App. Tab 3, 3SOPR 6, 16.) The Contractor has agreed to safely remove and relocate the monument as follows:

The contractor will remove and relocate the Confederate Monument in an archival manner consistent with [American Institute of Conservation of Historic and Artistic Works] guidelines to a storage facility on City of Dallas property. With reassembly in mind, each piece will be documented, removed, and relocated in a manner that preserves the

integrity of the pieces and provides of [sic] the ability to reconstruct the monument.

(*Id.* at 18.) A true and correct copy of the Contract for Services is contained in Tab 3 of the Supplemental Original Proceeding Record.

There is no need for injunctive relief to protect the Confederate Monument, because there is no threat to sell or destroy the monument or otherwise moot the appeal regarding the monument. It has already been moved once before. (App. Tab 5, 5OPR at 1-2). Indeed, its continued presence risks further damage by vandalism. (App. Tab 5, 5OPR at 2). For this reason, the Court should deny Relator's petition as to the Confederate Monument.

IV. In the alternative, a bond should be required.

Because the Lee statue is no longer in the City's possession, no injunctive relief regarding that statue is possible.

As for the Confederate Monument, the City has entered into a contract with a vendor for the removal at a cost of approximately \$480,000. (App. Tab 3, 3SOPR 6.) A delay will result in increased costs while the Contractor waits for word on whether it may proceed with the work. The contract itself may become void if the delay is too long, resulting in the cost of another round of bidding and potential for increased cost of removal. The monument itself has become the target of graffiti and its continued presence requires more security. Any bond should be at least in the amount of \$500,000. In addition, a bond should be required because of the lack of

any merit to Relators' claims and the repeated rejection of the claims by multiple courts.

CONCLUSION

The issue of whether the City of Dallas can remove City-owned Confederate symbols from City property has been litigated and re-litigated. In *Patterson*, there was a request for a temporary restraining order, a temporary injunction, and a permanent injunction to prevent removal. Final judgment was entered against the claims. In *Johnson v. Rawlings*, there was a request for a preliminary injunction and a permanent injunction to prevent removal. Final judgment was entered against the claims. In *Carter v. City of Dallas*, the trial court denied a request for a temporary restraining order and a temporary injunction to prevent removal. In *In re Carter*, this court denied the request for mandamus relief seeking to prevent removal. In *Return Lee to Lee Park*, there was a request for a temporary restraining order, a temporary injunction, and a permanent injunction to prevent removal. Final judgment was entered against the claims. This Court has already denied a motion for temporary relief in the appeal of this case. The petition should be denied.

PRAYER

Respondents request that the petition for writ of injunction be denied.

Respectfully submitted,

CHRISTOPHER J. CASO
Interim City Attorney

PATRICIA M. DE LA GARZA
Chief of Litigation

JAMES B. PINSON
Appellate Coordinator

NICHOLAS D. PALMER
Deputy Appellate Coordinator

/s/Charles S. Estee

Charles S. Estee

Texas Bar No. 06673600

Charles.estee@dallascityhall.com

Stacy Jordan Rodriguez

Texas Bar No. 11016750

stacy.rodriguez@dallascityhall.com

Assistant City Attorneys

City Attorney's Office
1500 Marilla Street, Room 7DN
Dallas, Texas 75201
Telephone: 214-670-3519
Telecopier: 214-670-0622

ATTORNEYS FOR RESPONDENTS

CERTIFICATION

I certify that I have reviewed this response and have concluded that every factual statement made in the response is supported by competent evidence included in Supplemental Original Proceeding Record.

/s/Charles S. Estee
Attorney for Respondents

CERTIFICATE OF COMPLIANCE

I certify that this document contains 1895 words, excluding the parts exempted by Texas Rule of Appellate Procedure 9.4(i)(1), and has been prepared in a proportionally spaced 14-point Times New Roman typeface using Microsoft Word 2016.

/s/Charles S. Estee
Attorney for City of Dallas

Dated: July 15, 2019

CERTIFICATE OF SERVICE

I certify that on July 15, 2019, the foregoing document was served upon Warren V. Norred, Attorney for Relators, Return Lee to Lee Park, Warren Johnson, and Katherine Gunn, by e-service through an electronic filing manager to warren@norredlaw.com.

/s/Charles S. Estee
Attorney for City of Dallas

IN THE COURT OF APPEALS
FOR THE FIFTH JUDICIAL DISTRICT OF TEXAS
AT DALLAS

In re RETURN LEE TO LEE PARK,
WARREN JOHNSON, and KATHERINE GANN,

Relators.

APPENDIX

Order entered July 1, 2019.....	Tab 1
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Contract for Services (SOPR Tab 3).....	Tab 3
Supplemental Plea, <i>Carter v. City of Dallas</i> (SOPR Tab 4).....	Tab 4
Affidavit of Lynn Rushton (SOPR Tab 5).....	Tab 5

VERIFICATION

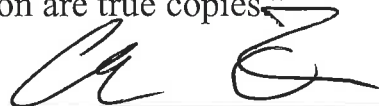
STATE OF TEXAS §

DALLAS COUNTY §

Before me, the undersigned notary, on this day personally appeared Charles S. Estee, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:


1. “My name is Charles S. Estee. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts in this verification are within my personal knowledge and are true and correct.

2. “I am the attorney for Respondents. All the documents included with the Response to Petition for Writ of Injunction are true copies.”



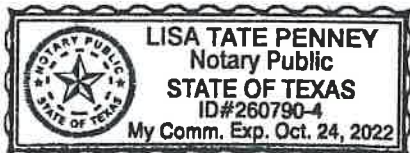
Charles S. Estee

Sworn to and subscribed before me by Charles S. Estee on July 15, 2019



Notary public in and for
the State of Texas

My commission expires: 10-24-22



Order entered July 1, 2019



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00774-CV

**IN RE RETURN LEE TO LEE PARK, WARREN JOHNSON,
AND KATHERINE GANN, Relators**

**Original Proceeding from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC18-05460**

ORDER

Before Justices Whitehill, Partida-Kipness, and Pedersen, III

Before the Court are relators' June 27, 2019 "Petition for Immediate Writ of Injunction" and relators' June 27, 2019 "Motion for Temporary Relief." We **GRANT** the motion, **STAY** all efforts to remove, alter, or demolish the Confederate Monument located in the Pioneer Cemetery in Dallas, Texas, which was one of the monuments at issue in the underlying proceeding, and **STAY** the sale of the Robert E. Lee and Confederate Soldier statue to the extent that sale has not been completed. This stay shall remain in effect until further order of the Court. We request that the real parties in interest and respondent file their responses, if any, to the motion for temporary relief and petition for writ of injunction **by July 15, 2019**.

/s/ **BILL WHITEHILL**
JUSTICE



City of Dallas


STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

FILE NO. 19-0950

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the **11th** day of **July, 2019**.



BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ

Tab 2

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

JUNE 12, 2019

19-0950

Addendum Item 10: Authorize (1) an action to confirm the sale of the Robert E. Lee and the Confederate Soldier sculpture, sold through an online auction held May 23, 2019 through June 5, 2019, to the highest bidder who tenders payment in full and executes a purchase agreement and bill of sale; and (2) the City Manager to execute a purchase agreement and bill of sale with the purchaser - Revenue: \$1,435,000

Councilmember Arnold moved to adopt the item.

Motion seconded by Councilmember Narvaez.

Councilmember Callahan moved a substitute motion to adopt the item with the following change:

Resolution [Section 2]

- Purchaser shall not display the Monument on city property within the City of Dallas.

Motion died due to lack of a second.

Councilmember Kleinman asked Councilmember Arnold if she would accept the following friendly amendment:

- That the Purchaser agrees not to publicly display the Monument in the Dallas-Fort Worth Metropolitan Area instead of only the City of Dallas.

Councilmember Arnold accepted Councilmember Kleinman’s friendly amendment as part of her motion.

Councilmember Narvaez, who seconded the motion, also accepted Councilmember Kleinman’s friendly amendment.

After discussion, Presiding Officer Thomas called a record vote on Councilmember Arnold’s amended motion:

Voting Yes:	[12]	Thomas, Medrano, Arnold, Narvaez, Felder, Atkins, Clayton, McGough, Kleinman, Greyson, Gates, Kingston
-------------	------	--

Voting No:	[1]	Callahan
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Absent when vote taken:	[2]	Rawlings, Griggs
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The city secretary declared the item amended.

June 12, 2019

WHEREAS, on May 22, 2019, City Council declared the sculpture titled the *Robert E. Lee and the Confederate Soldier* ("Sculpture"), by Alexander Phimister Proctor, as surplus property, and authorized its sale pursuant to Section 2-37.4 of the Dallas City Code by Resolution No. 19-0825; and

WHEREAS, Dallas City Code, Section 2-37.4, requires that when the highest bid for property is more than \$20,000, the sale to the highest bidder must be confirmed by City Council; and

WHEREAS, the City Council has set the reserve for this online auction at \$450,000, and further required that the highest bidder enter into a purchase agreement and bill of sale agreeing not to publicly display the Sculpture in the City of Dallas and to secure the same restriction contractually with any subsequent purchaser if Sculpture is later sold.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the sale of the Sculpture, through an online auction which ran from May 23, 2019 through June 5, 2019, is hereby confirmed with the highest bidder who tenders payment in full and executes a purchase agreement and bill of sale with the City of Dallas ("Purchaser").

SECTION 2. That the City Manager is hereby authorized to execute a purchase agreement and bill of sale, approved as to form by the City Attorney, with Purchaser wherein Purchaser agrees not to publicly display the Sculpture in the Dallas-Fort Worth Metropolitan Area and Purchaser further agrees to secure the same restriction contractually with any subsequent purchaser if Sculpture is later sold.

SECTION 3. That the Chief Financial Officer is hereby authorized to receive and deposit funds received from the proceeds of the sale in the City's General Fund Contingency Reserve Fund, Fund 0001, Department NBG, Unit 1000, Revenue Code 8415.

SECTION 4. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.



RECEIVED

2019 JUN 25 PM 2:41

Resolution No. 19 - 0950
Approved on June 12, 2019

STATE OF TEXAS

§ CITY SECRETARY
§ DALLAS, TEXAS
§

COUNTY OF DALLAS

PURCHASE AGREEMENT AND BILL OF SALE

This Purchase Agreement and Bill of Sale ("Agreement") dated as of June 12, 2019 ("Effective Date"), is between the **CITY OF DALLAS**, a Texas municipal corporation located in Dallas County, Texas ("City"), acting by and through its duly authorized officers, and Holmes Firm PC, a Texas professional corporation organized under the laws of the State of Texas, having its principal office at 14911 Quorum Drive, Ste 340, Dallas, Texas 75254 ("Purchaser").

WITNESSETH

WHEREAS, by Resolution No. 19-0825, approved on May 22, 2019, attached hereto as **Exhibit A**, City Council designated the *Robert E. Lee and the Confederate Soldier* monument ("Monument") by sculptor Alexander Phimister Proctor as surplus property and authorized the sale of the Monument by public auction; and

WHEREAS, City Council set a reserve for the auction at \$450,000; and

WHEREAS, the sale of the Monument is conditioned on the Purchaser's commitment to not publicly display the Monument in the Dallas-Fort Worth Metropolitan Area (as defined herein) and to secure this restriction contractually with any subsequent purchaser if the Purchaser later sells the Monument; and

WHEREAS, City Council resolved that the display of public Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City; and

WHEREAS, the City put the Monument up for auction from May 23, 2019 through June 5, 2019, through Lone Star Auctioneers, Inc.; and

WHEREAS, Purchaser, being the highest bidder at the close of the auction, was the winning bidder; and

WHEREAS, by resolution approved on June 12, 2019, City Council confirms the sale of the Monument to Purchaser pursuant to this Purchase Agreement and Bill of Sale (the "Agreement").

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the Parties agree as follows:

SECTION ONE. SALE OF ASSETS

City does now convey, sell, assign, transfer, and deliver to Purchaser and its successors and permitted assigns and Purchaser does accept and assume all of City's right, title, and interest in, to, and under the Monument, pursuant to the terms agreed to by the parties herein, TO HAVE AND TO HOLD the Monument to Purchaser, its successors and permitted assigns for their own benefit and use forever. THE MONUMENT IS BEING CONVEYED IN ITS CURRENT CONDITION "AS IS," "WHERE IS" AND "WITH ALL FAULTS OR DEFECTS (KNOWN OR UNKNOWN, LATENT, DISCOVERABLE, OR UNDISCOVERABLE)." CITY AND ITS AFFILIATES MAKE NO REPRESENTATION OR WARRANTY WHATSOEVER, WHETHER EXPRESSED, IMPLIED OR STATUTORY, WITH RESPECT TO THE KIND, SIZE, QUALITY, DESCRIPTION, MERCHANTABILITY, MAINTENANCE, REPAIR, CONDITION, CERTIFICATION, USE OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE MONUMENT. PURCHASER AGREES, BY ITS EXECUTION OF THIS AGREEMENT, THAT THERE ARE NO REPRESENTATIONS AND WARRANTIES EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, AND PURCHASER DOES FURTHER AGREE THAT IT IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF CITY OR ANY OF CITY'S AFFILIATES WITH RESPECT TO THE KIND, SIZE, QUALITY, DESCRIPTION, MERCHANTABILITY, MAINTENANCE, REPAIR, CONDITION, CERTIFICATION, USE OR THE FITNESS OF THE MONUMENT FOR ANY PURPOSE INTENDED BY PURCHASER, AND THAT PURCHASER IS ACQUIRING THE MONUMENT IN ITS CURRENT CONDITION AND STATE OF REPAIR "AS IS," "WHERE IS," AND "WITH ALL FAULTS OR DEFECTS (KNOWN OR UNKNOWN, LATENT, DISCOVERABLE OR UNDISCOVERABLE)." NO ALLOWANCE, REFUND OR SET ASIDE WILL BE MADE ON ACCOUNT OF ANY INCORRECTNESS, ERROR IN CATALOGING, IMPERFECTION, DEFECT OR DAMAGE.

The purchase price for the sale and conveyance of the Monument shall be **ONE MILLION FOUR HUNDRED THIRTY-FIVE THOUSAND DOLLARS AND 00/100 (\$1,435,000.00)**, payable pursuant to the terms and conditions of sale detailed in the auction advertisement attached as **Exhibit B**. The terms and conditions of sale stated in **Exhibit B** are incorporated into this Agreement.

SECTION TWO. PURCHASER OBLIGATIONS

Purchaser agrees to the following additional terms of sale of the Monument to Purchaser:

1. Purchaser shall not publicly display (meaning the monument shall not be visible from a public right of way) the Monument within the Dallas-Fort Worth Metropolitan Area (meaning Dallas, Tarrant, Collin, Denton, Ellis, Kaufman and Rockwall counties).
2. Purchaser shall contractually secure this restriction on public display of the Monument with any subsequent purchaser if the Monument is later sold, assigned, transferred, or conveyed. In such event, the Purchaser shall notify the City of its intent to sell, assign, transfer, or

convey and shall provide a copy of the contract within 30 days so that the City may confirm that the restrictions on publicly displaying the Monument were secured. Purchaser may redact the name, address and amount of the sale from the contract.

Purchaser agrees and understands that the restrictions on displaying the Monument in the Dallas-Fort Worth Metropolitan Area as defined above are vital terms of this Agreement. THE TERMS IN SECTION TWO OF THIS AGREEMENT SHALL SURVIVE THE SALE OF THE MONUMENT BY CITY IN PERPETUITY. Failure to adhere to the obligations in this section is considered an event of default under the terms of this Agreement.

SECTION THREE. REMOVAL OF THE MONUMENT

Purchaser shall be responsible for any damage to City property caused by or arising out of the removal of the Monument by Purchaser. The Director of Building Services shall determine if damage has been caused to the City property and upon assessment by the Director, or designee, the Director shall provide an estimate of the repairs needed to Purchaser. Purchaser agrees to pay such cost within thirty (30) business days of notice. For all other terms of removal, please see the terms and conditions stated in **Exhibit B** and which are incorporated into this Agreement.

City agrees to extend the removal date to June 30, or such later date upon mutual agreement by the City and Purchaser. Purchaser agrees to reimburse the City for security costs of \$51 per hour from June 12th through the removal date of the Monument. The Director of Building services shall determine the final amount.

SECTION FOUR. DEFAULT AND ENFORCEMENT

Default. A default shall exist if the Purchaser fails to perform or adhere to any term, condition, obligation, or covenant contained herein and the default continues for greater than 10 days. A default shall also exist if any statement, warranty or representation contained herein is false.

1. Notice by Purchaser. If Purchaser becomes aware of a default to Section Two, including Purchaser or a subsequent buyer publicly displaying the Monument within the City, Purchaser shall notify City within 10 days of Purchaser becoming aware of the default. Such notice shall specify the nature of the event or condition of default, the period of existence thereof, and the action Purchaser proposes to take with respect thereto to cure the default. Purchaser's proposed actions are subject to City approval. If a default exists and Purchaser does not notify City of the default, City has the right to provide Purchaser with written notice of the alleged event of default and allow the Purchaser twenty (20) business days after the receipt of the notice to cure such event of default. Notice under this section shall be in accordance with Section Six below.
2. Remedies of City. In the event of an uncured default by Purchaser, the City shall have the right to enforce the Agreement using any legal remedy available to it at law or equity, including without limitation specific performance or injunctive relief if the Monument is

being publicly displayed within the City in contravention of this Agreement. Parties agree that damages are not adequate at law to compensate for the public display of the Monument within the City.

3. Enforcement. This Agreement inures to the benefit of, and is enforceable by, the parties hereto. Purchaser does hereby grant to City the right to prosecute or take appropriate action, at law or in equity, against Purchaser to enforce any covenant or agreement contained in this Agreement. If the City prevails in a legal proceeding against Purchaser, the City is further entitled to recover damages, attorney's fees, and court costs from Purchaser.
4. Waiver of Breach Not Waiver of Subsequent Breach. The waiver of a breach of any term, covenant, or condition of this Agreement shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

SECTION FIVE. NOTICE OF CONTRACT CLAIM

This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Purchaser shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

SECTION SIX. NOTICES

Except as otherwise provided in Section 5, any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:

Jennifer Scripps, Director
City of Dallas
Office of Cultural Affairs
1925 Elm Street, Ste 500
Dallas, Texas 75201

If intended for Purchaser, to:

Ronald L. Holmes
Holmes Firm PC
14911 Quorum Drive, Ste 340
Dallas, Texas 75254

SECTION SEVEN. RISK OF LOSS

Purchaser acknowledges that risk of loss transferred from City to Purchaser upon City Council approval of the sale on June 12, 2019, in accordance with the terms of the auction advertisement, attached as **Exhibit B**.

SECTION EIGHT. VENUE

The obligations of the parties to this Agreement shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Agreement, exclusive venue shall lie in Dallas County, Texas.

SECTION NINE. INSURANCE REQUIREMENTS

1. Purchaser and Purchaser's designated moving contractor, a company authorized to do business in the State of Texas and otherwise acceptable to City, shall procure, pay for, and maintain from June 12, 2019 through the removal of the Monument from City property the minimum insurance coverage contained in **Exhibit C-1**, attached to and made a part of this Agreement. All insurance shall include an endorsement on the policy naming the City of Dallas its officers, employees and elected representatives as additional insureds.
2. Approval, disapproval or failure to act by City regarding any insurance supplied by Purchaser or its sub-contractors shall not relieve Purchaser of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Agreement. The bankruptcy or insolvency of Purchaser's insurer or any denial of liability by Purchaser's insurer shall not exonerate Purchaser from the liability or responsibility of Purchaser set forth in this Agreement.
3. A copy of the minimum insurance coverage contained in **Exhibit C-1** is attached as **Exhibit C-2**.

SECTION TEN. INDEMNITY

PURCHASER AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY PURCHASER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF PURCHASER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY

PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF PURCHASER AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS AGREEMENT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. PURCHASER AND CITY ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF THIS SECTION 7 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE TERM OF THIS AGREEMENT.

SECTION ELEVEN. GIFT TO PUBLIC SERVANT

City may terminate this Agreement immediately if Purchaser has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, City may require Purchaser to remove any employee of the Purchaser from work under this Agreement who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

SECTION TWELVE. BINDING EFFECT AND AMENDMENT

This Agreement is binding upon, inures to the benefit of, and is enforceable by City and Purchaser and their respective successors and permitted assigns. This Agreement may be amended, modified, or supplemented only by written agreement of the parties to this Agreement.

SECTION THIRTEEN. FURTHER ASSURANCES

City and Purchaser, for themselves and their respective successors and assigns, each covenant and agree to execute, acknowledge, and deliver, or to cause to be executed, acknowledged, and delivered, all and every further documents or instruments (including assignments and bills of sale) and to do such further acts as any party to this Agreement reasonably may deem necessary or

appropriate in order to effect the intent and purposes of this Agreement and the transactions contemplated by this Agreement.

The Parties acknowledge this Agreement shall survive and be operative as a Bill of Sale for the transfer of the Monument from City to Purchaser and no further document shall be necessary to consummate such transfer.

SECTION FOURTEEN. GOVERNING LAW

THIS AGREEMENT, AND THE LEGAL RELATIONS BETWEEN THE PARTIES WITH RESPECT TO THIS AGREEMENT, SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS WITHOUT REGARD TO RULES CONCERNING CONFLICTS OF LAW OR CHOICE OF LAW PRINCIPLES OF TEXAS OR OF ANY OTHER STATE.

SECTION FIFTEEN. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

SECTION SIXTEEN. MISCELLANEOUS

If any of the terms, conditions, or provisions of this agreement are held to be illegal, invalid or unenforceable by any court of competent jurisdiction, the legality, validity, and enforceability of the remaining terms, conditions, or provisions will not be affected thereby. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

SECTION SEVENTEEN. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written supplemental agreement executed by both parties.

[Remainder of this page left intentionally blank. Signatures appear on the following page.]

190950

June 12, 2019

WHEREAS, on May 22, 2019, City Council declared the sculpture titled the *Robert E. Lee and the Confederate Soldier* ("Sculpture"), by Alexander Phimister Proctor, as surplus property, and authorized its sale pursuant to Section 2-37.4 of the Dallas City Code by Resolution No. 19-0825; and

WHEREAS, Dallas City Code, Section 2-37.4, requires that when the highest bid for property is more than \$20,000, the sale to the highest bidder must be confirmed by City Council; and

WHEREAS, the City Council has set the reserve for this online auction at \$450,000, and further required that the highest bidder enter into a purchase agreement and bill of sale agreeing not to publicly display the Sculpture in the City of Dallas and to secure the same restriction contractually with any subsequent purchaser if Sculpture is later sold.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the sale of the Sculpture, through an online auction which ran from May 23, 2019 through June 5, 2019, is hereby confirmed with the highest bidder who tenders payment in full and executes a purchase agreement and bill of sale with the City of Dallas ("Purchaser").

SECTION 2. That the City Manager is hereby authorized to execute a purchase agreement and bill of sale, approved as to form by the City Attorney, with Purchaser wherein Purchaser agrees not to publicly display the Sculpture in the Dallas-Fort Worth Metropolitan Area and Purchaser further agrees to secure the same restriction contractually with any subsequent purchaser if Sculpture is later sold.

SECTION 3. That the Chief Financial Officer is hereby authorized to receive and deposit funds received from the proceeds of the sale in the City's General Fund Contingency Reserve Fund, Fund 0001, Department NBG, Unit 1000, Revenue Code 8415.


SECTION 4. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.



EXECUTED and effective as of June 12, 2019 ("Effective Date") by the City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 19 - 0950 adopted by the City Council on June 12, 2019; and by Purchaser, acting through its authorized officials.

APPROVED AS TO FORM:
CHRISTOPHER J. CASO
Interim City Attorney

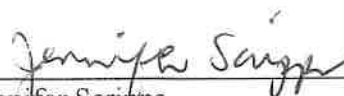
CITY OF DALLAS
T.C. BROADNAX
City Manager

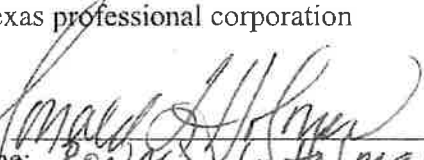
By: 
Assistant City Attorney

By: 

RECOMMENDED BY DIRECTOR:
OFFICE OF CULTURAL AFFAIRS

PURCHASER:
Holmes Firm PC
a Texas professional corporation


Jennifer Scripps

By: 
Name: RONALD L. HOLMES
Title: PRESIDENT

Attachments:

Authorizing Resolution approved on June 12, 2019

Exhibit A: Resolution No. 19-0825, approved on May 22, 2019, authorizing the sale of the Monument

Exhibit B: Description of the Monument and Terms and Conditions of the Sale

Exhibit C-1: Insurance Requirements

Exhibit C-2: Insurance Certificates

May 22, 2019

WHEREAS, on September 6, 2017, the City Council adopted Resolution No. 17-1385, directing the City Manager, with the cooperation of the Lee Park Conservancy, to immediately remove the Alexander Phimister Proctor monument (the "Sculpture" of Robert E. Lee) at Turtle Creek Park (then Lee Park) and store it in a safe location until the conclusion of the Task Force, as this monument is not a designated city landmark, nor is it part of the city's public art collection, as defined by Section 2-102 (12) of the Dallas City Code; and

WHEREAS, the Sculpture was considered obsolete and removed and relocated as surplus city property; and

WHEREAS, the appraised value of the Sculpture was determined to be \$950,000.00 on September 13, 2017; and

WHEREAS, the City Council reaffirmed the recitals in Council Resolution No. 18-0626 that the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City of Dallas; and

WHEREAS, on April 25, 2018, the City Council adopted Resolution No. 18-0626 directing the City Manager to take certain actions related to Confederate art and symbols; and

WHEREAS, Division 2, Section 2-37.2 and 2.37.4 of the Dallas City Code provides that personal property owned by the city that has been declared surplus, obsolete, worn out, or useless and that is no longer needed for public use may be sold or transferred by the city pursuant to the methods outlined therein.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the Sculpture be offered for sale at a public auction, and

SECTION 2. That the reserve price shall be set at \$450,000.00, and

SECTION 3. The purchaser shall agree to enter into a purchase agreement with the city that will require at a minimum that:

- (a) the purchaser will pay for all costs of relocation of the Sculpture in addition to the bid for purchase, and
- (b) the purchaser shall not publicly display the Sculpture in the City of Dallas and that the purchaser shall secure this restriction contractually with any subsequent purchaser if the Sculpture is later sold.

190950

username
password
GeoTrust

- Auction Calendar
 - Closing Soon
 - Just Added
 - Contact Us
 - Help
 - FAQs
 - Terms
 - Register
- Sellers ▾ Categories ▾ Item Locations ▾ Advanced Search

City of DALLAS, TX

Navigate To: Home > City of DALLAS, TX > Robert E Lee Sculpture

Server Time: June 19, 2019 11:31 AM CT



Lot: 1 - 1936 Alexander Phimister Proctor, "Robert E. Lee and the Confederate Soldier" Sculpture
THIS IS A RESTRICTED AUCTION! (Item 1074515131)
CITY OF DALLAS, TEXAS - Surplus

- BID NOW!
- FULL DESCRIPTION
- SELLERS TERMS
- PAYMENT TERMS
- SALES TAX
- REMOVAL TERMS
- AUCTION TERMS

Current Bid \$1,435,000.00 USD
High Bidder LawDude
Time Left COMPLETED
Ends 06/05/2019 11:55 AM CT
Started 05/23/2019 11:30 AM CT
First Bid \$450,000.00
of Bids 84 (view bid history)

Seller City of DALLAS, TX
[view other items by this seller](#)
Location Hensley Field
 Dallas, TX 75211
Contact Questions regarding the sculpture should be directed to the Public Affairs & Outreach at pao@dallascityhall.com or 214-670-1897. For website, registration or technical help, contact Lone Star Auctioneers at 817-429-3336 or 1-800-275-3336
Preview Sorry - there is no preview available.
Payment Due June 10, 2019
Removal Within 5 business days BY APPOINTMENT ONLY!

ADDITIONAL FEES:

A buyer's premium (BP) of 7% will be collected at settlement from the winning bidder.

NOTE: Payment must be made by Wire Transfer.

All items are in UNKNOWN WORKING CONDITION unless otherwise stated. All items are sold AS IS, WHERE IS with NO WARRANTIES implied or expressed. **Item preview is highly recommended and bidding without preview is strongly discouraged.**

ITEM PHOTOS



190950

SELLER TERMS**Acceptance of Terms:**

All persons participating in the on-line bidding agree to and **accept these terms and conditions** unequivocally and without exception. All items are sold **AS IS, WHERE IS** with **NO warranties** implied or expressed. No allowance, refund or set aside will be made on account of any incorrectness, error in cataloging, imperfection, defect or damage. Any descriptions or representations are for identification purposes only and are not to be construed as a warranty of any type. It is the responsibility of the Buyer to have inspected thoroughly the 2017 value appraisal report and to have satisfied himself or herself as to its value and to bid based upon that judgment solely. Any discrepancy with any item description must be dealt directly with the SELLER listed above and not Lone Star Auctioneers, Inc., or its owners, officers, or employees. All participants hereby agree and accept that neither Lone Star Auctioneers, Inc. nor LoneStarOnline.com will be held responsible for any errors in descriptions or any failure to execute a bid on behalf of any participant(s) for any reason whatsoever. By submitting winning bid(s) on this auction, I acknowledge and accept without recourse that I have purchased the above items at public auction "as is, where is" without warranty or guarantee of any kind. I will not stop payment, dispute or otherwise contest this transaction.

PAYMENT TERMS**PAYMENT TERMS:**

- 1. Full and complete payment must be received within 3 business days of auction close by wire transfer.**
- 2. Any bidder(s) who does not pay for his/her online purchases by the deadline shall not be allowed to register or participate in any future auctions conducted by Lone Star Auctioneers, Inc. (live, webcast or online) and the deposit will be forfeited.**
- 3. This sale will require a deposit with Lone Star Auctioneers of \$50,000.00 to register as a bidder. Deposit will be refunded by wire transfer if your bid is not the winning bid.**

METHODS OF PAYMENT ACCEPTED:**WIRE TRANSFER**

An additional fee of \$50.00 will be added for international wire transfers.

Please contact service@LoneStarAuctioneers.com for wiring instructions.

Note: This IS NOT the same as a Bank Direct Deposit of Funds. We do not accept Bank Direct Deposits as a form of payment. (This fee is taxable if you pay sales tax on your invoice).

Winning bidder will receive an email notification APPROXIMATELY 1 hour after the auction has closed letting you know when your invoice has been posted to the MY ACCOUNT section of the website. Please pay from that invoice. If you do not receive this email notification or see an invoice posted online within 24 hours, please contact our office immediately to verify that your email address is correct in the system and that you actually won the item. Email: service@LoneStarAuctioneers.com or Phone: 817-740-9400. **No Pay, No Return!**

Bidder(s) understands that they may not be anonymous, and sale records are subject to the Texas Open Records Act.

SALES TAX**IMPORTANT: READ THIS IF YOUR ARE CLAIMING ANY SALES TAX EXEMPTION:**

LONE STAR AUCTIONEERS IS REQUIRED BY LAW TO COLLECT THE FOLLOWING TAXES:

SALES TAXES

Texas Sales Tax of 8.25% will be collected on all non-titled items unless the items are being purchased for qualified:

- resale under a valid Texas Sales and Use Tax Permit;
- non-profit exempt use..

No paid receipts will be issued with sales tax removed until the required information is received in our office by the time of payment. **NO EXCEPTIONS!**

NOTE: "A retailer is not required to accept an exemption certificate. If a retailer does not accept an exemption certificate, the purchaser can request a refund of the tax paid directly from the Comptroller if the retailer gives the purchaser an **Assignment of Right to Refund.**"

For your convenience we include below the following URLs for the required forms. To claim an exemption under one of these certificates click the appropriate link below and fill out the form completely, sign it and submit it to Lone Star Auctioneers immediately:

Resale: <http://www.LoneStarAuctioneers.com/TxResaleTaxExemptForm.pdf>

Non-Profit: <http://www.LoneStarAuctioneers.com/TxNonProfitTaxExemptForm.pdf>

ITEM REMOVAL

Item must be removed from City property within 5 business days of council approval, tentatively scheduled for 6/12/2019. The time of removal will be scheduled with the City. The winning bidder will be responsible for all costs of removal and transport, and must obtain all required insurance and permits, including any Department of Transportation permits. **If the item is not removed within 5 business days of council approval, or upon agreement from the City for an alternate period of time, the buyer forfeits monies paid and the property reverts to the City of Dallas with no recourse.**

015

6/19/2019

Insurance Requirements

SECTION A.

PURCHASER shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in **SECTION C (a)**, certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The CITY shall be named as an additional insured by endorsement to each policy, where applicable, and thus will be entitled to notice of cancellation, of the policy in accordance with Section 1811 of the Texas Insurance Code. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY PURCHASER UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY.

SECTION B.

The CITY reserves the right to review the insurance requirements of this section during the effective period of the work performed by PURCHASER and to modify insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions or other relevant factors. PURCHASER shall acquire and ensure execution of requests for deletions, revisions or modifications of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either CITY or PURCHASER).

SECTION C. REQUIRED PROVISIONS

PURCHASER agrees, with respect to the required insurance as documented below, all certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a) The certificate of insurance or policy and endorsements shall be evidenced by delivery to:
 - (i) Office of Procurement Services, Attention: Juanita Ortiz, Project Manager, 1500 Marilla, 3F-North, Dallas, Texas 75201 and
 - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- b) All certificates of insurance shall identify the service or product being provided, by including the bid number and contract or solicitation name.
- c) All certificates of insurance shall name the City of Dallas as the Certificate Holder.

SECTION D. INSURANCE COVERAGE REQUIRED

Subject to PURCHASER'S right to maintain reasonable deductibles, PURCHASER shall obtain and maintain in full force and effect for the duration of its engagement with the CITY and any extension hereof, at PURCHASER'S sole expense, insurance coverage in the following type(s) and amounts:

3. **COMMERCIAL GENERAL LIABILITY INSURANCE**

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate, \$2,000,000 general aggregate.

The policy shall include:

- a) An endorsement naming the City of Dallas, its officers, employees and elected representatives as additional insured using the broadest form of endorsement available, with such status extended to include the extension of the completed operations coverage as described above.
- b) An endorsement to waive subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- c) Mobile Equipment (not excluded).
- d) Include Riggers Liability coverage extension to cover property "on hook" in your care, custody and control for a limit of \$450,000.
- e) Provide that PURCHASER'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- f) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy.

SECTION E. SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the PURCHASER, the PURCHASER shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name PURCHASER as an additional insured.

(2) PURCHASER shall obtain and monitor the certificates of insurance from each Subcontractor. PURCHASER must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION F. PURCHASER LIABILITY

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by PURCHASER or its subcontractors shall not relieve PURCHASER of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate PURCHASER from liability.

Memorandum



DATE June 25, 2019

TO Juanita Ortiz, Project Manager, 1500 Marilla, 3F-North, Dallas, TX 75201
POM

SUBJECT CERTIFICATE OF INSURANCE
Auction of Lee Statue/Holmes Firm PC
CF#465756

We have reviewed the certificate(s) of insurance for the project and contractor shown above and have found them to be in compliance with the insurance requirements of the contract.

To ensure the accuracy of our records and to ensure appropriate monitoring of this contract, please advise the end date for this project. If the end date changes, please update our office on the changed date to ensure insurance is monitored through the life of the contract.

Please call me at 214-670-574 should you have any questions.

Donna Taylor
Donna Taylor
Sr. Risk Analyst
Office of Risk Management



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/25/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Coverica 5999 Summerside Suite 200 Dallas TX 75252		CONTACT NAME: Amanda Roberson PHONE (A/C, No, Ext): (972) 490-8800 FAX (A/C, No): (972) 490-2255 E-MAIL ADDRESS: amanda.roberson@CoVerica.com															
INSURED Davis Motor Crane Service, Inc. F.B. McIntire Equipment, Inc. 1212 North Loop 12 Irving TX 75061-5615		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: HDI Global Specialty</td> <td>41343</td> </tr> <tr> <td>INSURER B: Pennsylvania Manufacturing Association Ins</td> <td>18058</td> </tr> <tr> <td>INSURER C: Old Republic Union Ins. Co./Tokio Marine</td> <td>24147</td> </tr> <tr> <td>INSURER D: Texas Mutual Insurance Company</td> <td>22945</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A: HDI Global Specialty	41343	INSURER B: Pennsylvania Manufacturing Association Ins	18058	INSURER C: Old Republic Union Ins. Co./Tokio Marine	24147	INSURER D: Texas Mutual Insurance Company	22945	INSURER E:		INSURER F:	
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INSURER F:																	

COVERAGES **CERTIFICATE NUMBER:** Davis 19/20 w 18/19 wc **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR I,TR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Riggers Liability <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			IICHMPP-0003022-01	02/14/2019	02/14/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OF AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			151901-10-62-78-5	02/14/2019	02/14/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			ORANXS000186-00/PUB665319	02/14/2019	02/14/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	0001137684	10/29/2018	10/29/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

THE GL AND AUTO POLICIES INCLUDE BLANKET ADDITIONAL INSURED AND WAIVER OF SUBROGATION ENDORSEMENTS GRANTING STATUS TO ANY PERSON OR ORGANIZATION WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT EXECUTED PRIOR TO LOSS. THE WC POLICY INCLUDES BLANKET WAIVER OF SUBROGATION ENDORSEMENT GRANTING STATUS TO ANY PERSON OR ORGANIZATION WHEN REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER HOLMES FIRM PC 4911 QUORUM DRIVE DALLAS TX 75254	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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190950



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/25/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Higginbotham Insurance Agency, Inc 500 W. 13th Street Fort Worth TX 76102	CONTACT NAME: Shea Diaz PHONE (A/C, No, Ext): 254-870-3994 E-MAIL ADDRESS: sdiaz@higginbotham.net	FAX (A/C, No): 817-347-6981
	INSURER(S) AFFORDING COVERAGE	
INSURED Displays LLC; Displays Unlimited Inc. 626 106th St Arlington TX 76011	INSURER A: Continental Casualty Company NAIC # 20443	
	INSURER B: Texas Mutual Insurance Company 22945	
	INSURER C: The Travelers Lloyds Insurance Co 41262	
	INSURER D: National Fire Ins of Hartford 20478	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 646354020 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	X COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			C4026394985	9/24/2018	9/24/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 200,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> MCS-90			C4026394999	9/24/2018	9/24/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			C4026394971	9/24/2018	9/24/2019	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	TSF0001216318	9/24/2018	9/24/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Cargo - Includes Reeler Breakdown			QT6602F251709	6/2/2019	6/2/2020	\$250,000 ded @ \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Derrick Varnell excluded on Texas Workers Compensation policy #0001216318

The General Liability policy includes a blanket automatic additional insured (including Completed operations) endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The General Liability policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.

See Attached...

CERTIFICATE HOLDER Holmes Firm PC 4911 QUORUM DR Dallas TX 75254	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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City of Dallas

Agenda Information Sheet

File #: 19-885

Item #: 10.

STRATEGIC PRIORITY: Government Performance and Financial Management

AGENDA DATE: June 12, 2019

COUNCIL DISTRICT(S): N/A

DEPARTMENT: Office of Procurement Services

EXECUTIVE: Elizabeth Reich

SUBJECT

Authorize **(1)** an action to confirm the sale of the *Robert E. Lee and the Confederate Soldier* sculpture, sold through an online auction held May 23, 2019 through June 5, 2019, to the highest bidder who tenders payment in full and executes a purchase agreement and bill of sale; and **(2)** the City Manager to execute a purchase agreement and bill of sale with the purchaser - Revenue: \$1,435,000

BACKGROUND

On May 22, 2019, City Council declared the sculpture titled the *Robert E. Lee and the Confederate Soldier* ("Sculpture"), by Alexander Phimister Proctor, as surplus property and authorized its sale pursuant to Section 2-37.4 of the Dallas City Code by Resolution No. 19-0825.

On May 22, 2019, City Council further established a reserve of \$450,000 for this item and required that the highest bidder enter into a purchase agreement whereby the purchaser agrees not to publicly display the Sculpture in the City of Dallas and also agrees to secure the same restriction from a subsequent purchaser.

Dallas City Code, Section 2-37.4, requires that when the highest bid for property is more than \$20,000, the sale to the highest bidder must be confirmed by City Council.

This action seeks City Council confirmation of the sale of the Sculpture, which was publicly auctioned May 23, 2019 through June 5, 2019, to the highest bidder who tenders payment in full and executes a purchase agreement and bill of sale. This action also seeks City Council authorization for the City Manager to execute the purchase agreement and bill of sale, approved as to form by the City Attorney, with the purchaser.

The City used its current contracted auctioneer, Lone Star Auctioneers, Inc., to auction the Sculpture. The auctioneer charges a seven percent premium paid by the buyer in lieu of collecting a commission from the City.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On May 22, 2019, City Council authorized a resolution declaring the *Robert E. Lee and the Confederate Soldier*, by Alexander Phimister Proctor, as surplus property; and authorizing a method of sale pursuant to Section 2-37.4 of the Dallas City Code by Resolution No. 19-0825.

FISCAL INFORMATION

Revenue: \$1,435,000.00

PROCUREMENT INFORMATION

The following bids were received via online auction, which closed on June 5, 2019:

*Denotes highest bidder

<u>Bidder</u>	<u>Amount</u>
*Holmes Firm PC	\$1,435,000.00
Diamond A Ford	\$1,432,500.00
Twinwood (U.S.), Inc.	\$ 775,000.00
Patrick Shelby	\$ 550,000.00

OWNER**Holmes Firm PC**

Ron Holmes, Shareholder

SEE ALSO

File: 19-0950

The following files contain information relating to this file and may be of interest. The information contained in these files may amend, repeal or otherwise affect the status of this file.

19-0825

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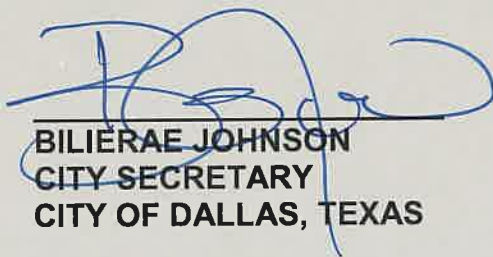
STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

FILE NO. 19-0296

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the 11th day of **July, 2019**.


BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ

Tab 3

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

FEBRUARY 13, 2019

19-0296

Addendum Item 2: A resolution declaring that The Confederate Monument in Pioneer Cemetery is a noncontributing structure for the historic overlay district and authorizing the City Manager to (1) take action necessary to secure approval from the Landmark Commission, and any related appeals, if necessary, to remove and store The Confederate Monument; (2) procure services to disassemble, remove, and transfer to storage The Confederate Monument with a vendor selected by the City Manager pursuant to a request for competitive sealed proposals and to enter into a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00; and (3) increase appropriations in an amount not to exceed \$480,000.00 in the Office of Cultural Affairs budget from General Fund Contingency Reserve - Not to exceed \$480,000.00 - Financing: Contingency Reserve Funds

The following individuals addressed the city council on the item:

John Fullinwider, 1851 Fuller Dr.
Gerald Britt, 1610 S. Malcolm X Blvd.
Alia Salem, 465 Bordeaux Ave.
Danna Miller Pyke, 10716 Lathrop Dr.
Akwte Tyehimba, 2804 Thomas Tolbert Ave.
Elaine Everitt, 5106 Kelsey Rd.

Mayor Pro Tem Thomas moved to adopt the item.

Motion seconded by Councilmember Atkins.

At the request of Councilmember Felder, the following individual addressed the city council on the item:

Arthur Fleming, 822 Westover Dr., Lancaster, TX

Councilmember Gates moved a substitute motion to re-envision the [confederate] monument and site.

Substitute motion seconded by Councilmember Callahan.

During discussion and after consulting with the city attorney, Mayor Rawlings stated Councilmember Gates' substitute motion was out of order.

Councilmember Gates moved a substitute motion to hold the item under advisement until the June 12, 2019 voting agenda meeting of the city council; to allow Lauren Woods an opportunity to re-envision the [confederate] monument and site, before the city council makes a decision.

Substitute motion seconded by Councilmember Callahan.

OFFICE OF THE CITY SECRETARY

CITY OF DALLAS, TEXAS

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

19-0296

Page 2

After discussion, Mayor Rawlings called a record vote on Councilmember Gates' substitute motion:

Voting Yes: [5] Rawlings, Callahan, McGough, Greyson, Gates

Voting No: [10] Thomas, Medrano, Griggs, Arnold, Narvaez,
Felder, Atkins, Clayton, Kleinman, Kingston

The city secretary declared the motion failed.

Mayor Rawlings called a record vote on Mayor Pro Tem Thomas' original motion to adopt the item:

Voting Yes: [11] Rawlings, Thomas, Medrano, Griggs, Arnold,
Narvaez, Felder, Atkins, Clayton, Kleinman,
Kingston

Voting No: [4] Callahan, McGough, Greyson, Gates

The city secretary declared the item adopted.

February 13, 2019

WHEREAS, on April 25, 2018, the City Council adopted Resolution No. 18-0626 directing the City Manager to take certain actions related to Confederate art and symbols; and

WHEREAS, Section 4 of that resolution as presented for City Council consideration provided for the disassembly and removal of *The Confederate Monument* located in Pioneer Cemetery; and

WHEREAS, on April 25, 2018, the City Council deferred any disassembly and removal of *The Confederate Monument* until the City Manager reviewed other ideas to enhance and improve Pioneer Cemetery, including creating new statues or plaques or other alterations, such as recontextualizing *The Confederate Monument*; and

WHEREAS, the Office of Cultural Affairs briefed the City Council on recontextualization options on February 6, 2019; and

WHEREAS, the City Council reaffirms the recitals in Council Resolution No. 18-0626 that the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City of Dallas.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That *The Confederate Monument* in Pioneer Cemetery is a noncontributing structure that is newer than the period of historic significance for the historic overlay district, and demolition or removal of the noncontributing structure will not adversely affect the historic character of Pioneer Cemetery or the integrity of the historic overlay district.

SECTION 2. That the City Manager is hereby authorized and directed to exhaust all options to obtain the necessary approvals for disassembly, removal, and transfer to storage.

SECTION 3. That the City Manager is authorized to **(1)** procure services to disassemble, remove, and transfer to storage *The Confederate Monument* located in Pioneer Cemetery with a vendor to be selected by the City Manager pursuant to a request for competitive sealed proposals; and **(2)** execute a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00.

190296

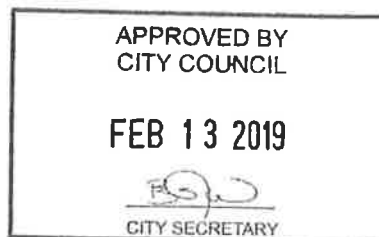
February 13, 2019

SECTION 4. That the Chief Financial Officer is hereby authorized to transfer funds in an amount not to exceed \$480,000.00 from Fund 0001, Department NBG, Unit 1000, Revenue Code RTRF, to Fund 0001, Department OCA, Unit 4804, Revenue Code 9229; and a clearing entry, in the same amount, to Fund 0001, Department BMS, Balance Sheet Account 0991 (Debit) and to Fund 0001, Department BMS, Balance Sheet Account 0950 (Credit).

SECTION 5. That the City Manager is hereby authorized to increase the Office of Cultural Affairs appropriations in an amount not to exceed \$480,000.00, from \$19,973,188.00 to \$20,453,188.00 in the General Fund, Fund 0001, Department OCA, Unit 4804, Object 3070; total General Fund expenditure appropriations by \$480,000.00 from \$1,366,121,406.00 to \$1,366,601,406.00; and to increase total General Fund revenue appropriations by \$480,000.00 from \$1,366,121,406.00 to \$1,366,601,406.00.

SECTION 6. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$480,000.00 from Fund 0001, Department OCA, Unit 4804, Object 3070, Activity CA04, Encumbrance No./Contract No. OCA-2019-00009491, in an amount not to exceed \$480,000.00.

SECTION 7. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.



RECEIVED

2019 JUL -3 AM 9:10

Resolution No. 19-0296
Contract No. OCA-2019-00009491

STATE OF TEXAS
COUNTY OF DALLAS
CITY SECRETARY
DALLAS, TEXAS

CONTRACT FOR SERVICES

THIS CONTRACT FOR SERVICES is made and entered into by and between the CITY OF DALLAS, a Texas municipal corporation, located in Dallas County, Texas (hereinafter called "City") and PHOENIX I RESTORATION AND CONSTRUCTION, LTD., a Texas limited partnership that is authorized to conduct business in the State of Texas with its principal office at 9411 Hargrove, Dallas, Texas 75220 and offices at 14032 Distribution Way, Farmers Branch, Texas 75234 (hereinafter called "Contractor").

WHEREAS, on April 25, 2018, City Council adopted and approved Resolution No. 18-0626 directing the City Manager to take certain actions related to Confederate art and symbols; AND

WHEREAS, on April 25, 2018, City Council deferred any disassembly and removal of the Confederate Monument until the City Manager reviewed other ideas to enhance and improve the location of the Confederate Monument; AND

WHEREAS, on February 13, 2019, City Council adopted and approved Resolution No. 19-0296 reaffirming the recitals in Council Resolution No. 18-0626 that the Confederate Monument is a noncontributing structure and that the City Manager is authorized and directed to (1) procure services to disassemble, remove, and transfer to storage pursuant to a request for competitive sealed proposals; and (2) execute a contract, approved as to form by the City Attorney for such services, in an amount not to exceed \$480,000.00; AND

WHEREAS, the City of Dallas, Office of Procurement conducted a Request for Competitive Sealed Proposals ("RFCSP") for the removal and archival storage of the Confederate Monument on or about March 14, 2019 and Contractor was determined to be the most advantageous proposer;

NOW THEREFORE,

1. DESCRIPTION OF WORK

A. For the consideration agreed below to be paid to Contractor by City, Contractor shall provide services for the removal, relocation and archival storage of Confederate Monument currently located at 1201 Marilla Street, in the City and County of Dallas, Texas, hereinafter called the "Services." The Services are to be performed in a good and workmanlike manner and shall conform in every respect to the following:

- (i) City's RFCSP No. BKZ1900009779;

Phoenix I Restoration and Construction, Ltd.
Contract for Services – removal and relocation of Confederate Monument

- (ii) City's Specifications for the Services (the "Specifications"), and all addenda thereto, attached as **Exhibit A**; and
- (iii) Contractor's Proposal (the "Proposal"), attached as **Exhibit B**.

B. All of the documents referred to in Subsection A of this Section 1 are incorporated by reference and made a part of this Contract for all purposes as though each were written word for word in this Contract; provided, however, that in case of a conflict in the language of the RFCSP, the Specifications, the Proposal and this Contract, the terms and conditions of this Contract shall control and are final and binding on both parties, and the Specifications shall control where they conflict with the Proposal. Contractor and City further agree that should any dispute or questions arise respecting the true construction or meaning of any of these documents, the true meaning shall be decided by City and such decision shall be binding and conclusive upon Contractor.

2. DUE DILIGENCE AND COORDINATION

Contractor represents that, prior to submitting the Proposal and executing this Contract, Contractor became and remains thoroughly acquainted with all matters relating to the performance of this Contract, all applicable laws and all of the terms and conditions of this Contract. All Services under this Contract shall be coordinated under, and performed to the satisfaction of, City's Director of the Office of Cultural Affairs or the Director's designated representative, hereinafter called "Director." Director will instruct Contractor on when to begin the performance of the Services and will provide and communicate the details of the Services as necessary.

3. PAYMENT

Upon completion of performance of the Services by Contractor, acceptance of the performed Services by the Director, and receipt and approval of Contractor's invoice, to the Director, City will pay Contractor in accordance with the Specifications and the Proposal. Contractor's invoice shall be accompanied by sufficient backup information as required by the Director. Total payments by City for the Services, however, shall not exceed **THREE HUNDRED NINETY-SIX THOUSAND DOLLARS AND 00/100 DOLLARS (\$396,000.00)**, subject to appropriations, which amount (or a portion of the amount where the Contract term may exceed one year) is set aside and segregated for the purpose of paying for the Services in accordance with the terms of this Contract. City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Contractor, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

4. TERM AND DELAY DUE TO EVENT OF FORCE MAJEURE

A. The term of this Contract shall be for a term of one (1) year, commencing on June 10, 2019, and terminating on June 9, 2020, unless sooner terminated in accordance with the provisions of this Contract. The schedule for completion of the Services shall be as provided in the Specifications, where the Specifications do not provide for time of completion, the schedule shall be as provided by the Director. Time is of the essence of completion of the performance of the Services. For good cause shown by Contractor, the Director may extend the time to perform the Services.

B. Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Contract due to an event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party within ten (10) days of the date on which such party gains actual knowledge of such event of Force Majeure. "Force Majeure" shall mean an act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, landslide, explosion, epidemic, hostilities or war, a labor dispute which results in a strike or work stoppage affecting Contractor or any obligations described in this Contract, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

C. Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Contract due to a Court Order preventing the performance of the Services. "Court Order" shall mean any court document that may require the cessation of the Services, whether temporary or permanent or work stoppage affecting Contractor or any obligations described in this Contract. Contractor agrees to abide by the Director's instructions on when to cease work and when to resume the commencement of the Services.

D. The parties agree that City will not be held liable for an interruption to Services for the reasons set forth in Subsections B and C of this Section 4 and Contractor agrees that any kind of interruption resulting from an event of Force Majeure or from a Court Order event will not increase or change the cost of this Contract as specified under Section 3 of this Contract.

5. PERMITS; COMPLIANCE WITH LAWS AND REGULATIONS

A. Contractor shall possess or obtain any necessary permits required by City ordinance or State or Federal law for the performance of the Services prior to commencing the Services. Contractor shall perform its obligations pursuant to this Contract in accordance with all federal, state and local statutes, ordinances, laws, regulations and executive, administrative and judicial orders applicable to the Services to be performed pursuant to the Contract.

B. City has developed an Environmental Management System (EMS), based upon International Standards Organization (ISO) Standard 14001. As part of the EMS, City has adopted an environmental policy. Contractor acknowledges receipt of the environmental policy

as a part of the Request for Proposal and shall adhere to the policy and provide information to City in the form and at the times requested by City in furtherance of the policy.

C. This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Dallas and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. Contractor shall, during the course of performance of this Contract, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

6. INDEPENDENT CONTRACTOR

Contractor's status shall be that of an independent contractor and not an agent, servant, employee, or representative of City in the performance of the Services. Contractor shall exercise independent judgment in performing duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

7. INDEMNITY

CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF CONTRACTOR AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONTRACTOR AND CITY ACKNOWLEDGE AND AGREE

THAT THE PROVISIONS OF THIS SECTION 7 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE TERM OF THIS CONTRACT.

8. INSURANCE

A. Contractor shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to City, the minimum insurance coverage contained in **Exhibit C**, attached to and made a part of this Contract.

B. Approval, disapproval or failure to act by City regarding any insurance supplied by Contractor or its subcontractors shall not relieve Contractor of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of Contractor's insurer or any denial of liability by Contractor's insurer shall not exonerate Contractor from the liability or responsibility of Contractor set forth in this Contract.

9. TERMINATION

City's Director may, at its option and without prejudice to any other remedy City may be entitled to at law, in equity or elsewhere under this Contract, terminate further work under this Contract in whole or in part for failure to appropriate funds, cause or for the convenience of City by giving at least ten (10) days advance written notice of termination to Contractor, with the understanding that all performance being terminated shall cease as of a date to be specified in the notice. City also has the right to request that Contractor assign and transfer to City all of Contractor's rights and obligations under existing subcontracts that it has to perform Contract work in the event of termination under this Section. City shall compensate Contractor in accordance with the terms of this Contract for Contract work properly performed prior to the date of termination specified in the notice, following inspection and acceptance of same by City's Director. Contractor shall not, however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate.

10. CONFLICT OF INTEREST

A. Contractor and its employees, agents or associates are required to make regular, timely, continual and full disclosures to the Director of all significant outside interests and responsibilities that may give rise to a direct or indirect conflict of interest, including, but not limited to, any and all significant outside interests and responsibilities that could reasonably be expected to impair independence of judgment in Contractor's performance of all of the services under this Contract. Such disclosures must be made no later than ten (10) days following the event giving rise to the potential or actual conflict of interest for the duration of the Contract term. A potential or actual conflict of interest exists when commitments and obligations to the City or widely recognized professional norms are likely to be compromised in Contractor's performance of its duties under this Contract by the existence of Contractor's other professional

relationships, contracts, obligations, or commitments. Failure to disclose such a conflict of interest may result in the City's immediate termination of this Contract by the City Manager.

B. The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

"CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No city official or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as a city official or employee. Any violation of this section shall constitute malfeasance in office, and any city official or employee guilty thereof shall thereby forfeit the city official's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.

(d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.

(e) This section does not apply to non-negotiated, form contracts for general city services or benefits if the city services or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(f) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code."

11. GIFT TO PUBLIC SERVANT

City may terminate this Contract immediately if Contractor has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

Phoenix I Restoration and Construction, Ltd.
Contract for Services – removal and relocation of Confederate Monument

For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, City may require Contractor to remove any employee of Contractor from the Services who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

12. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Contractor shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

13. NOTICES

Except as otherwise provided in Section 12, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:

Jennifer Scripps, Director
City of Dallas
Office of Cultural Affairs
1925 Elm Street, Suite 400
Dallas, Texas 75201

If intended for Contractor, to:

Dale Sellers, President
Phoenix I Restoration and Construction, Ltd.
14032 Distribution Way
Farmers Branch, Texas 75234

14. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

A. Contractor shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. Contractor agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

B. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.

C. Contractor shall furnish all information and reports required by the City Manager or his designee and shall permit the City Manager or his designee to investigate its payrolls and personnel records which pertain to current contracts with City for purposes of ascertaining compliance with this equal employment opportunity clause.

D. Contractor shall file compliance reports with City as may be required by the City Manager or his designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of Contractor, and must be in the form that the City Manager or his designee prescribes.

E. If Contractor fails to comply with the equal employment opportunity provisions of this Contract, it is agreed that City at its option may do either or both of the following:

- (1) Cancel, terminate or suspend this Contract in whole or in part;
- (2) Declare Contractor ineligible for further City contracts until it is determined to be in compliance.

15. ASSIGNMENT

Contractor shall not sell, assign, transfer or convey its interest or rights in the Contract, or any claim or cause of action related thereto, in whole or in part, without the prior written consent

of the City Manager. As an express condition of consent to any assignment, Contractor shall remain liable for completion of the Contract work in the event of default by the successor contractor or assignee.

16. RIGHT OF REVIEW AND AUDIT

City may review any and all of the services performed by Contractor under this Contract. City is granted the right to audit, at City's election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

17. VENUE

The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

18. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

19. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

20. COUNTERPARTS

This Contract may be executed, including electronically, in one or more counterparts, each of which when so executed shall be deemed to be an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

21. CAPTIONS

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

Phoenix I Restoration and Construction, Ltd.
Contract for Services - removal and relocation of Confederate Monument

22. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and, except as otherwise provided in this Contract, their assigns.

23. NO INTENDED THIRD-PARTY BENEFICIARIES

This Contract is entered into solely for the benefit of Contractor and the City. No third party will be deemed a beneficiary of this Contract, and no third party will have any right to make any claim or assert any right under this Contract.

24. MISCELLANEOUS

A. Pursuant to Section 2270.002, Texas Government Code, the Contractor hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of the Contract. As used in the immediately preceding sentence, "boycott Israel" shall have the meaning given such term in Section 2270.001, Texas Government Code.

B. The Contractor hereby represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.

25. CERTIFICATION OF EXECUTION

The person or persons signing and executing this Contract on behalf of Contractor, or representing themselves as signing and executing this Contract on behalf of Contractor, do hereby warrant and certify that he, she or they have been duly authorized by Contractor to execute this Contract on behalf of Contractor and to validly and legally bind Contractor to all terms, performances and provisions herein set forth.

26. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

[Remainder of this page left intentionally blank. Signatures appear on the following page.]

EXECUTED this, the 25th day of June, 2019, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 19-0296, adopted by the City Council on February 13, 2019, and by Contractor, acting through its duly authorized official.

APPROVED AS TO FORM;
CHRISTOPHER J. CASO
Interim City Attorney

CITY OF DALLAS
T. C. BROADNAX
City Manager

BY *Chris*
Assistant City Attorney

BY *T. C. Broadnax*
Assistant City Manager

~~BY~~
BY

CONTRACTOR:
PHOENIX I RESTORATION AND CONSTRUCTION, LTD.
a Texas limited partnership

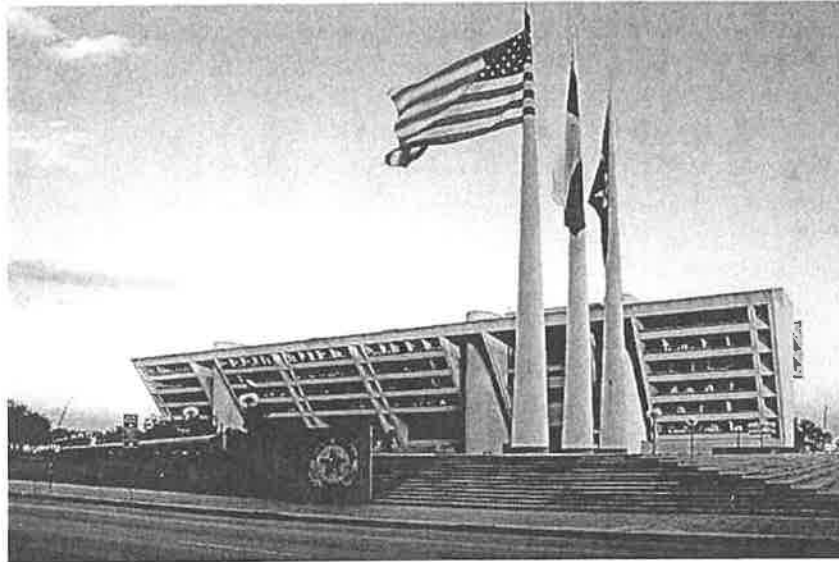
BY: D.C. SELLERS, INC.
a Texas corporation
its general partner

BY *Dale Sellers*
Dale Sellers, June 11, 2019

PRINTED
NAME Dale Sellers

TITLE President/CEO of GP

CITY OF DALLAS



REQUEST FOR COMPETITIVE SEALED PROPOSALS (RFCSP)

REMOVAL AND ARCHIVAL STORAGE OF CONFEDERATE MONUMENT

BKZ1900009779

BACKGROUND

The Confederate Monument was created by sculptor Frank Teich¹ in 1896-7 with funds raised by the Daughters of the Confederacy. Originally installed in City Park, it was moved in 1961 to Pioneer Cemetery to accommodate the Freeway. At that time, City Hall was at 106 S Harwood St, and Memorial Auditorium served as the Convention Center at 650 S Griffin St, Dallas, TX 75202. The Confederate Monument is currently installed at 1201 Marilla Street, Dallas, Texas 75201. It is one of the oldest works in the City of Dallas Public Art collection.

It must be treated using the American Institute of Conservation of Historic and Artistic Works' code of Ethics. [http://www.conservation-us.org/our-organizations/association-\(aic\)/governance/code-of-ethics-and-guidelines-for-practice#.W_L0dHpKii4](http://www.conservation-us.org/our-organizations/association-(aic)/governance/code-of-ethics-and-guidelines-for-practice#.W_L0dHpKii4)

SCOPE

The contractor will remove and relocate the Confederate Monument in an archival manner consistent with AIC guidelines to a storage facility on City of Dallas property. With reassembly in mind, each piece will be documented, removed, and relocated in a manner that preserves the integrity of the pieces and provides of the ability to reconstruct the monument. The archival construction reference documents produced by the contractor will be in the form of drawings, diagrams, photographs and/or written recommendations. On-site security will be provided by the City during the term of the contract.

Using recognized safety practices, conservation materials and techniques, the construction team will abide by the AIC code of ethics.²

All services are subject to the approval of the City of Dallas Office of Cultural Affairs in consultation with the Park and Recreation Department in accordance with the City of Dallas Cultural Policy, as amended.

If, during services the contractor identifies work not identified on the Scope of Services, the Office of Cultural Affairs shall be immediately notified and sent a proposal for any additional work outside of the contracted scope.

DELIVERABLES

Services provided by contractor will include and are not specifically limited to the items listed below. The tasks are divided into project phases on the Confederate Monument Project Procedures chart below.

1. The contractor will visit the site to prepare a preliminary condition report with photos, drawings and diagrams to confirm the appropriate procedures for documenting, dismantling, removal, and safe storage of the Confederate Monument.

¹ Frank Teich <https://tshaonline.org/handbook/online/articles/fl61>

² Attached as Appendix A

- The preliminary condition report will be reviewed by the Office of Cultural Affairs Public Art Staff and approved for project initiation. The contractor will also create a disassembly plan for the Confederate Monument.
 - The plan will provide for the preservation of the structural and aesthetic integrity of the monument.
2. The contractor will provide all equipment, materials and procedures for the disassembly and removal of the Confederate Monument:
 3. The contractor will
 - Transport and deliver the disassembled monument to the designated storage facility.
 - Comply with standard safety practices the execution of the work.
 - Provide the City of Dallas with a certificate of liability insurance for coverage as required by the City of Dallas to be reviewed and approved by the City of Dallas Office of Risk Management.
 - Provide a written report upon completion, including photographic documentation.
 - If, during the process, the contractor identifies that additional services are needed or require additional work time over the contracted time to comply with the AIC Code of Ethics, the contractor team shall immediately notify the City Office of Cultural Affairs and send a proposal for any additional work required to meet safety standards before proceeding with the removal and storage of the Confederate Monument.

SCHEDULE

All services are to be completed eight to ten weeks from Director's Notice to Proceed.

PRE-PROPOSAL CONFERENCE

The City will hold a pre-proposal conference with potential proposers concerning its requirements. Pre-proposal conference will be on the date and time stated on the RFCSP Signature Page. The conference will be held in conference room of the Convention Center offices, 650 S. Griffin Street, Dallas, Texas.

Do not rely on oral instructions for clarifications. Be advised, however, that verbal agreements or representations are not binding on the City. The Office of Procurement Services will issue the City of Dallas' official position in writing.

Office of Procurement Services will make all necessary arrangements for direct contact with other City Departments, if required.

A written Addendum will be posted to the City's website at <https://bids.dallascityhall.com/> summarizing the questions and answers identified during the pre-proposal conference and in writing to the Office of Procurement Services. Proposer identities will not be revealed in the posted questions and answers.

MANDATORY SITE VISIT

Prospective proposers will have an opportunity to view the monument and surrounding area and to ask questions about the proposal requirements. **All prospective proposers are required to attend the mandatory pre-proposal meeting and site visit in order to be considered.**

Each prospective proposer shall carefully examine the RFCSP, and any and all addenda or revisions, and thoroughly familiarize itself with all requirements prior to submitting a proposal. The proposer submitting the request will be responsible for its prompt delivery. Any response, interpretation or correction of the RFCSP will be made by written addenda to all Proposers. During review of the RFCSP and preparation of proposals, proposers may discover certain errors, omissions or ambiguities. If so, or if in doubt about the meaning of any part of this RFCSP, submit written questions to the designated buyer with the RFCSP number no later than seven business days following the Pre-Proposal Conference. This is to give the City time to answer the questions and distribute written responses to all Proposers. **All communications about this RFCSP shall be directed through the Buyer.**

Please note that this will be the only opportunity for interested parties to ask questions or seek clarification from department staff or their representatives. Representatives of the City will be available during the meeting to answer questions.

In addition, a mandatory site visit will immediately follow the pre-proposal meeting to give all prospective proposers an opportunity to view the monument and surrounding areas.

RESTRICTIONS ON COMMUNICATION

After the RFCSP has been issued, proposers are prohibited from communicating with the City staff or officials regarding the RFCSP or proposals, with the following exceptions:

- a) At the pre-proposal conference.
- b) To the Evaluation Committee during any finalist interviews.
- c) To Office of Procurement Services staff.

Verbal questions and explanations are not permitted other than at the pre-proposal conference and during finalist interviews. **All questions are to be submitted no later than 5pm CT one week following the pre-proposal conference.**

Questions concerning this RFCSP shall be directed, in writing only, to the buyer.

The City shall not meet with representatives of any proposer to discuss proposals except during finalist interviews or final negotiations.

The City reserves the right to contact proposer for clarification after responses are opened and/or for further negotiation with any proposer, if such is deemed desirable by the City. Proposer shall not contact City employees or officers to explain, clarify or discuss their proposals before an award is made, except as set out in this section. Violation of these provisions by proposer may lead to disqualification of its proposal.

TERM AND AWARD OF CONTRACT

Term of this contract will be for a maximum of one (1) year. Services are to commence upon award of the contract by the City Council and the Director's Notice to Proceed. Services are expected to be completed in eight (8) to ten (10) weeks after the Directors Notice to Proceed.

The City reserves the right to award by the method deemed most advantageous to the City. The contract will be awarded to the proposers whose proposal:

- 1) Is the most advantageous to the City
- 2) Is authorized by City Council or City Manager.

The City will require the selected proposer(s) to execute a contract in substantially the same form as the sample attached.

- 1) No work shall commence until the contract document(s) are signed; and proposer(s) has provided necessary evidence of insurance as required in RFCSP. The City of Dallas will require the Contractor to sign the necessary contract documents prepared by the City Attorney's Office prior to going to -a Notice to Proceed being issued. Contract documents are not binding on City until approved by the City Attorney and executed by the City Manager or appointee.
- 2) In the event the parties cannot negotiate and execute a contract within the time specified, the City reserves the right to terminate negotiations with the selected proposers and commence negotiations with another proposer.
- 3) If selected to provide the services, responses to the RFCSP will be considered as part of the firm's contractual responsibilities.
- 4) Misrepresentation of the proposer's ability to perform as stated in the proposal may result in cancellation of the contract award.
- 5) The City of Dallas reserves the right to withdraw or reduce the amount of an award, or to cancel the contract resulting from this procurement if adequate funding is not available.
- 6) In the event the City should be required to re-advertise because of the failure to execute the contract documents, the defaulting party shall not be eligible to submit a proposal.
- 7) The City reserves the right to reject any or all proposals and to waive any irregularity in proposals received; and accept other than the lowest offer after receipt and evaluation of proposals and completion of interviews.
- 8) Mark-up's to the sample contract shall be submitted with the RFCSP response by the due date and time

FORMAT OF PROPOSAL CONTENT

Proposals shall be structured and formatted as follows:

- 1) Transmittal Letter (Executive Summary of Services):
 - a) Maximum length of two pages on company letterhead.
 - b) Include an offer to negotiate indicating the Respondent's understanding and agreement to comply with the terms of this RFCSP and all related addenda, and stipulating that the proposal set forth remains effective for a minimum period of 150 days after the proposal opening date.

- c) The vendor should indicate the extent of authorization by the agency to make a valid offer in the submission summary that may be accepted by the City to form a valid and binding contract. If the vendor is not authorized to present a submission that can be bound by the City's acceptance, such person should also obtain the signature of an authorized representative of the agency that may result in a bound contract upon the City's acceptance.
- d) Include Firm's name, address and telephone number.
- e) Include the name, mailing address, email address and telephone number of a single contact person for all correspondence and notifications regarding this RFCSP.
- f) Include names, mailing address, email address and telephone numbers of any additional person(s) authorized to discuss the RFCSP and represent the firm.
- g) Include the name, mailing address, email address and telephone number of a single contact person for legal counsel regarding this RFCSP.
- h) The original signature of a partner, principal, or officer of the Respondent with a statement that the signatory is authorized to submit the proposal.

2) Table of Contents

Proposals submitted shall include a Table of Contents with appropriate page numbers for locating the required information and attachments.

3) Proposal Content

The submission will cover the following:

- a) General description and capabilities of the Proposer.
- b) Scope of Work to be performed should be clearly defined in a manner consistent with the scope of work as advertised, including but not limited to the requirements documented.
- c) Description of fee structure to be paid by the City including a not to exceed amount and amounts to be charged for any subsequent appeals of the City's actions.
- d) The approach and methodologies as defined in the scope of services from the City the Proposer will employ to deliver the proposed services in the time frame described.
- e) If the Proposer proposes to use a sub-contractor, the Proposer or affiliate shall be identified, and information included as requested by number 1 above for the sub-contractor.
- f) The Proposer shall identify its Project Manager and key staff members for the project and include a brief description of their experience and capabilities.
- g) Identify any special assistance that will be requested from the City, such as e-mail accounts, physical workspace, telephone lines, etc.
- j). All other required forms and documents. **Required City documents to be submitted as follows:**

- i. RFCSP Signature Page
- ii. Proposal and pricing

- 4) The following documents shall be submitted with the proposal or upon request

- i. Business Information Form (BDPS-FRM-140)
- ii. Conflict of Interest Questionnaire
- iii. Insurance Requirements Affidavit Form (BDPS-FRM-122)
- iv. Business Inclusion and Development Affidavit (BDPS-FRM-203)
- v. Ethnic Workforce Composition Report (BDPS-FRM-204)
- vi. RFP/RFCSP Contractors affidavit history of MWBE utilization form (BDPS-FRM-205)
- vii. RFP/RFCSP Contractors affidavit type of work by prime and sub contractor form (BDPS-FRM-206)
- viii. Copy of contractor's internal affirmative action plan or policy
- ix. Wage Floor Affidavit (BDPS-FRM-150)
- x. Any other City documents as required

PROPOSAL SUBMITTAL REQUIREMENTS

As the City of Dallas is migrating to the new Bonfire electronic solicitation portal on March 1, 2019, proposers will be submitting their proposals online thru this portal. Vendors will need to click on this link <https://dallascityhall.bonfirehub.com/login> in order to register on this new portal to ensure you continue to receive notifications of addenda and business opportunities with the City and to allow submission of electronic responses once the system is live. **Submissions of proposals, pricing and any other requested documents will be thru the Bonfire system.**

Each firm's Proposal shall be submitted in the following format:

1. Any additional or alternative proposals shall be submitted separately and labeled accordingly.
- 2) Any information deemed confidential, shall be clearly noted as such on each page or pages. Efforts will be made to keep the marked information confidential; however, we cannot guarantee we will not be compelled to disclose all or part of any public record under the Texas Open Record Act.
- 3) Unnecessarily elaborate brochures or other presentations, beyond those sufficient to present a complete and effective proposal, will not be accepted.
- 4) Although the specifications represent the City of Dallas' anticipated needs, there may be instances in which it is in the City's best interest to permit exceptions to specifications and accept alternatives. It is the proposer's responsibility to fully explain any exceptions to the specifications.

Proposals received after the due date and time will not be considered and will be returned unopened. Proposers are responsible for insuring that proposals are received on time and at the right location. The City of Dallas reserves the right to reject any and all proposals or to accept proposals deemed to be in its best interest.

CONFIDENTIALITY

Any information deemed confidential, shall be clearly noted as such on each page or pages. Efforts will be made to keep the marked information confidential, however, the City cannot guarantee it will not be compelled to disclose all or part of any public record under the Texas Open Record Act. Proposals will be opened by the City to avoid disclosure of contents to competing Respondents and kept secret and confidential during the process of negotiation. Trade secrets and confidential information contained in a proposal are not open to public inspection (bid pricing, however, is not considered to be confidential under any circumstances). Bidders who include information in a proposal that is legally protected as trade secret or confidential shall clearly indicate what information constitutes a trade secret or confidential information by marking that part of the proposal "trade secret" or "confidential" at the appropriate place. The City will not be responsible for any public disclosure of the trade secret or confidential information if it is not marked as provided above. If a request is made under the Texas Open Records Act to inspect information designated as trade secret or confidential in a proposal, the bidder shall, upon request, immediately furnish sufficient written reasons and information as to why the information designated as a trade secret or confidential should be protected from disclosure, in order for the City attorney to present the matter to the Attorney General of Texas for final determination.

DISCLOSURES**APPROVAL BY CITY COUNCIL AND OFFERING OF CONTRACT**

Contract award will be subject to approval by the Dallas City Council. The City of Dallas may require the awarded vendor Contractor to sign the necessary contract documents prepared by the City Attorney's Office prior to going to Council.

ADDENDA AND SUPPLEMENTAL INFORMATION

Corrections and/or changes to this RFCSP shall be posted on-line as an addendum on the City's website at <https://dallascityhall.bonfirehub.com>.

It may be necessary for the City to request supplemental information from individual Respondents after proposals have been submitted and reviewed. Such information will be requested in writing to the specific Respondent and will be used by the City in evaluating the proposal and will not be shared with other Respondents during the evaluation and award process.

LATE AND WITHDRAWN PROPOSALS

Proposals received by the City after the time and date will not be considered. Proposers are responsible for insuring that proposals are received on time and at the right location.

OPENING AND ACCEPTANCE OF PROPOSALS

All proposals shall be received by Office of Procurement Services no later than the due date. Upon receipt, all proposals become the property of the City of Dallas, which will not be liable for any costs incurred by any firm responding to this RFCSP. All proposals submitted shall remain valid for one hundred and fifty (150) days following the proposal opening date. Any proposal submitted before the due date can be withdrawn before the proposal due date. Any proposals not so withdrawn shall constitute an irrevocable offer to provide the City services set forth in the specifications.

MODIFICATIONS

Minor modifications or corrections of oversights in your proposal may be allowed at the City's sole discretion; however, the City cannot guarantee that revised proposal elements will be accepted.

REJECTION OR ACCEPTANCE OF PROPOSALS

This Request for Proposals does not commit the City to award any contract.

The successful proposer shall be qualified to transact business in the State of Texas and all proposals from companies not legally permitted to do business in Texas shall not be considered. Failure to submit a proposal in the required format on the required forms supplied in the RFCSP may cause the proposal to be rejected.

The City of Dallas reserves the right to reject any or all proposals, to waive technicalities or irregularities, and to accept any proposal it deems to be in the best interest of the City. The City of Dallas shall not be liable for any costs incurred by any firm responding to this RFCSP.

NEGOTIATIONS

The proposals submitted with the initial proposal will be considered binding. Financial negotiations will continue throughout the proposal process, and the City is free to request, receive and accept revised rates from any and all proposing vendors, at the City's sole discretion.

The City reserves the right throughout the proposal process to negotiate with proposers over any and all terms of their proposal, to waive any informality in the proposal process, to solicit additional information and accept any modifications at its sole discretion.

SELECTION OF BEST QUALIFIED PROPOSALS

The City of Dallas will review the proposals submitted by all proposers. Based on the evaluation criteria, the City of Dallas will determine which proposals are best qualified for the award of the policy contract.

The City of Dallas may at any time, investigate a proposer's ability to perform work. The City of Dallas may ask for additional information about a company and its work on previous contracts. Proposers may choose not to submit such information in response to City of Dallas' request; however, if failure to submit such information does not clarify the City's questions concerning the ability to perform, the City may discontinue further consideration of a proposal.

Please be aware that the City of Dallas may use sources of information not supplied by the proposer concerning the abilities to perform this work. Such sources may include current or past customers of the organization; current or past suppliers; articles from industry newsletters or other publications or from non-published sources made available to the City of Dallas.

DISCUSSION WITH REASONABLY QUALIFIED PROPOSALS

After selection of the best qualified proposers, the Evaluation Committee may determine that oral presentations are required before making a final decision. The City may invite the proposers with

the highest evaluation scores to make such presentations. Discussions will be on an individual basis and closed to third parties and other proposers.

During the presentation, the City of Dallas and the proposer will review in detail all aspects of the City's requirements and the proposal. During these reviews, the proposer may offer revisions and the City of Dallas may accept the revisions in the proposal. Similarly, the City may ask for revisions, and the proposer may accept.

The City expects to accept the "best and final offer" that most meets the City's criteria. The City may accept an initial proposal without additional presentations if the City judges such proposal to be far superior to all other competing proposals, the City also reserves the right to reject all proposals.

Proposers will be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, such revisions will be permitted after proposal submissions and prior to award for the purpose of obtaining best and final offers.

DISQUALIFICATION OF PROPOSERS

Proposers may be disqualified for non-compliance with requirements and any, but not limited to the following reasons:

1. Reason to believe collusion exists among the proposers.
2. The proposer is involved in any litigation against the City of Dallas.
3. The proposer is in arrears on an existing contract or has failed to perform on a previous contract with the City of Dallas.
4. Lack of financial stability.
5. Failure to use the City of Dallas approved forms.

CONFLICT OF INTEREST

The Proposer acknowledges that the following section of the Charter of the City of Dallas prohibits certain transactions between the City and its officers and employees, to wit:

CHARTER XXII Sec. 11 FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED

No city official or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as a city official or employee. Any violation of this section shall constitute malfeasance in office, and any city official or employee guilty thereof shall thereby forfeit the city official's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council. The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees. The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable

federal or state law. This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund. This section does not apply to non-negotiated, form contracts for general city services or benefits if the city services or benefits are made available to the city official or employee on the same terms that they are made available to the general public. This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, shall comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15; Amend. of 11-4-14, Prop. Nos. 2 and 9)

INDEMNITY

The selected PROPOSER agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the selected Proposer's breach of any of the terms or provisions of the contract, or by any other negligent or strictly liable act or omission of the selected Proposer, its officers, agents, employees, or subcontractors, in the performance of the contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its officers, agents, or employees and in the event of joint and concurrent negligence or fault of the selected Proposer and City, responsibility, and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

WAGE FLOOR REQUIREMENT

On November 10, 2015, the Dallas City Council passed Resolution 15-2141 which requires prime contractors, awarded general service contracts valued greater than \$50,000, and first-tier subcontractors on the contract to pay their employees rendering services on the contract a wage floor of not less than \$10.37 per hour. The current living wage is \$11.15 per hour.

Pursuant to Resolution 15-2141 the wage floor requirement for all general service contracts greater than \$50,000 shall be effective immediately on all new contracts awarded after November 10, 2015. Vendors bidding/proposing on general service contracts shall take into consideration such wage floor requirements in their bid/proposal. The wage floor requirement for the City of Dallas' general service contracts shall be derived from the most current Massachusetts Institute of Technology Living Wage publication and shall remain fixed for the term of the respective contract. The City reserves the right to audit such contracts for compliance with the wage floor requirement as mandated by Resolution 15-2141. This requirement does not apply to construction contracts in which prevailing wage of employees is governed by the Davis-Bacon Act as defined in the Texas Local Government Code 2258, purchase of goods, procurements made with grant funds or procurements made through cooperative and/or inter-local agreements.

The purpose of this policy is to promote an acceptable wage floor for working families in the City of Dallas, increase the level of service delivered to the City through specific contracts and reduce turnover in such contracts thus maintaining a continuous and consistent level of service for vested parties.

The City Manager shall use the following definitions to administer the benefactors of the "wage floor" for purposes of the referenced resolution: "City" means the City of Dallas, Texas.

"General Services Contract" means any agreement between the City and any other Person or business to provide general services through an awarded City contract valued greater than \$50,000. A General Services Contract for purposes of the Resolution does not include (i) a contract between the City and another governmental entity or public utility, (ii) a contract subject to federal or state laws or regulations that would preclude the application of the wage floor, (iii) or a contract with all services under the contract performed outside of the City of Dallas.

"Subcontractor" means any Person or business that has entered into its own contract with a prime contractor to perform services, in whole or in part, as a result of an awarded City general services contract.

"Employee" means any person who performs work on a full-time, part-time, temporary, or seasonal basis, including employees, temporary workers, contracted workers, contingent workers, and persons made available to work through services of a temporary services, staffing or employment agency or similar entity.

Wage Floor Reporting Requirements

Contractors awarded City general services contracts as described in the wage floor rate requirement section of this specification shall be required to provide the buyer the residential zip code and respective number of employees directly impacted by the wage floor requirement ten days after Council approval and on January 1st, but not later than January 31st, for the term of the contract. The Contractor shall submit the report to the contract administrator during the established period.

Wage Floor Compliance Requirements

Vendors submitting a response to a solicitation for general services shall comply with the wage floor requirement to be consider responsive. The City may request of vendors, at any time during the pre-or post-award process, to demonstrate compliance with the wage floor requirement. Vendors not compliant with the wage floor requirement will be deemed nonresponsive and will not be considered for award. Vendors awarded general service contracts shall comply with the wage floor policy and reporting requirements for the term of the contract, failure to remain in compliance may result in breach of contract.

CERTIFICATE OF INTERESTED PARTIES (Form 1295)

All vendors recommended by City staff for a contract pursuant to this RFCSP will be required to comply with Section 2252.908 of the Texas Government Code. Each vendor shall complete Form 1295-Certificate of Interested Parties- for every contract for which they're recommended. Vendor will complete the form electronically at the Texas Ethics Commission website,

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm,

and submit a copy to the buyer before the contract information will be sent to the City Attorney's Office to draft the contract. Once the terms of the contract are fully negotiated; the recommended vendor has signed the contract indicating agreement with the terms of the contract; and the Form 1295 is on file at the Texas Ethics Commission website with a copy provided to the buyer; the staff recommendation will be placed on a City Council agenda to award the contract.

PAYMENT

Payment will be made within thirty (30) days of receipt and approval of services and receipt of accurate invoice. No payments will be made from statements. The successful vendor will ensure that the correct mailing and remittance addresses are on file with the City of Dallas.

EVALUATION CRITERIA AND SELECTION

A comprehensive, fair, and impartial evaluation will be made of all proposals received in response to this RFCSP. Each proposals received will be analyzed to determine overall qualifications under the RFCSP. An evaluation committee, comprised of City staff, will determine the responsiveness and acceptability of each proposal. Each proposal received will be analyzed to determine overall qualifications under the RFCSP. Evaluation for selection of the proposal(s) shall be based on the following criteria, which are valued as displayed to total 100 percentage points:

1) Capabilities and Expertise	Maximum 30 points
2) Fee Structure	Maximum 30 points
3) Overall Approach & Methodology	Maximum 25 points
4) Business Inclusion and Development Plan	Maximum 15 points

INSURANCE REQUIREMENTS

- 1) The successful proposer will be required to purchase and maintain, during the term of the contract, insurance as described in Attachment A and agrees to the indemnification agreement therein.
- 2) Failure to provide proof of required insurance to the City's representative within 15 days after award notification may disqualify the selected vendor.
- 3) If the selected vendor allows required insurance coverage to lapse during the term of this agreement, they shall be found in default and this agreement and may be terminated, depending on the type of insurance and the vendor's ability to reinstate coverage within a reasonable time.
- 4) Mark-up's to the insurance requirements shall be submitted with the RFCSP response by the due date.

FEE SCHEDULE/PRICING

All Proposers are required to submit pricing for the services as listed in the Scope of Work. Proposals pricing and any necessary best, and final offers shall be adequate to cover all expenses related to compliance with all applicable requirements of the specifications. The City will not pay any costs not included in the proposals. Any related costs, direct or indirect, shall be clearly

identified in the proposals. In order to recover any additional related costs, such costs shall be accounted for and identified in your proposals.

The City will not be liable for any expense or costs incurred by any proposer associated with the preparation of the proposal, the pre-proposal conference, or during any phase of the interview process.



CITY OF DALLAS

Business Development & Procurement Services

www.bids.dallascityhall.org

1500 Marilla Street, Room 3FN

Dallas, Texas 75201-6390

Addendum No. 1
(RFCSP)

Date: 3/28/19

Proposal Number: BKZ1900009779

Proposal Title: **Removal and Archival Storage of Confederate Monument**

Proposal Due Date and Time: 4/18/19 2:00 P.M. CT

ACTION

The due date for the submission of proposals has been extended until 4/18/19 at 2pm CT. All submissions need to be made thru the Bonfire portal.

A second pre-proposal meeting will be held on Monday, 4/1/19 at 9:30am in City Hall, 3FS Conference Room. A site visit to the monument will follow the meeting. Attendance is not mandatory.

The following documents have been posted:

- UPDATED Attachment A-Insurance Requirements
- BKZ1900009779 MWBE List
- Sample Service Contract

The following changes are made to the specifications:

- 1. Attendance at the pre-proposal meetings and site visits is not mandatory to be eligible to submit proposals.**

Questions and Answers will be posted on a future addendum.

The City of Dallas has migrated to an electronic solicitation portal, effective March 1, 2019. Vendors are invited to click on this link <https://dallascityhall.bonfirehub.com/login> to register. This registration will ensure vendors continue to receive notification of business opportunities with the City and allow vendors to submit electronic responses.

If there are any questions pertaining to this addendum, please contact Buyer:

Buyer Name: Doug Shelton

Addendum

Phone Number: 214-671-9820
Email: douglas.shelton@dallascityhall.com



Business Development & Procurement Services

www.bids.dallascityhall.org
1500 Marilla Street, Room 3FN
Dallas, Texas 75201-6390

Addendum No. 2
(RFCSP)

Date: 4/1/19

Proposal Number: BKZ1900009779

Proposal Title: **Removal and Archival Storage of Confederate Monument**

Proposal Due Date and Time: 4/18/19 2:00 P.M. CT

ACTION

The following documents have been posted:

- Pre-Proposal Meeting Attendance Sheet 3-28-19
- Pre-Proposal Meeting Attendance Sheet 4-1-19

Additional questions will be accepted until 12pm on 4/2/19.

The questions and answers will be posted on a future addendum.

The City of Dallas has migrated to an electronic solicitation portal, effective March 1, 2019. Vendors are invited to click on this link <https://dallascityhall.bonfirehub.com/login> to register. This registration will ensure vendors continue to receive notification of business opportunities with the City and allow vendors to submit electronic responses.

If there are any questions pertaining to this addendum, please contact Buyer:

Buyer Name: Doug Shelton
Phone Number: 214-671-9820
Email: douglas.shelton@dallascityhall.com



CITY OF DALLAS

Business Development & Procurement Services

www.bids.dallascityhall.org

1500 Marilla Street, Room 3FN
Dallas, Texas 75201-6390

Addendum No. 3
(RFCSP)

Date: 4/10/19

Proposal Number: BKZ1900009779

Proposal Title: **Removal and Archival Storage of Confederate Monument**

Proposal Due Date and Time: 4/25/19 2:00 P.M. CT

ACTION

The due date for the submission of proposals has been extended to 4/25/19 at 2:00 P.M. CT.

The following documents have been posted:

- Cemetery Map
- Convention Center Plans

BKZ1900009779 Questions and Answers

1. Question-Where will the monument be stored?
Answer-Hensley Field
2. Question-How will equipment be utilized to remove monument?
Answer-The contractor should include an equipment utilization plan within their proposal.
3. Question-There is a total of five statues and the base?
Answer Yes
4. Question-Will the base stay in place?
Answer-No
5. Question-Is this solicitation a best value solicitation or lowest price solicitation?
Answer-Best value proposal with evaluation criteria.
6. Question-Is bonding required?
Answer-No, bonding is not required for this procurement.

7. Question-Does the City know if there will be any public protests?
Answer-No, but best to anticipate them. Police are aware of the relocation

8. Question-Is there any landscaping restrictions?
Answer-We are unaware of any landscaping restrictions- however the cemetery is under Landmark protection

9. Question-Will non-concrete landscaping be required?
Answer-No

10. Question-Does the City have any specifics and/or drawings of them monument, i.e., size, weight, etc.?
Answer-No plans or drawings have been found showing the dimensions of the monument.

11. Question-Does the City have a layout of the headstones and placement of the graves in the cemetery?
Answer-We have a 1961 plan-which pre-dates the movement of the monument. See Cemetery Map posted per this addendum.

12. Question-Is there a blueprint or layout of the Convention Center?
Answer-See Convention Center plans posted per this addendum.

13. Question-Do you require the crates to be totally enclosed and sealed or would slat crates be acceptable?
Answer-Slat crates which provide air circulation but do not allow clear visibility of the artwork are appropriate.

14. Question-Are all of the materials to be used in the construction of the crate to be of archival grade and approved by the AIC for long time use?
Answer-Yes

15. Question-Must the crates be stored in a climate (temperature and humidity) controlled space or would interior, uncontrolled environmental protection be acceptable?
Answer-Plan for exterior storage

16. Question-Are partial proposals acceptable, i.e., a proposal that only covered specific deliverables such as documentation, crating and storage, but not the on-site removal and packing of the de-installed monument?
Answer-No partial proposals will be accepted. Proposals will need to include all of the requested services in the specifications.

17. Question-Will the City allow tree trimming in the cemetery for equipment access?
Answer-We will check with the Parks and Recreation department at time of the award.

18. Question-What type of crating is preferred or recommended for preservation and storage?
Answer-See AIC requirements- museum grade crates.

19. Question-Will the contractor be responsible for unloading at the storage site?

Answer-Yes

20. Question-What work hours are allowed, i.e., earliest start time, end time, etc.?

Answer- See City Code for construction hours— if hours outside the city code are necessary, we will work with the contractor to provide access.

21. Question-Any restrictions on days of the week to work?

Answer-None that we know of at this time.

22. Question-Can the City block a lane on Marilla Street to be used as a staging area and for contractor parking? Will the contractor have to file and pay the fees for this lane closure?

Answer-That information is not available at this time.

End of Questions and Answers. As the time has lapsed for the submission of questions, no further questions or requests for information will be accepted.

The City of Dallas has migrated to an electronic solicitation portal, effective March 1, 2019. Vendors are invited to click on this link <https://dallascityhall.bonfirehub.com/login> to register. This registration will ensure vendors continue to receive notification of business opportunities with the City and allow vendors to submit electronic responses.

If there are any questions pertaining to this addendum, please contact Buyer:

Buyer Name: Doug Shelton

Phone Number: 214-671-9820

Email: douglas.shelton@dallascityhall.com



CITY OF DALLAS

Business Development & Procurement Services

www.bids.dallascityhall.org

1500 Marilla Street, Room 3FN

Dallas, Texas 75201-6390

Addendum No. 4
(RFCSP)

Date: 4/25/19

Proposal Number: BKZ1900009779

Proposal Title: **Removal and Archival Storage of Confederate Monument**

Proposal Due Date and Time: 5/2/19 2:00 P.M. CT

ACTION

The due date for the submission of proposals has been extended to 5/2/19 at 2:00 P.M. CT.

The City of Dallas has migrated to an electronic solicitation portal, effective March 1, 2019. Vendors are invited to click on this link <https://dallascityhall.bonfirehub.com/login> to register. This registration will ensure vendors continue to receive notification of business opportunities with the City and allow vendors to submit electronic responses.

If there are any questions pertaining to this addendum, please contact Buyer:

Buyer Name: Doug Shelton

Phone Number: 214-671-9820

Email: douglas.shelton@dallascityhall.com

BKZ1900009779

RFCSP
Removal
and
Archival
Storage
of
Confederate
Monument

Signature Page & Authorization
Pages 1-2

Cost Proposal
Pages 3-4

Form 140-Business Information
Page 5

Conflict of Interest
Pages 6-7

Form 122-Insurance Affidavit
Page 8

Form 150-Wage Floor Policy
Page 9

Form 203-BID Affidavit
Page 10

Form 204-Ethnic Workforce
Page 11-12

Form 205-Contractor's Utilization of MWBE
Page 13

Form 206-Type of Work
Pages 14-27

Affirmative Action Plan
Page 28

Equipment Utilization Plan
Page 29-41

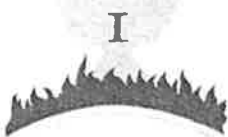
Fee Structure
Page 42

Project Staff
Page 43-45

Approach and Methodologies
Pages 46-50

190296

PHOENIX



RFCSP
Removal and Archival Storage of Confederate Monument
BKZ1900009779

Phoenix I Restoration and Construction, Ltd
14032 Distribution Way
Farmers Branch, Texas 75234
Office: 214.902.0111
Fax: 214.904.9635

Primary Contact for Phoenix I
Dale C. Sellers, President/CEO of GP
E Mail: dsellers@phoenix1.org
Cell: 214.415.1201

Dale C. Sellers, President / CEO of GP is authorized to make decisions regarding this bid submittal as well has 100% authority to obligate Phoenix I Restoration and Construction, Ltd. and form a valid and binding contract.

 Dale C. Sellers
President / CEO of GP

April 25, 2019

Phoenix I Restoration and Construction, Ltd.

14032 Distribution Way Farmers Branch, Texas 75234 • 214 982 0111 • 214 904 9635 fax

REQUEST FOR COMPETITIVE SEALED PROPOSALS (RFCSP)

190296

Signature Page, Instructions, General Conditions



SOLICITATION NUMBER: BKZ1900009779

DUE DATE/TIME: 4/11/19 2:00 P.M.

RFCSP Name: Removal and Archival Storage of Confederate Monument

City of Dallas

Office of Procurement Services

1500 Marilla, Room 3FN; Dallas, Texas 75201

Doug Shelton, 214-671-9820, douglas.shelton@dallascityhall.com

Solicitation meeting(s) 3/21/19 10:00 A.M.

Solicitation meeting will be held at Convention Center Conference Room, 650 S. Griffin Street, Dallas, TX 75201

The purpose of this solicitation is to seek interested and qualified consulting firms that can provide removal and archival storage services for the Confederate Monument located at Pioneer Cemetery in Dallas. Award will be made to the most advantageous proposer based the evaluation criteria and meeting specifications. The City reserves the right to award by method deemed most advantageous to the City.

By submitting a solicitation response and signing this document, the signee attests to have read all associated documents related to this solicitation and agrees to the terms and conditions outlined throughout this Request for Competitive Sealed Proposals (RFCSP). The undersigned hereby offers to furnish and deliver the goods or services as specified at the prices and terms there stated herein and in strict accordance with the RFCSP and conditions of bidding, all of which are made a part of this offer. After RFCSP closing date, this offer is not subject to withdrawal without written consent of the City's Purchasing Agent

To be considered for award, a business entity must be registered to do business in the state of Texas with the Texas Secretary of State. Proposers shall also comply with Dallas City Code Sec 12A-15.8 - Lobbying by bidders and Proposers on City Contracts. Refer to page 7, No. 40.

April 24, 2019 Phoenix I Restoration and Construction, Ltd
Date Full Legal Company Name (as registered with the Texas Secretary of State)

14032 Distribution Way, Farmers Branch, TX 75234

(Address, City, State and ZIP Code) Note: No Post Office Box

214.902.0111 214.904.9635 dsellers@phoenix1.org
Telephone No. Fax No. Email Address


Authorized Signature DALE C. SELLERS President / CEO of GP
Print Name Title

Note: DALLAS CITY CHARTER, CHAPTER XXII, SEC. 11, FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED, (a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as an officer or employee.

Cooperative Purchasing: Should other governmental entities decide to participate in this contract, would you, the vendor, agree that all terms, conditions, specifications, and pricing would apply? Yes X No _____

If you checked "yes," the following will apply: Governmental entities utilizing Inter-Governmental Contracts with the City of Dallas will be able, but not obligated, to purchase material/services under this contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Dallas will be billed directly to that governmental entity and paid by that governmental entity. The City of Dallas will not be responsible for another governmental entity's debts. Each governmental entity will order its own material/services as needed.

Primary Responses

Success: All data is valid

				Numeric	
Status	Item ID	Item Name	Quantity	Unit Price	Total Cost
Success: All values provided	#0-1	Preliminary Planning/Disassembly Plan	1	\$ 28,000.00	\$ 28,000.00
Success: All values provided	#0-2	Scaffolding Plan	1	\$ 81,000.00	\$ 81,000.00
Success: All values provided	#0-3	Scaffolding Timeline	1	\$ 0.00	\$ 0.00
Success: All values provided	#0-4	Transportation Plan and Costs	1	\$ 49,000.00	\$ 49,000.00
Success: All values provided	#0-5	Disassembly and Transport Supervision	1	\$ 216,000.00	\$ 216,000.00
Success: All values provided	#0-6	Final Report	1	\$ 22,000.00	\$ 22,000.00

Success: All values provided	#0-7	Contingency	1	If, during the process, the consultant identifies that additional services are required to comply with the AIC Code of Ethics, the consultant shall immediately notify the City and send a proposal for any additional work required to meet safety standards before proceeding with the removal or relocation of the Confederate Monument	\$ 0.00	\$ 0.00
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CITY OF DALLAS

BUSINESS INFORMATION FORM

Complete Legal Name of Business

Phoenix I Restoration and Construction, Ltd. _____

(address) 14032 Distribution Way _____

(city/state/ZIP) Farmers Branch, TX 75234 _____

(phone number) 214.902.0111 _____

(email address) dsellers@phoenix1.org _____

Form of Business Entity (check one)

- Texas corporation
- Texas non-profit corporation
- Out-of-State corporation
- Texas professional corporation

_____ state of incorporation
(check one) _____ profit _____ non-profit

- Texas general partnership
- Texas limited partnership
- Out-of-State partnership

_____ state where partnership is legally registered

- Individual doing business as _____
- Texas limited liability company
- Other (describe) _____

List the full name of each Officer of the Company:

PRESIDENT: Dale C. Sellers _____

VICE PRESIDENT: _____

SECRETARY: _____

TREASURER: _____

Who is legally authorized to sign and execute contracts: Dale C. Sellers _____

Who, if anyone, is required to witness contract signatures: N/A _____

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.
This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).
By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.
A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY
Date Received

1 Name of vendor who has a business relationship with local governmental entity.

N/A

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?
 Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

N/A
Signature of vendor doing business with the governmental entity April 22, 2019
Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.



CITY OF DALLAS
INSURANCE REQUIREMENT AFFIDAVIT

To Be Completed By Insurance Agent/Broker And Bidder

I, the undersigned Agent/Broker, reviewed the insurance requirement contained in this bid document. If the Bidder shown below is awarded this contract by the City of Dallas, I will be able to, within fifteen (15) days of notification of such award, furnish a valid insurance certificate to the City of Dallas meeting all of the insurance requirements in this bid.

Insurance Coverages Reviewed: General & Auto Liab, Umbrella & Workers Comp

Agent's Name: Doug Moore

Agency Name: Ward and Moore Insurance Services

Address: 12700 Park Central Drive Suite 1440

City/State/ZIP: Dallas, TX

Telephone No: (214) 221.8300 Fax No: (214) 904.9635

Bidder's Name and Company: Dale C. Sellers-Phoenix J Restoration and Construction, Ltd

Project/Bid No. and Title: RECSP Removal and Archival Storage of Confederate Monument

Insurance Agent/Broker Signature: [Signature] Date: 4-23-19

By submitting a bid and signing below I affirm the following: I am aware of all costs to provide the required insurance, will do so pending contract award and will provide a valid insurance certificate meeting all requirements within fifteen days of notification of award.

If the above fifteen day requirement is not met, the City of Dallas has the right to reject this bid and award the contract to the next lowest bidder meeting specifications. If you have any questions concerning these requirements, please contact the City of Dallas' Risk Management Division at (214) 671-9041.

Bidder's Signature: [Signature] Date: 4-27-19



CITY OF DALLAS

Wage Floor Policy Confirmation Affidavit

On November 10, 2015 the Dallas City Council passed Resolution 15-2141 which requires prime contractors, awarded general service contracts valued greater than \$50,000, and first-tier subcontractors on the contract to pay their employees rendering services on the contract no less than the “living wage” rate. The current living wage rate is \$11.15.

By signing this Affidavit, the officer of contractor, attests to be authorized to legally bind the representing business entity and acknowledges the City’s wage floor policy and reporting requirements. The contractor agrees to pay employees employed to execute services specified in the terms and conditions of awarded contract not less than \$11.15 per hour for the duration of time committed in executing specified services on the contract. Additionally, upon the execution of awarded contract, the contractor agrees to notify in writing each employee involved in providing services on the contract of the wage floor requirement and the benefit to the employee.

Contractor shall make a copy of this Affidavit available to all employees involved in a City of Dallas general service contract. Staff involved in such contract(s) shall be informed by the contractor to contact the City of Dallas’ Office of Procurement Services office (214-670-3326) if the employee is not receiving a wage floor as specified in the wage floor policy.

Through this Affidavit, the contractor agrees to allow the City to audit all pertinent information relative to the City contract to determine compliance as described herein.

The signee must be a company officer and shall be authorized to legally bind the business entity referenced herein.

Legal Company Name	Phoenix I Restoration and Construction, Ltd.		
Address, City, State and Zip Code (No Post office Box)	14032 Distribution Way, Farmers Branch, Texas 75234		
Officer Signature	<i>DeDee Bellomy</i>		Date
			<i>April 23, 2019</i>
Officer Printed Name	DeDee Bellomy		Office Manager
			Officer title



**CITY OF DALLAS
Business Inclusion and Development Affidavit**

It is the policy of the City of Dallas to involve qualified Minority and Women-Owned Business Enterprises (M/WBEs) to the greatest extent feasible on the City's construction, procurement and professional services contracts. The City and its contractors shall not discriminate on the basis of race, age, color, religion, national origin, or sex in the award and performance of contracts. In consideration of this policy, the City of Dallas has adopted the Business Inclusion and Development Plan (BID Plan) for all City of Dallas contracts.

M/WBE Participation Goals

The BID Plan establishes subcontracting goals and requirements for all prospective bidders to ensure a reasonable degree of M/WBE meaningful business inclusion and participation in City contracts. It is the goal of the City of Dallas that a certain percentage of work under each contract be executed by one or more M/WBEs. For the purpose of participation percentages, the City of Dallas does not include amounts paid to the prime by the sub contractor.

On May 14, 1997 the City Council adopted the following M/WBE participation goals without consideration for a specific ethnicity or gender (Resolution Number 97-1605):

<u>Construction</u> 25.00%	<u>Architectural & Engineering</u> 25.66%	<u>Other Professional</u> 36.30%	<u>Other Services</u> 23.80%	<u>Goods</u> 18.00%
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The apparent low bidder/most advantageous proposer shall agree to meet the established goals or must demonstrate and document a "good faith effort" to include M/WBEs in subcontracting opportunities. The apparent low bidder/most advantageous proposer who fails to adequately document good faith efforts to subcontract or purchase significant material supplies from M/WBEs may be denied award of the contract by the City based on the contractor's failure to be a "responsive" or "responsible" bidder.

By signing below, I agree to provide the City of Dallas, Business Development & Procurement Services department with a completed copy of all required forms provided within the Business Inclusion and Development document package. I understand that, for the purpose of M/WBE subcontracting participation, any amounts paid to the prime from the sub contractor should not be included in the above listed participation amount. Finally, I understand that if I fail to provide all of the required documents within five (5) business days after notification, my bid may be deemed "non-responsive" and I may be denied award of the contract.

(Note: Please use the Tab button, mouse or arrows to move from one section to the next. Please DO NOT use the "Enter" key.)

BKZ1900009779	Phoenix I Restoration and Construction, Ltd
Bid Number: _____	Company Name: _____
<u>DeDee Bellomy</u>	<u>April 23, 2019</u>
Typed or Printed Name of Certifying Official of Company	Date
	<u>Office Manager</u>
Signature of Certifying Official of Company	Title



190296

**CITY OF DALLAS
ETHNIC WORKFORCE COMPOSITION REPORT**

(Note: Please use the Tab button, mouse or arrows to move from one section to the next. Please DO NOT use the "Enter" key.)

Company name: Phoenix I Restoration and Construction, Ltd.
Address: 14032 Distribution Way, Farmers Branch, TX 75234
Bid #: BKZ1900009779
Telephone Number: 214 - 902 - 0111 Ext.
Email Address: dsellers@phoenix1.org

For Goods/Services
 Please complete the following sections based on the ethnic composition of the (location) entity which is listed on the signature page, for RFB form BDPS-FRM-116, for RFCSP form BDPS-FRM-134
 For Construction/Architectural & Engineering the referenced forms do not apply.

Employee Classification	Total No. Employees		White		Black		Hispanic		Other	
	Male	F	M	F	M	F	M	F	M	F
Administrative/ Managerial	12	3	10	3			2			
Professional	3		3							
Technical	1		1							
Office/Clerical		3		3						
Skilled	70		40				30			
Semiskilled					1					
Unskilled										
Seasonal										
Totals:	87	6	54	6	1		32			

190296

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DeDee Bellomy

Officer's Signature

Office Manager

Title

DeDee Bellomy

Typed or Printed Name

April 23, 2019

Date



**CITY OF DALLAS
RFCSP/RFQ CONTRACTOR'S AFFIDAVIT
HISTORY OF M/WBE UTILIZATION FORM**

Project Name: RFCSP Removal & Archival Storage of Confederate Monument Bid/Contract #: BKZ1900009779

Has your company sub-contracted with M/WBE firms in the past? Yes No If yes, please complete the section below.
Historical utilization is not limited to City of Dallas contracts. Please include historical M/WBE utilization with other entities as well for projects completed in the last five years.

Name of the Entity Contact Name Phone Number	Project Name/ Contract Type	Total Contract Amount	M/WBE Goal	M/WBE Actual Participation (\$)	M/WBE Actual Participation (%)	# of M/WBE Firms Utilized
DPARD-Trent Williams 214.670.1807	Dealey Plaza Phase II CSP	\$1,057,826.23	25%	\$272,187.70	25%	3
DPARD-Carl Janak 214.671.5123	Dallas Municipal Building CSP	\$13,957,701.43	25%	\$13,610,333.66	25.86%	5
EBS-Carl Janak 214.671.5123	Dallas Museum Of Art CSP	\$1,459,196.51	25%	\$365,147.48	25.02%	3
DPARD-Trent Williams 214.670.1807	Sharrock Niblo Cabin Stabilization - CSP	\$372,971.05	25%	\$75,198.00	20.16%	3
DPWD-Robert van Buren 214.948.4332	Perot Museum in Fair Park - CSP	\$1,233,161.52	25%	\$290,852.00	25.03%	4

I certify that the information included in this History of M/WBE Utilization Form is true and complete to the best of my knowledge and belief. I further understand and agree that all information will be reviewed and verified by the Business Inclusion and Development Compliance staff.

Company Name: Phoenix I Restoration and Construction, Ltd

Officer's Signature: *DeDee Bellomy*

Title: Office Manager

Printed Name: DeDee Bellomy

Date: April 23, 2019

190296



190296

April 19, 2019

Phoenix I Restoration and Construction, Ltd. is solely owned by Dale C. Sellers. This project will be administered out of our Dallas office. Phoenix I Restoration and Construction, Ltd. has been in business over 50 years and under its' current ownership since 1999. We are a specialty consulting, construction manager, general contractor and trades contractor. Our specialty is historic building restoration. We have participated in the restoration of over 30 historic Texas Courthouses as well as over 100 other historically significant projects.

Phoenix I Restoration and Construction, Ltd. is recognized as an industry leader and expert in technical trade consulting, cost estimating and peer reviews. We provide these specific services to the State Attorney General's Office, the Texas Historical Commission, as well as many architects, engineers, cities and attorneys across the State.

Phoenix I Restoration and Construction, Ltd. and its' projects have received dozens of awards for its' many restoration projects. Phoenix I Restoration and Construction, Ltd. has been recognized by the **Dallas Chapter** of the **American Institute of Architects** as the "**Contractor of the Year**" for 2011 and received the **Craftsmanship Award** in 2013.

Our ability to professionally manage the project, including planning, scheduling, coordination, administration and value engineering are well recognized in the industry. These attributes have consistently provided cost savings to the Owner that are often greater than all the management fees involved with the project. It is also the reason we are the low bidder and the best value provider on so many projects.

We consider it a fundamental imperative that the Team explore and fully understand the various ways, means and materials to be utilized on this project to ensure constructability, the quality of the construction, operational functionality and long-term durability of installed systems and materials.

Our Experience Modifier of .79 is proof of our commitment to safety and to the protection of our employees, subcontractors and to the public.

Phoenix I Restoration and Construction, Ltd. and its' team will, without reservation, dedicate their full resources and efforts to this project's success.

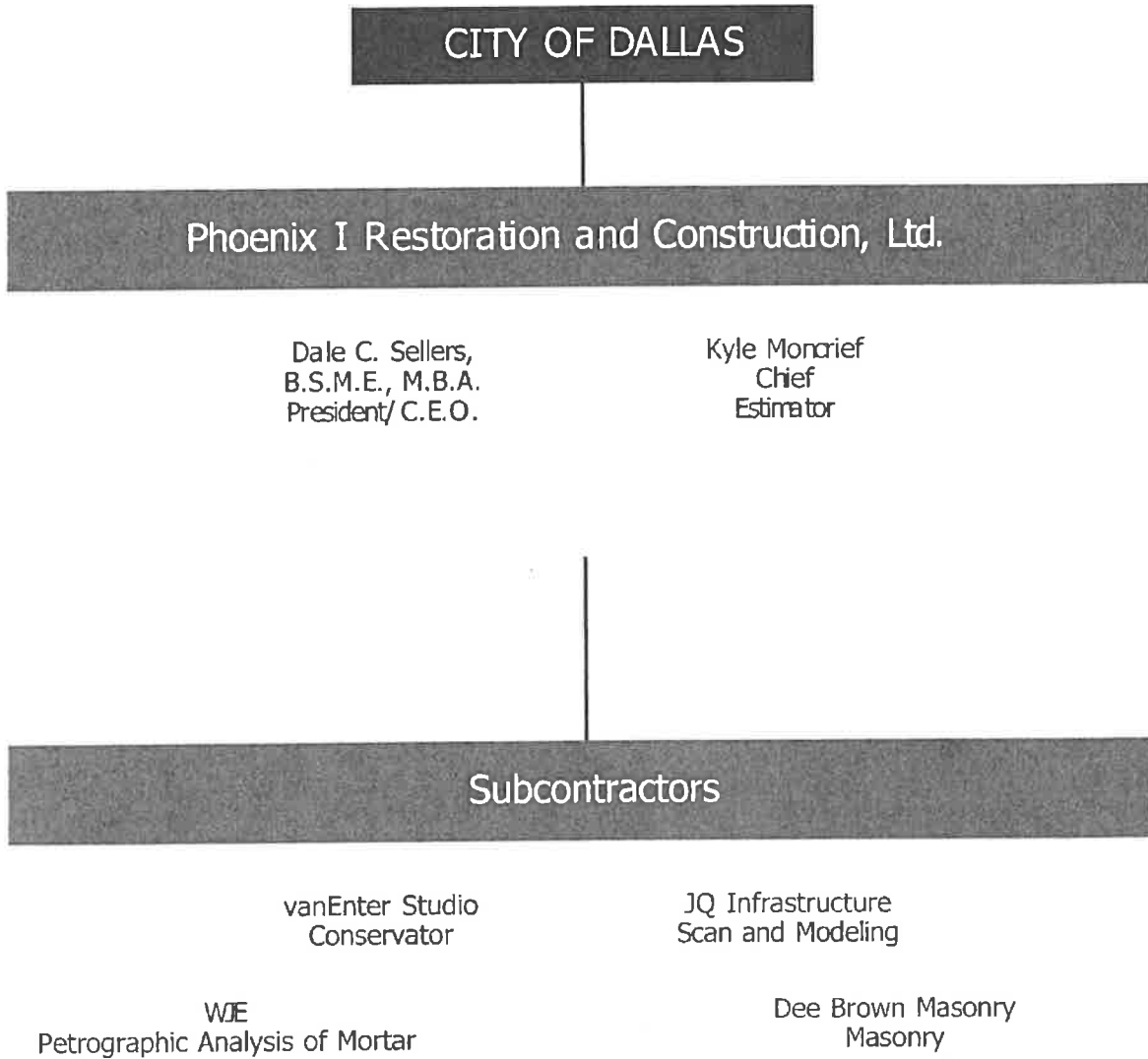
We take great pride in what we do and who we do it with!

Respectfully submitted,

Dale C. Sellers, B.S.M.E., M.B.A.
President, C.E.O. of General Partner

Phoenix I Restoration and Construction, Ltd.

14032 Distribution Way, Farmers Branch, TX 75244 • 214 902 0111 • 214 904 9635 (Fax)





City of Dallas

March 15, 2019

RE: Phoenix 1

To whom it may concern:

The Dallas Park and Recreation Department and other City of Dallas departments have had the pleasure of working with Phoenix 1 and their highly qualified staff for approximately eighteen years.

Sixty-four projects are enumerated on the attached list and each listed project represents a construction solution that was made even more successful by the expertise and commitment to detail that Dale Sellers and his team brought to the project assignment. Their team has excelled in the analysis of complex construction problems, especially with older structures for which new technologies must be incorporated to bring the best possible result.

We look forward to many more opportunities to work with Phoenix 1 this year and years to come. Please note that the City of Dallas has and continues to be fully supportive of any and all opportunities to secure additional funding for the much-needed multimodal improvements in the Fair Park area. We appreciate the opportunity to express support for this vital project and looks forward to a successful application process.

Sincerely,

Willis C. Winters, FAIA

Director

Park and Recreation Department

cc: Trent Williams, Senior Park Manager

City of Dallas and Fair Park Projects awarded to
Phoenix I Restoration and Construction, Ltd.

Fair Park and State Fair Projects	
Dallas Children's Aquarium	\$9,553,722.00
Dallas City News Studio	\$5,681,387.00
Dallas Heritage Village	\$3,996.00
Dallas Women's Museum	\$408,233.00
Fair Park Concrete Repairs	\$250,000.00
Fair Park Band Shell	\$5,640.00
Fair Park Electrical Building	\$272,383.00
Fair Park Interpretation Program	\$377,193.00
Fair Park Misc. Repairs	\$435.00
Fair Park Pavers	\$8,126.00
Fair Park Perot Museum	\$1,030,400.00
Motorized Sun Screens at Fair Park	\$972,320.00
Motorized Sunscreen Maintenance	\$21,147.00
Motorized Sunscreen Maintenance	\$11,200.00
Pylon & Sculpture Base Reconstruction	\$207,746.00
State Fair Big Tex Circle	\$689,669.00
State Fair Dog Park	\$14,498.00
State Fair Phase IV Site Development	\$947,568.00
State Fair Observation Tower Phase I	\$21,943.00
State Fair Observation Tower Phase II	\$2,541,697.00
State Fair Outdoor Arena	\$12,088.00
Texas Discovery Gardens	\$638,048.00
Texas Discovery Gardens Phase III	\$5,622,248.00
Texas Discovery Garden HVAC Modifications	\$375,690.00
Wayfinding Signage	\$175,555.00
Fair Park Power-washing	\$274,711.67
Esplanade Sun Shades	\$288,812.00
Fair Park Plaster Repairs	\$214,491.35
Total Fair Park Projects	\$30,620,947.02
Parks and Recreation Center Projects	
Bachman Recreational Center	\$157,611.00
Beckley Saner and Willie Mae Butler Spray Parks	\$1,709,010.00
Campbell Green Park	\$943,461.00
Cedar Crest Golf Course	\$20,335.00
Churchill Park Renovations	\$676,805.00
Kiest Park	\$657,337.00
Lake Cliff Park	\$1,040,375.00
Lake Highlands North Park	\$676,614.00
Ridgewood Park	\$598,001.00
Rose Haggar Park	\$722,399.00

Salado Park	\$122,239.00
Sharrock Niblo Park	\$372,971.00
Tenison Park Repairs	\$18,600.00
Tietze Park	\$646,137.00
Webb Chapel Pavilion	\$290,418.00
White Rock Window Restoration	\$23,076.00
Willie B Johnson Recreation Center	\$18,870.00
Total Parks and Recreation Projects	\$8,694,259.00

Other City of Dallas Projects	
Dallas Black Dance Theatre	\$34,251.00
Dallas Black Dance Theatre	\$24,354.00
Dallas Black Dance Theatre Basement	\$9,897.00
Dallas Museum of Art Sculpture Garden	\$1,290,000.00
Dallas Police Heliport	\$48,850.00
Dallas Police Station Shoring	\$4,636.00
Dallas Substation Artwork Repair	\$8,832.00
Dealey Plaza Phase I	\$809,687.00
Dealey Plaza Phase II	\$1,058,866.00
Family Gateway Center	\$201,248.00
Fuel Islands	\$259,066.00
Jack Evans Garage Shoring	\$2,404.00
Meyerson Acoustical Panel	\$12,895.00
Meyerson Symphony Center	\$1,715,551.00
Meyerson Symphony Center Cleaning	\$12,822.00
Meyerson Cable and Drain	\$12,296.00
Meyerson Wall Cleaning	\$4,280.00
Old Municipal Building	\$13,690,013.16
Southside Waste Water Treatment	\$1,533,371.00
Total Other City of Dallas Projects	\$20,733,319.16

Total All Projects	<u>\$60,048,525</u>
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City of Dallas and Fair Park Projects awarded to:
Phoenix I Restoration and Construction, Ltd.

City of Dallas Projects	
Lee Park Plinth Stone Removal and Relocation	\$27,060.00
Dallas Black Dance Theatre	\$34,251.00
Dallas Black Dance Theatre	\$24,354.00
Dallas Black Dance Theatre Basement	\$9,897.00
Dallas Museum of Art Sculpture Garden	\$1,290,000.00
Dallas Police Heliport	\$48,850.00
Dallas Police Station Shoring	\$4,636.00
Dallas Substation Artwork Repair	\$8,832.00
Dealey Plaza Phase I	\$809,687.00
Dealey Plaza Phase II	\$1,058,866.00
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Meyerson Symphony Center	\$1,715,551.00
Meyerson Symphony Center Cleaning	\$12,822.00
Meyerson Cable and Drain	\$12,296.00
Meyerson Wall Cleaning	\$4,280.00
Old Municipal Building	\$13,690,013.16
Southside Waste Water Treatment	\$1,533,371.00
Total	\$20,760,379.16

Fair Park and State Fair Projects	
Dallas Children's Aquarium	\$9,553,722.00
Dallas City News Studio	\$5,681,387.00
Dallas Heritage Village	\$3,996.00
Dallas Women's Museum	\$408,233.00
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City of Dallas and Fair Park Projects awarded to:
Phoenix I Restoration and Construction, Ltd.

State Fair Dog Park	\$14,498.00
State Fair Phase IV Site Development	\$947,568.00
State Fair Observation Tower Phase I	\$21,943.00
State Fair Observation Tower Phase II	\$2,541,697.00
State Fair Outdoor Arena	\$12,088.00
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Parks and Recreation Center Projects

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Sharrock Niblo Park	\$372,971.00
Tenison Park Repairs	\$18,600.00
Tietze Park	\$646,137.00
Webb Chapel Pavilion	\$290,418.00
White Rock Window Restoration	\$23,076.00
Willie B Johnson Recreation Center	\$18,870.00
Total Parks and Recreation Projects	\$8,694,259.00



ABOUT DEE BROWN.

Dee Brown Inc. (DBI) is a family owned and operated company founded in 1955 in Dallas, Texas. While our foundation is in the conventional masonry market, through the years we have become a leader in the industry with broad expertise in all types of exterior and interior stone applications.

Our renowned craftsmanship makes us the preferred contractor to architects, builders, owners and designers. In our continued effort to add value, our focus has more recently expanded into the high-end residential and commercial interior finish-out market.

The addition of the Stone Finishes division, along with the expansion of our shop, allows us to provide a comprehensive service by offering in-house fabrication and installation of cut-to-size floors, countertops and architectural elements.

CULTURE & LEADERSHIP.

The third generation of leadership at Dee Brown Inc. is focused on broadening the business and leading the marketplace in custom stone fabrication. We remain dedicated to the values set forth in our mission and will continue to embrace our family business culture that promotes teamwork, develops people and holds true to commitments.

C. Dewitt Brown, Jr. – Founder

Robert V. (Buddie) Barnes, Jr. – Chairman of the Board and CEO

Robert V. (Rob) Barnes, III – President and COO

VISION.

Our vision is to provide the highest quality by leading our industry in innovation, developing strong relationships with our clients and suppliers, working as a team to exceed our customers' expectations, and delivering exceptional craftsmanship within budget and on schedule.

MISSION.

Our mission is to provide customer satisfaction through dedication, reliability, and integrity while producing the highest quality product.



IN-HOUSE FABRICATION

Our full-service fabrication facility is equipped to produce interior and exterior stone finishes including cut-to-size floors, countertops and architectural elements for high-end residential and commercial projects.

van Enter Studio - for fine art and conservation - Dallas Texas

PROFILE

van Enter Studio LTD.

1415 Fairview Ave. Dallas TX
75223

Fine Art and Conservation | Historic Preservation

214 515-9948

March 2017

Profile:

As a conservator of Fine Art, I have specialized in monumental and 20th century sculpture. My broad base of material experience has included a full range of metal objects, antiques and decorative architectural arts. I have worked and trained under some of the best conservators in private practice in the USA and abroad. As a specialist in hot patina and patina matching of metals, I have had the privilege to work as a sub-contractor to art foundries of international acclaim. It has also been my good fortune to work with some leading international artists such as Kenneth Snelson and world leading institutions like the Dallas Museum of Art, Nasher Sculpture Center, Modern Art Museum of Fort Worth, Texas.

Private Practice:

Full time Professional Sculptor and Fine Art Conservator from 1988 till present; Fine Arts Conservation Practitioner, 1999 - present, operating in Dallas, Texas.

Texas Clientele Includes: Modern Art Museum of Fort Worth, The Rachofsky House, Trammel Crow Collection, Nasher Sculpture Center, The Barrett Collection, The Meadows Museum, SMU university, Texas A&M, UT Austin.

Education and General Background – Michael van Enter

Born Cape Town, South Africa I became a US citizen in 2009.

Graduated from the Johannesburg School for Art Ballet and Music, visual arts major. In 1975, I entered into a formal government apprenticeship in graphics arts. From 1980 until 1988, worked as an illustrator/art director. During this time, I continued to develop sculpture, painting and conservation skills.

Since 1988 to present, I have focused exclusively on fine arts sculpture and sculpture conservation and historic preservation.

ABOUT US | FIRM PROFILE

JQ Infrastructure, LLC (JQ) is a multi-disciplinary firm providing structural engineering, civil engineering, land surveying, and facility assessments throughout Texas and the United States. The firm has offices in Dallas, Fort Worth, Austin, Houston, Lubbock, and San Antonio.

ABOUT US | AVAILABILITY AND COMMITMENT

JQ commits that the key personnel assigned to this contract shall remain available for the entirety of the contract as long as that individual is employed by JQ or unless the City of Dallas agrees to a change in the key personnel. This commitment to staffing continuity ensures that project objectives are clearly understood by all members of the design team and carried forward through all phases of the project.

ABOUT US | CLAIMS HISTORY

JQ Infrastructure, LLC has not had any claims in the past 5 years.

ABOUT US | M/WBE INFORMATION

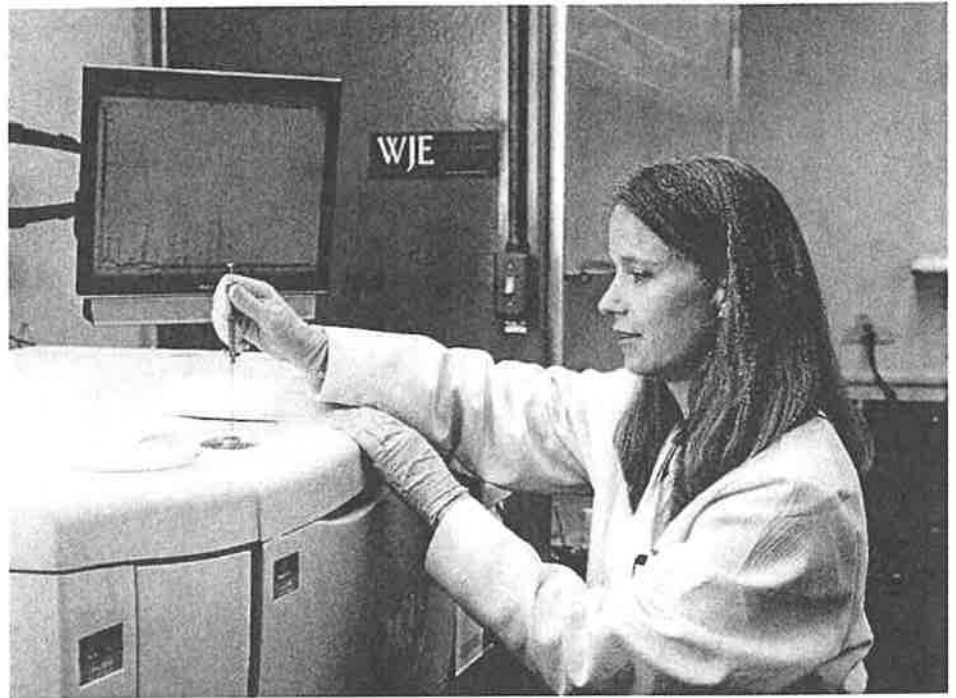
Legal Name: JQ Infrastructure, LLC

Address: 100 Glass Street
Suite 201
Dallas, Texas 75207

Contact: Stephen H. Lucy, PE
214.623.5801
slucy@jqeng.com

Vendor #: VS0000044072

Materials Evaluation and Testing



- Comprehensive construction materials testing and analysis
- Failure investigation
- Materials preservation and conservation
- Materials research
- New product evaluation
- Inorganic/organic chemistry
- Analytical chemistry
- Petrographic evaluation
- Metallurgical testing
- Thermal analysis
- Engineering criticality assessment and fitness-for-service

When materials fail, structures can fail or become damaged. WJE's materials scientists provide comprehensive consulting services for the evaluation and testing of construction materials—both new and old. A full range of services in petrography, metallurgy, microscopy, analytical chemistry, organic and inorganic chemistry, and physical testing of materials are offered in WJE's Janney Technical Center in Northbrook, Illinois, and in branch office laboratory facilities in Austin, Texas, and Cleveland, Ohio.

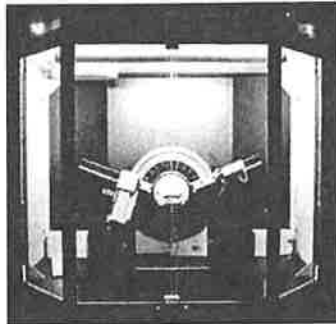
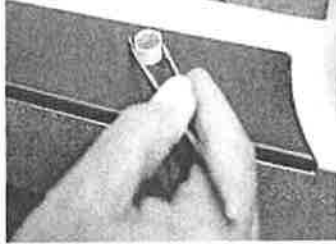
The combination of comprehensive materials science expertise with engineering and architectural capabilities uniquely positions and qualifies WJE to deliver innovative yet sound solutions to construction materials problems. Using state-of-the-art evaluation methods, many of which were pioneered at WJE, the firm's materials scientists have a long history of performing foundational materials-related research and have solved thousands of construction materials problems, answering such questions as "Why did it fail?" and "How long will it last?" and "How can it be fixed?"



Materials Evaluation and Testing

REPRESENTATIVE PROJECTS

- ▣ Aloha Stadium - Honolulu, HI: Planning study and rehabilitation recommendations for weathering steel
- ▣ Continuum Parking Garage - Austin, TX: Deterioration investigation and repair materials specification
- ▣ Federal Highway Administration - Savoy, IL: Evaluation of treatments for mitigating alkali-silica reaction in concrete pavements
- ▣ Georgia State Capitol - Atlanta, GA: Cleaning and material studies for building facade
- ▣ I-10 Bridge over Lake Pontchartrain - New Orleans, LA, and Slidell, LA: AASHTO T277 chloride ion resistance testing
- ▣ Palo Verde Nuclear Generating Station - Tonopah, AZ: Mechanical draft cooling towers condition assessment
- ▣ Soldier Field - Chicago, IL: Corrosion mitigation testing for historic concrete elements
- ▣ Ascension Saint Clare's Hospital - Weston, WI: Condensation investigation and repair design
- ▣ Texas Governor's Mansion - Austin, TX: Materials assessment of load-bearing masonry walls
- ▣ Wacker Drive - Chicago, IL: Development of high-performance concrete and validation testing of durability performance for bridge reconstruction





Affirmative Action Plan

Phoenix I Restoration and Construction, Ltd. is an Equal Opportunity Employer.

Phoenix I Restoration and Construction, Ltd. does not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin; and will take affirmative action to ensure that its applicants are employed and its employees are treated fairly during employment without regard to race, color, religion, sex, age, disability or national origin. Such nondiscrimination shall include but not limited to the following areas of employment practice: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training; including apprenticeship.

As necessary, advertisements for employment are posted in local newspapers. Currently, Phoenix I Restoration and Construction, Ltd. is not in need of recruitment activities.

DeDee Bellomy, Office Manager, is responsible for the administration and implementation of the Affirmative Action Plan.

Phoenix I Restoration and Construction, Ltd.
14032 Distribution Way, Farmers Branch, Texas 75234 • 214-902-0111 • 214-904-9635 (Fax)



RFCSP
Removal and Archival Storage of Confederate Monument
BKZ1900009779

Phoenix I Restoration and Construction, Ltd
14032 Distribution Way
Farmers Branch, Texas 75234
Office: 214.902.0111
Fax: 214.904.9635

Equipment Utilization Plan

Equipment to be used on site:

- Model G12-55A – Telehandler
- Galion 150 Series Hydraulic Mobile Crane
- Corona Export Pallet

Phoenix I Restoration and Construction, Ltd.

14032 Distribution Way Farmers Branch, Texas 75234 • 214-902-0111 • 214-904-9635 (Fax)

Model G12-55A

TELEHANDLER



Performance

Rated Capacity	12,000 lb	5,443 kg
Maximum Lift Height	55 ft	16.76 m
Load at Max Height	5,000 lb	2,268 kg
Maximum Forward Reach	42 ft	12.8 m
Load at Max Reach	3,500 lb	1,588 kg
Frame Leveling	10°	
Lift Speed (boom retracted)		
Up	16 sec	
Down	15 sec	
Boom Speed (extended/retracted)		
Extended	17 sec	
Retracted	13 sec	
Top Travel Speed (4-Speed)	20 mph	32 kph
Drawbar Pull (loaded)	24,000 lb	10,886 kg
Outside Turning Radius	14 ft	4.27 m
Operating Weight	35,860 lb	16,266 kg

Standard Specifications

Engine

Make and Model	Cummins QSB4.5L ATAAC	
No. of Cylinders	4	
Displacement	276 cu in.	4.5 L
Gross Power Basic	130 hp	97 kW
Maximum Torque @ 1500 rpm	457 lb-ft	619 Nm
Fuel Tank Capacity	38 gal	144 L

Transmission

- Powershift with torque converter.
- 4-speed forward and 3-speed reverse.

Axles

- Trunnion mounted planetary steer axles.
- Integral steer cylinder
- High bias limited slip differential on front axle

Brakes

- Service brakes are inboard wet disc brake on front and rear axles.
- Parking brakes are wet disc spring-applied hydraulic release on front axle.

Tires

- Standard 400/75-28
- Optional Foam-Filled or Solid

Cab

- Certified ROPS/FOPS structure
- Adjustable seat
- Horn

Steering 4-Wheel

- Hydraulic power steering with manual backup
- Operator selectable 4-wheel circle, 4-wheel crab, 2-wheel front

Instruments

- Volt meter
- Hourmeter
- Engine oil pressure gauge
- Temperature gauge
- Fuel gauge

Hydraulic System-Implement

Capacity	60 gal	227.1 L
----------	--------	---------

- Load sense piston pump.
- Auxiliary hydraulics used for all attachments equipped with cylinders or other hydraulic components.

Accessories & Options

- Enclosed Cab
- Auxiliary Electrics
- Road Lights
- Air Conditioning
- Work Lights
- Rotating Beacon
- Pintle Hook
- Fenders
- Brick Guard
- Arctic Package
- Hydraulic Quick Switch

Attachments

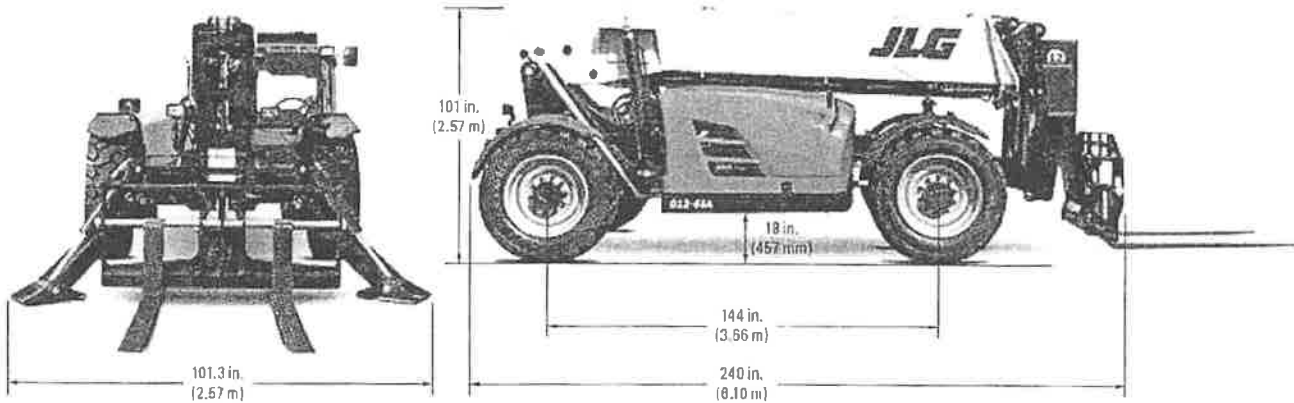
Standard Carriage	50 in.	1.3 m
	60 in.	1.5 m
	72 in.	1.8 m
Side-Tilt Carriage	50 in.	1.3 m
	60 in.	1.5 m
	72 in.	1.8 m
Swing Carriage (90° or 180°)	72 in.	1.8 m
Dual Fork Positioning Carriage		
Side-Shift Carriage	50 in.	1.3 m
Tower	8 ft	2.4 m
For use on 50 in. (1.3 m) Standard or Side-Tilt Carriage*		
Pallet Forks	2.36 in. x 5 in. x 48 in.	60 mm x 127 mm x 1.2 m
	2.00 in. x 6 in. x 72 in.	51 mm x 152 mm x 1.8 m
	1.75 in. x 7 in. x 60 in.	44 mm x 178 mm x 1.5 m
Lumber Forks	2.36 in. x 6 in. x 60 in.	60 mm x 152 mm x 1.5 m
	2 in. x 2 in. x 48 in.	51 mm x 51 mm x 1.2 m
Cubing Forks		
Fork Extensions	90 in.	2.3 m
Material Bucket	72 in., 1.0 cu yd	1.8 m, 0.76 m ³
	96 in., 1.5 cu yd	2.4 m, 1.15 m ³
	102 in., 2.0 cu yd	2.6 m, 1.53 m ³
Grapple Bucket	96 in., 1.75 cu yd	2.4 m, 1.34 m ³
Truss Boom	12 ft, 2,000 lb	3.7 m, 907 kg
	15 ft, 2,000 lb	4.6 m, 907 kg
	12 ft with winch, 2,000 lb	3.7 m, 907 kg
Fork Mounted Work Platform	8 ft, 1,000 lb capacity	2.4 m, 455 kg capacity
Lifting Hook		

* Requires auxiliary electrics

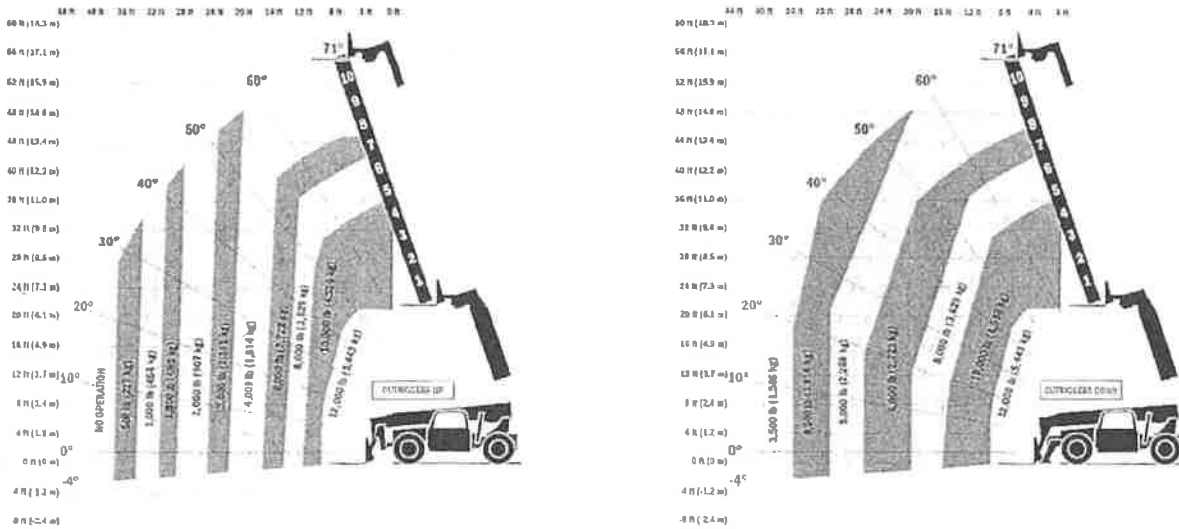
Model G12-55A TELEHANDLER

Dimensions

All dimensions are approximate.



Load Chart Dimensions



IMPORTANT

Hated lift capacities shown are with machine equipped with carriage and pallet forks. The machine must be level on a firm surface with undamaged, properly inflated tires. Machine specifications and stability are based on rated lift capacities at specific boom angles and boom lengths. (If specifications are critical, the proposed application should be discussed with your dealer.) DO NOT exceed rated lift capacity loads, as unstable and dangerous machine conditions will result. DO NOT tip the machine forward to determine the allowable load. Use only JLG approved attachments with proper material handler model/attachment load capacity charts displayed in the operator's cab. OSHA requires all rough terrain forklift operators be trained according to OSHA 29 CFR 1910.178 (1).

Due to continuous product improvements, JLG Industries reserves the right to make specification and/or equipment changes without prior notification. This machine meets or exceeds ASME B56.6-1998 as originally manufactured for intended applications.



JLG Industries, Inc.
 1 JLG Drive
 McConnellsburg, PA 17233 9533
 Telephone 717-485-5161
 Toll-free in US 877-JLG LIFT
 Fax 717-485-6417
 www.jlg.com

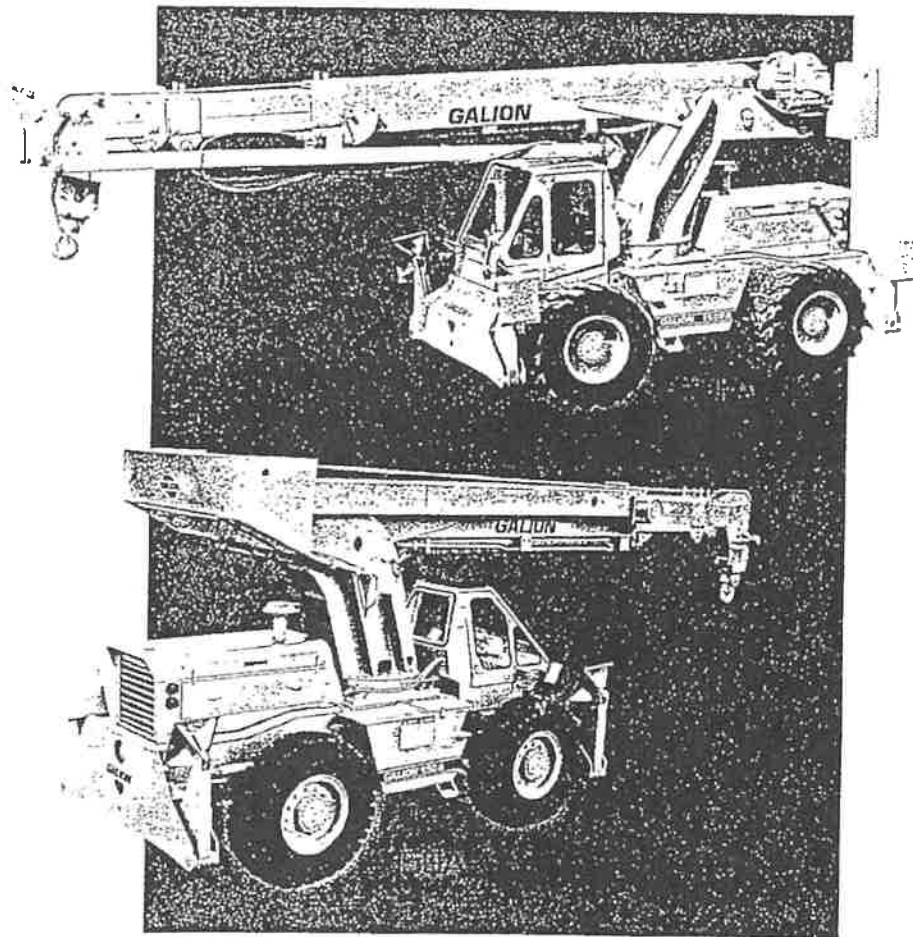
An Oshkosh Corporation Company

Form No.: SS-G12-55A
 Part No.: 3132211
 R101206
 Printed in USA

GALION 150 Series

Hydraulic Mobile Crane

SPECIFICATIONS



30,000 lb (13 608kg) Capacity
121 HP (90.3kW)

Galion 150 Series Crane

ENGINE

Make and Model: Komatsu S6D102E-1
 Type: direct injection, 4-cycle diesel turbocharged
 Flywheel horsepower: 121 Net, HP (90.3 kW)
 Governed rpm: 2500
 Max. torque @ 1200 rpm: 368 lb ft (499 N-m)
 Bore and stroke: 4.02" x 4.72" (102 x 120mm)
 No. of cylinders: 6
 Displacement: 359 in³ (5.88 litre)
 Electrical system: 12V
 AMA HP U.S. tax purposes: 38.8
 Net flywheel power output of standard engine as installed in this vehicle (per SAE J1349) complete with fan, air cleaner, alternator, water pump, lubricating oil pump and fuel pump. Engine will maintain specified flywheel power up to 10 000' (3048m) altitude.

TRANSMISSION

Six speed dual range power shift Torque Converter with full forward and reverse speeds

Forward and reverse (approx.): 0 to 26.5 mph
 (0-42.6 km/h)

GENERAL DIMENSIONS (four section boom)

Weight with outriggers (approx.): 41800 lb (18980 kg)
 Length, overall (4 Section boom): 29'6" (8983mm)
 Width, overall: 8' (2438mm)
 Turning radius: 18'1" (5512mm)

CHASSIS

Frame
 Length, overall: 15'6½" (4737 mm)
 Box section, center: 22½" x 5" (572 x 127 mm)
 Box section, overaxles: 15"x5"(381 x127mm)
 Ground Clearance
 Axle: 16" (406 mm)
 Outriggers: 15" (381 mm)

AXLES

Front: NoSPIN®
 Rear axle disconnect
 Front and rear—Steering Type, planetary
 Mounting
 Front: Rigid to frame
 Rear (no locks needed): Elastomeric suspension
 Wheels: Integral disc and rim

STEERING (flow regulated from main system)

Front: Hydrostatic
 Rear: Hydraulic

BRAKES

Service: Hydraulic Power, 4-Wheel—17" x 4" (432 x 102mm)
 Parking: Mechanical on front axle drive—12" x 3" (305 x 76mm)

HYDRAULICS

Controls: Hydraulic
 Tandem Hydraulic Pumps 50 GPM (189 lit/min) and 30 GPM (114 lit/min)

BOOM

	3 Section	4 Section
Reach, horizontal, minimum	18'2" (5334mm)	20' (6096mm)
Reach, horizontal, maximum	37'6" (11430mm)	60' (18288mm)
Swing, rotation continuous	360°	360°
Elevation, maximum	70°	70°
Tail Swing, maximum	8'8" (2356mm)	8'8" (2642mm)
Hook height, boom horizontal	6'6¾" (2000mm)	6'6¾" (2000mm)

CRANE PERFORMANCE

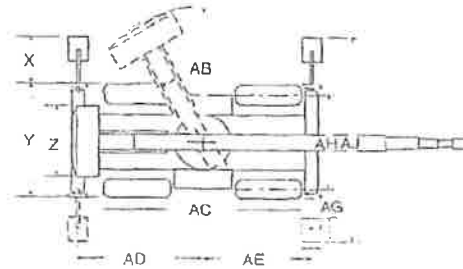
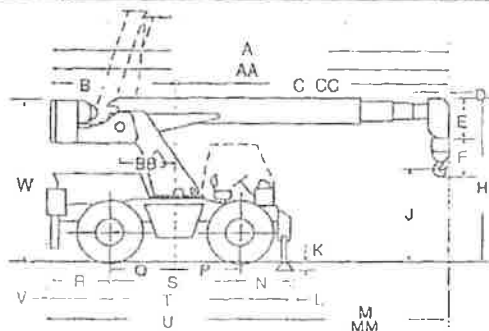
Boom topping speed: 18.9 sec.
 Boom lowering speed: 17.8 sec.
 Swing speed, rpm: 4.4
 Outrigger speed
 Down: 3.9 sec.
 Up: 3.3 sec.
 Crowd speed (approx.)
 Extending, fpm: 50 (15.2 m/min)
 Retracting, fpm: 60 (18.3 m/min)
 Average line speed
 Low, fpm: 125 (38.1 m/min)
 Intermediate, fpm: 225 (68.6 m/min)
 High, fpm: 350 (106.7 m/min)
 Standard rigging:
 5-part line
 Maximum hook speed with 5-part line, fpm: 70 (21.3m/min)
 Capacity: See load charts

HOIST PERFORMANCE

Single part line pull, maximum, bare drum: 7500lb (3402 kg)
 Single part line pull, rated: 6200 lb (2812 kg)
 Hoist Drum Capacity: 450 ft. ⅜" cable
 (137.2 m 14.3 mm)
 Wire rope: 8 x 19 Seale, rotation resistant ⅜" diameter IWRC. Minimum breaking strength: 15 tons (30,000 lbs)

Galion 150 Series Crane

DIMENSIONS & RATINGS MODEL 150FA



Load Ratings**

Model 150F Series A hydraulic mobile crane. Based on 85% Tipping (75% without outriggers)—Crane on firm level surface.

3-Section power boom load in lbs.

Working Radius in feet	360° Rotation		Off Front
	Without Outriggers	With Outriggers	Without Outriggers
10	18400	30000	30000
12	13200	28500	19900
14	10200	25000	15750
16	8250	21875	12750
18	6850	18950	10550
20	5800	15750	9000
22	5000	13340	7700
24	4300	11580	6750
26	3750	10240	6000
28	3350	9180	5250
30	3000	8240	4800
32	2600	7480	4300
34	2350	6800	3850
36	2100	6200	3500

4-Section power boom load in lbs.

Working Radius in feet	360° Rotation		Off Front
	Without Outriggers	With Outriggers	Without Outriggers
10	17600	30000	30000
12	13600	28500	21750
14	10950	25000	16250
15	9900	23300	14600
16	9050	21850	13300
18	7500	18490	11250
20	6150	16020	9500
22	5050	14020	8000
24	4250	12320	6800
25	3900	11560	6300
30	2600	8620	4100
35	1750	6370	3200
40	1200	4970	2450
45	900	4330	1950
50	-	3400	1500
55	-	2760	1200
60	-	2080	900

Dimensions

	Ft./inches (mm)	Ft./inches (mm)
A	27' 2" (8280) [3-Section]	Q 4' 9" (1448)
AA	29' 6" (8992) [4-Section]	R 3' 10 1/2" (1181)
B	8' 8" (2642)	S 9' 0" (2743)
BB	3' 10" (1168)	T 16' 3 1/2" (2426)
C	18' 2" (5537) [3-Section]	U 16' 10 1/2" (5144)
CC	20' 6" (6248) [4-Section]	V 3 1/2" (89)
D	7" (178)	W 11' 2 1/2" (3416)
E	2' 3 1/2" (699)	X 3' 0 1/4" (920)
F	2' 5 1/2" (749)	Y 8' 0" (2438)
G	6' 4" (1930)	Z 4' 11 1/2" (1511)
H	11' 1" (3378)	AB 8' 8" (2642)
J	6' 6 3/4" (2000)	AC 13' 5" (4089)
K	6 1/2" (165)	AD 8' 3" (2514)
L	3 1/2" (89)	AE 7' 3 1/2" (2223)
M	10' 3 1/2" (3137) [3-Section]	AF 16" (406)
MM	13' 7 1/2" (4153) [4-Section]	AG 20" (508)
N	3' 9" (1143)	AH 6' 9" (2057)
P	4' 3" (1295)	AJ 14' 2 1/2" (4331)

20' Jib capacities—load in lbs.

Jib Angle	Boom Angle					Parts of Line	Rated Load lbs.
	70°	60°	50°	40°	30°		
0°	6000	5300	3900	3000	2500	1	6000
15°	4500	3400	2700	2350	2000	2	12000
30°	3000	2500	2150	1850	1500	3	18000
						4	24000
						5	30000

The loads given on the jib capacity chart are the maximum allowable loads due to structural limitations of the jib and boom. The loads on the rated load chart are to be reduced when lifting with the main boom hook block as follows: 1200 lbs with the jib in a working position, 800 lbs with the jib stowed.

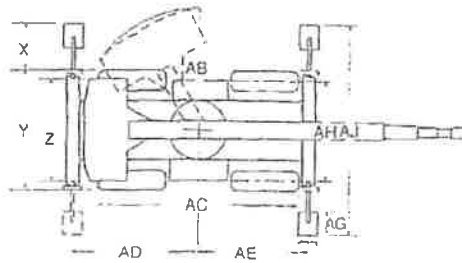
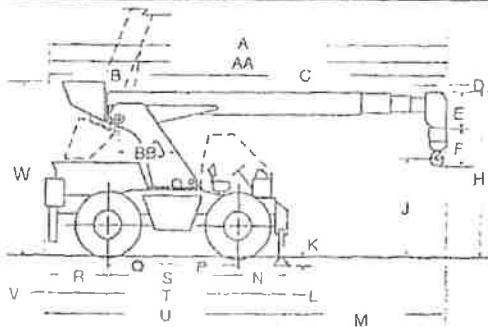


Note: Avoid serious bodily injury or death. Refer to Operator Manual and CIMA Crane Safety Manual. The user shall operate at reduced rated loads to allow for adverse job conditions, such as soft uneven ground, out of level conditions, high winds, side loads, pendulum action, jerking or stopping of loads, hazardous conditions, experience of personnel, traveling with loads, electric wires, etc. Side pull on boom or jib is hazardous. • Before lifting a load, be sure that: the weight of the load is known, the proper parts of line are used, the load is secured and rigged properly, the hook has a functioning safety latch, the wire rope is in both good condition and has sufficient number of wraps on the winch drum, and all personnel are clear. • Rated loads, without outriggers, depends on tire capacity and condition of tires. Ratings are based on 14:00 x 24—16 ply tires at 80 psi static and creep, and 17.5 x 25—14 ply tires at 65 psi static and creep. • For four section power booms, rated loads are based on extending

Continued on next page

Galion 150 Series Crane

DIMENSIONS & RATINGS MODEL 150A



Dimensions

Ft./inches (mm)		Ft./inches (mm)	
A	27' 2" (8280) [3-Section]	Q	4' 9" (1448)
AA	29' 6" (8992) [4-Section]	R	3' 10 1/2" (1181)
B	7' 9" (2362)	S	9' 0" (2743)
BB	3' 10" (1168)	T	16' 3 1/2" (2426)
C	18' 2" (5537) [3-Section]	U	16' 10 1/2" (5144)
CC	20' 6" (6248) [4-Section]	V	3-1/2" (89)
D	7" (178)	W	11' 2 1/2" (3416)
E	2' 3 1/2" (699)	X	3' 0 1/4" (920)
F	2' 5 1/2" (749)	Y	6' 6" (1981)
G	6' 4" (1930)	Z	4' 11 1/2" (1511)
H	11' 1" (3378)	AB	7' 9" (2352)
J	6' 6 3/4" (2000)	AC	13' 5" (4089)
K	6 1/2" (165)	AD	8' 3" (2514)
L	3 1/2" (89)	AE	7' 3 1/2" (2223)
M	10' 3 1/2" (3137) [3-Section]	AF	16" (406)
MM	13' 7 1/2" (4153) [4-Section]	AG	20" (508)
N	3' 9" (1143)	AH	6' 9" (2057)
P	4' 3" (1295)	AJ	14' 2 1/2" (4331)

Load Ratings**

Model 150 Series A hydraulic mobile crane. Based on 85% Tipping (75% without outriggers)—Crane on firm level surface.

3-Section power boom load in lbs.

Working Radius in feet	360° Rotation		Off Front
	Without Outriggers	With Outriggers	Without Outriggers
10	18400	30000	30000
12	13200	28500	19900
14	10200	25000	15750
16	8250	21875	12750
18	6850	18950	10550
20	5800	15750	9000
22	5000	13340	7700
24	4300	11580	6750
26	3750	10240	6000
28	3350	9180	5250
30	3000	8240	4800
32	2600	7480	4300
34	2350	6800	3850
36	2100	6200	3500

20' Jib capacities—load in lbs.

Jib Angle	Boom Angle					Parts of Line	Rated Load lbs.
	70°	60°	50°	40°	30°		
0°	6000	5300	3900	3000	2500	1	6000
15°	4500	3400	2700	2350	2000	2	12000
30°	3000	2500	2150	1850	1500	3	18000
						4	24000
						5	30000

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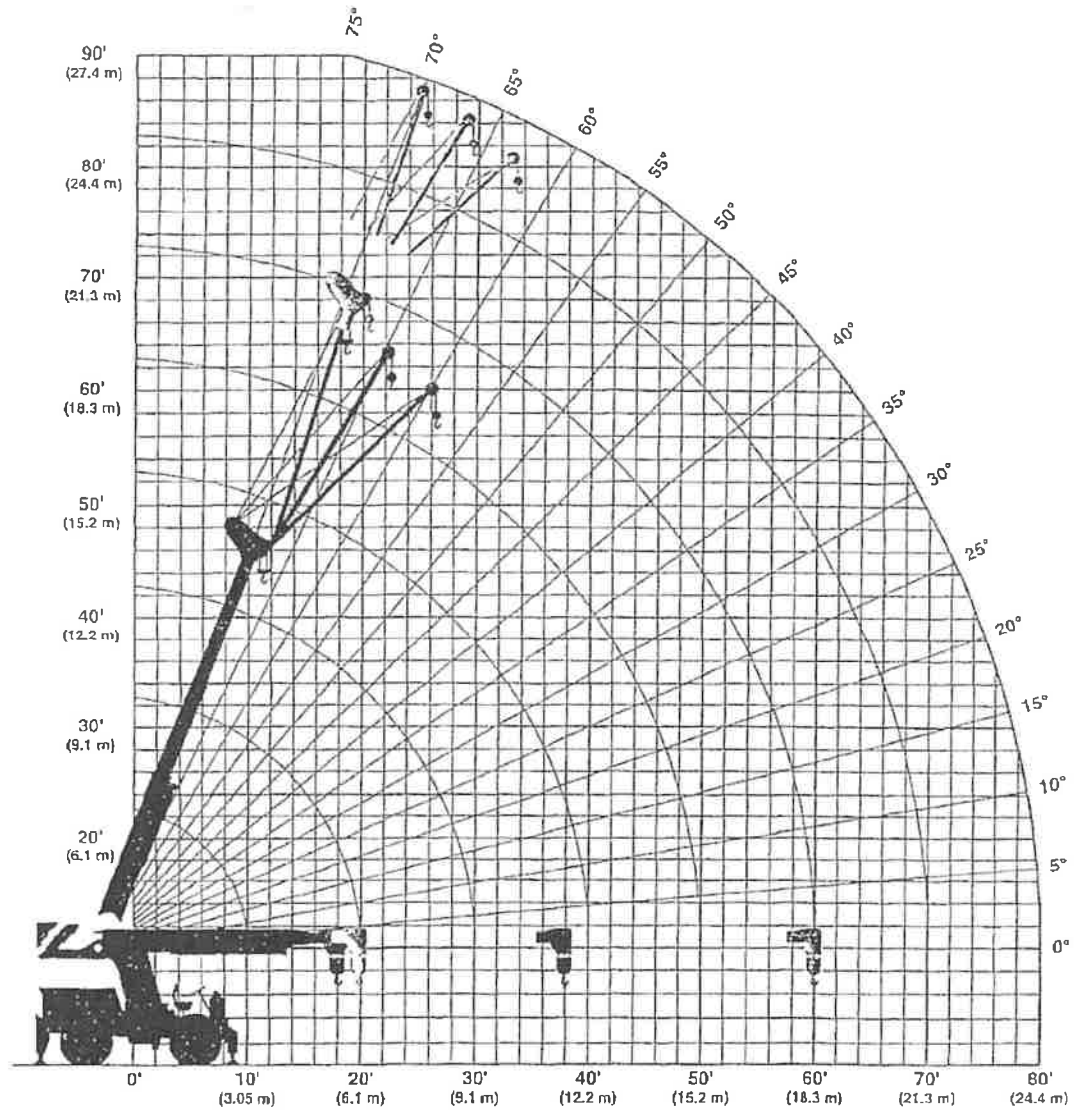
the smallest boom extensions first. The first and second extensions are hydraulically sequenced to extend and retract equally. Boom length should be as short as possible to make a lift. If positioning a load by crowding, repositioning with the lower crowd is recommended. • Rated loads shall include the weight of hook block, slings and auxiliary lifting devices. Their weights shall be subtracted from the listed rated load to obtain the net load to be lifted. • Single line weighted hook block weighs 125 lbs. Do not two-block. • Multiple line hook block weighs 375 lbs. Do not two-block. • Working radius is the horizontal distance from a projection of the axis of rotation with respect to the supporting surface, before loading, to the center of the vertical hoist line or tackle with load applied. • Do not operate at radii or boom angles where capacities are not listed. For tipping limitations, do not exceed the crane load rating chart. • **Rated loads above the heavy line are based on the machine's hydraulic or structural competence and not on the machine's stability. • Rated loads are based on freely suspended loads. Do not two-block. • Jib movement and pinning must be controlled during erection and stowage.

4-Section power boom load in lbs.

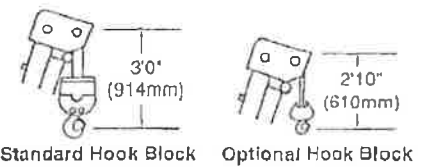
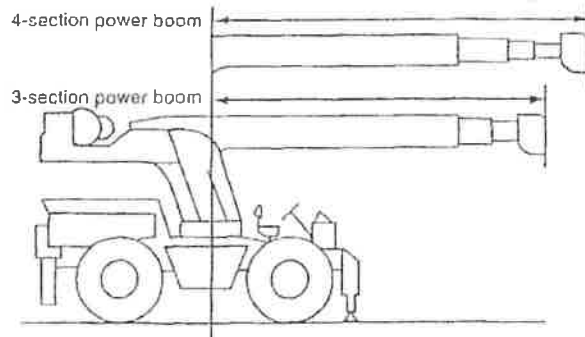
Working Radius in feet	360° Rotation		Off Front
	Without Outriggers	With Outriggers	Without Outriggers
10	18500	30000	30000
12	13500	28500	20600
14	10650	25000	15800
15	9450	23300	14600
16	8650	21850	12550
18	7000	18250	10500
20	5500	15500	8600
22	4500	13150	7250
24	3700	11250	6300
25	3350	10400	5800
30	2150	7350	3800
35	1500	5700	2800
40	1100	4600	2250
45	750	3750	1800
50	-	3100	1500
55	-	2550	1100
60	-	2100	850

Working Ranges

Range of 3-section boom shown in black, 4-section boom shown in color.



Retractable Travel Lengths



Horizontal Boom Range

4-section power boom 20'6" (6248mm) to 60' (18 288mm)
 3-section power boom 18'2" (5537mm) to 37'6" (11 430mm)



Boom Section Nomenclature

190296

Galion 150 Series Crane

Standard Equipment

- Alternator, 62 amp
- Antifreeze to -30°F (-34° C)
- Two block damage protection (30,000 lb [13600kg] capacity)
- Audible backup alarm
- Automatic hoist and swing brake
- Battery, dual heavy duty
- Boom, choice of: 3 section, or 4 section self-proportioning full power hydraulic with 60 ft. reach
- Boom angle indicator
- Boom elevation, 70° maximum
- Boom point with 3 sheaves
- Bubble level indicator
- Cross line relief protection for hoist and swing circuits

- Drum, grooved
- Dual swing control
- Electric gauges, fuel, converter temperature, voltage, water temperature & transmission pressure
- Electrical system, 12 volt
- Engine air cleaner, dual stage dry with service indicator & safety element
- Engine hood sides
- Four wheel drive with axle disconnect
- Four wheel power brakes
- Four wheel steering
- Hoist, 3 speeds
- Hook block, 5 part line
- Hook latch
- Horn

- Hourmeter
- Hydraulic outriggers with pilot check valves
- Master electrical disconnect
- Muffler
- NoSPIN[®] front axle
- Over center check valves for crowd and boom lift cylinders
- Powershift transmission
- Rear steer indicator
- Rotation, 360° continuous
- Seat, adjustable "bucket type"
- Tandem hydraulic pumps 30 and 50 GPM (114 and 189 l/min)
- Tires, directional, 14:00 x 24-16 P.R.
- Torque converter

Optional Equipment

- Alarm, engine (high water temperature, low oil pressure)
- Auxiliary sheave (boom point)
- Auxiliary hoist with cable
- Cab, deluxe enclosed with front wiper, 12000 BTU heater, defroster fan, two outside mirrors and seat belt
- Electric tire pump with hose and gauge
- Hook and weight for single part line

- Jib and gantry, 20' (6096 mm)
- Lights, directional signals
- Lights, flood, chassis mounted
- Lights, flood, pedestal mounted
- Lights, front headlights with combination stop/tail on rear
- Open cab
- Paint, blue accent
- Paint, special (one color)

- Pintle hook
- Rear view mirrors, outside mounted
- Starting aid, ether injection
- Sound suppression kit
- Tires, 14:00 x 24, 20 P R, non directional type
- Tires, 17.5 x 25, 14 P R directional, tubeless.
- Winch, mounted on front outrigger frame

Your authorized distributor is _____



Specifications subject to change without notice. Illustrations may include optional equipment and accessories, and may not include all standard equipment.
FORM NO. AD-70252-SS2 (HP5M) 2/97 Lithographed in U.S.A.

Komatsu America International Company • 440 North Fairway Drive • Vernon Hills, IL 60061

190296

Corona

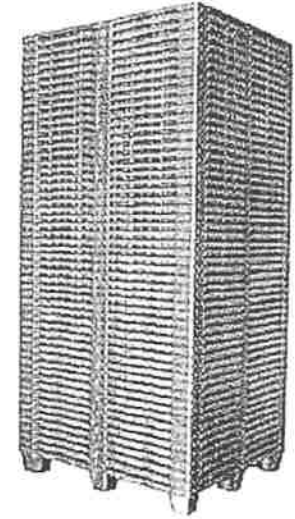
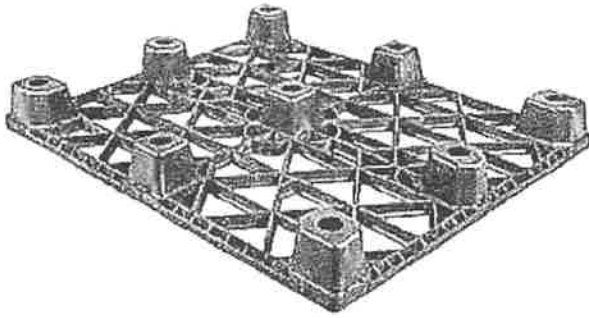
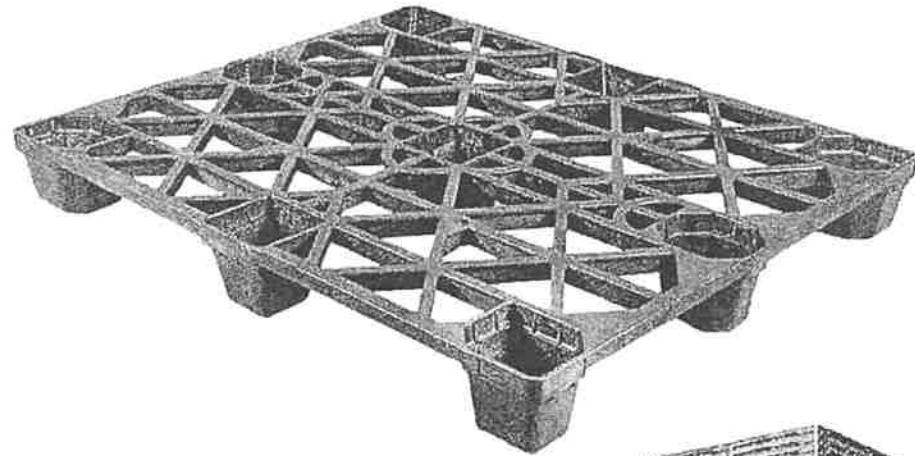
Export Pallet



Defining Plastic Pallets

- Holds up to 3,000 lbs in transit
- Saves space and lowers freight costs
- Satisfies ISPM-15 requirements

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Maximize shipments with nestable design

SPECIFICATIONS

ITEM	DIMENSIONS			WEIGHT	LOAD CAPACITY			# IN A STACK	MATERIAL
	Length	Width	Height		Static	Dynamic	*Edge Racking		
125150	48"	40"	5.5"	22 lbs	5,000	3,000	N/A	52	HDPE RECYCLED/PP

*Rated load capacities are intended as a guideline only. Capacity will vary depending on product. Nominal specifications subject to change without notice. Product performance characteristics vary with application.
 # In A Stack is based upon 55" height of standard LTL carriers.

190296

45x45 Stackable

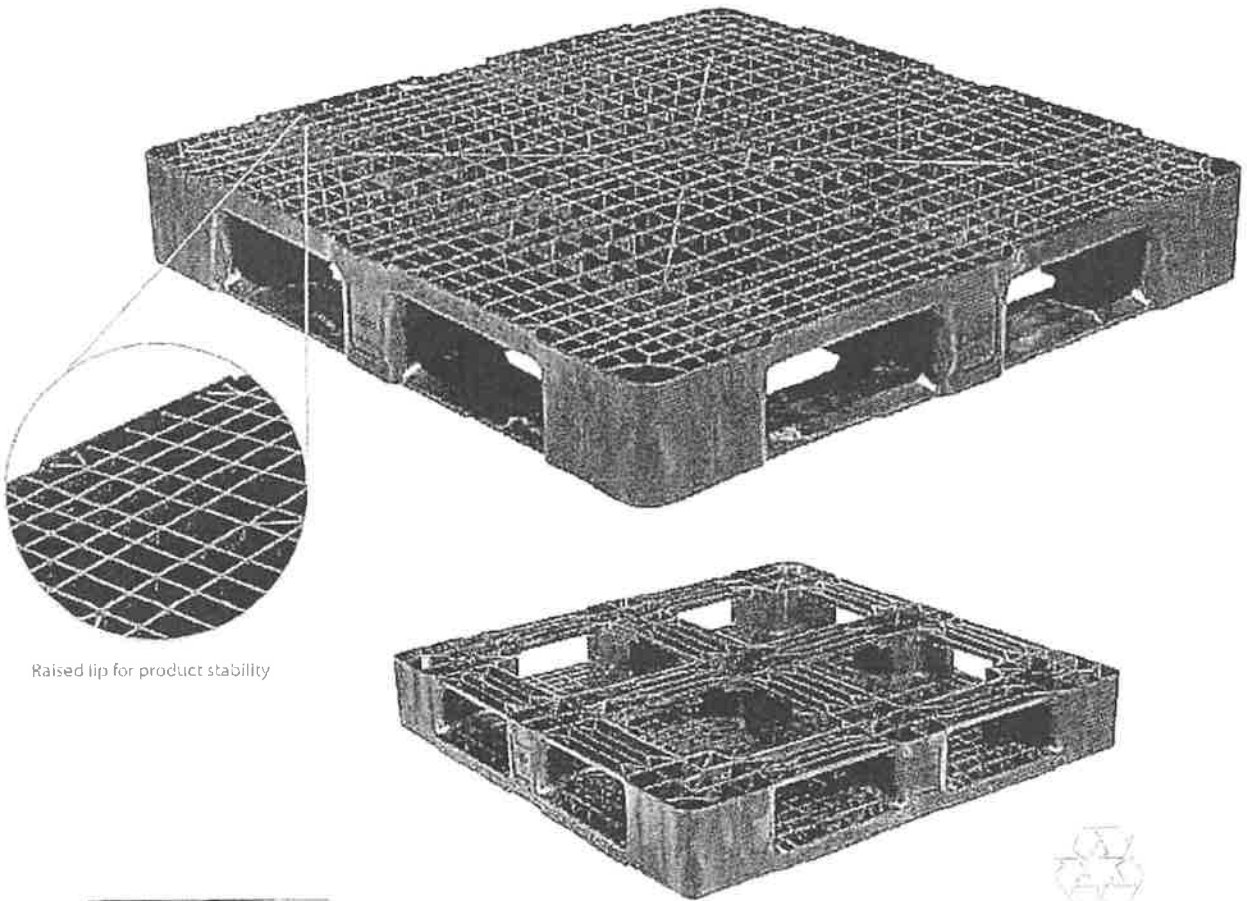
Heavy Duty Pallet



Defining Plastic Pallets

- Heavy duty pallet for shipping and storage applications
- Footprint optimizes ocean container shipments
- Single-piece, flow-through design
- Ideal for bulk bag and drum shipping
- Satisfies ISPM-15 requirements

TranPak Inc.
(800) 827 2474
www.tranpak.com

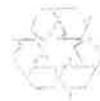


Raised lip for product stability

SPECIFICATIONS

ITEM	DIMENSIONS			WEIGHT	LOAD CAPACITY			# IN A STACK	MATERIAL
	Length	Width	Height		Static	Dynamic	*Edge Racking		
116101	45"	45"	6.7"	52 lbs	16,500	3,300	2,700	14	HDPE

*Rated racking capacity is for standard edge racking where pallet is only supported by two points at the edges. Racking capacity for other types of racks will be different.
Nominal specifications subject to change without notice. Product performance characteristics vary with application.
In A Stack is based upon 98" height of standard LTL carriers.



Plastic Pallets

Bins

Pails

Hoppers

Cases

Totes

IBCs

Kangaroo

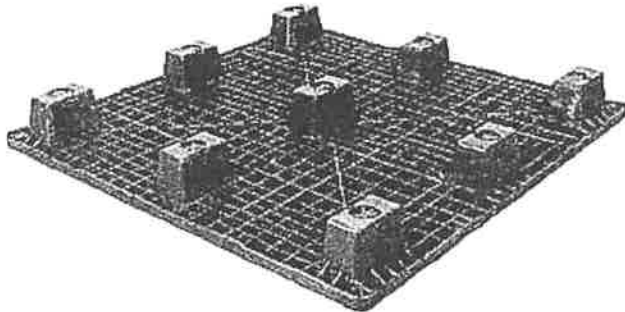
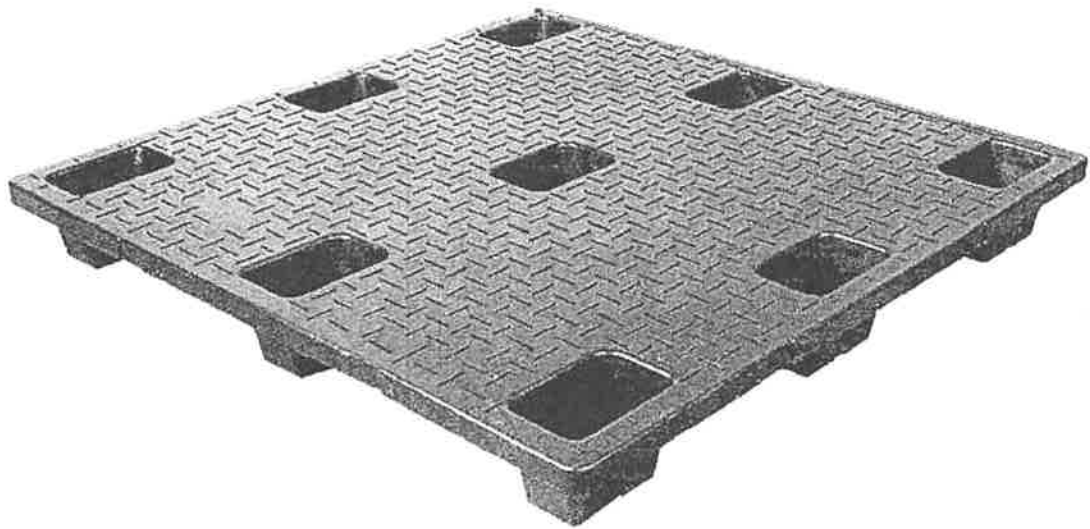
Export Pallet



Defining Plastic Pallets

- Holds up to 2,500 lbs in transit
- Saves space and lowers freight costs
- Preferred size for Australian shipments
- Smooth deck protects product from damage
- Satisfies ISPM 15 requirements

TranPak Inc.
 (800) 827 2474
www.tranpak.com



SPECIFICATIONS

ITEM	DIMENSIONS			WEIGHT	LOAD CAPACITY			# IN A STACK	MATERIAL
	Length	Width	Height		Static	Dynamic	*Edge Racking		
102804	45"	45"	5.5"	33 lbs	20,000	2,500	N/A	44	PP

*Rated load capacities are intended as a guideline only. Capacity will vary depending on product. Nominal specifications subject to change without notice. Product performance characteristics vary with application.

190296

Monobloc

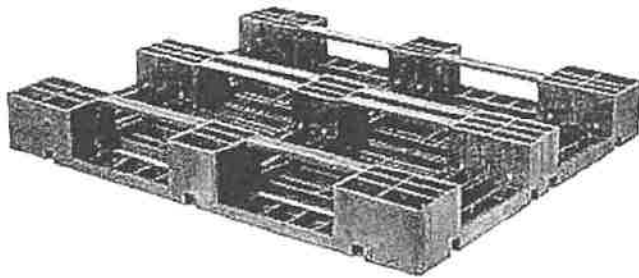
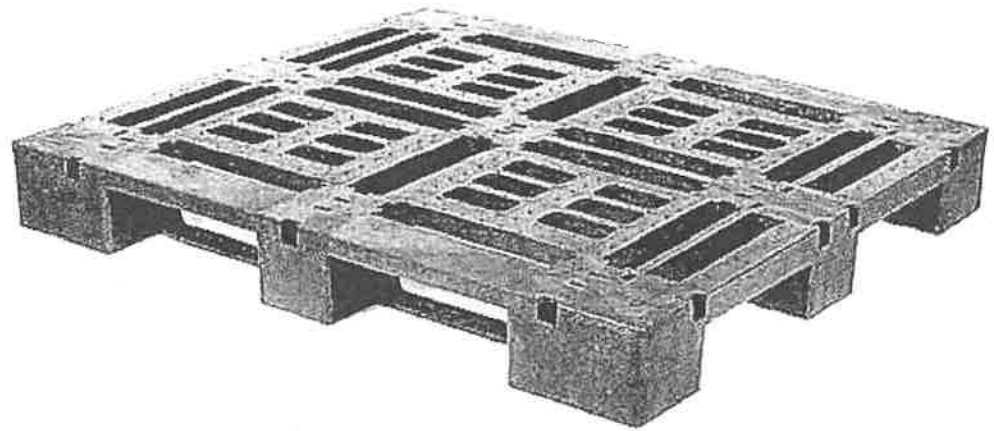
Reusable Pallet



Defining Plastic Pallets

- Economical wholesale pallet
- Single piece block design
- Available in 48x40 and 48x45 footprints

TranPak Inc.
 (800) 827 2474
www.tranpak.com



SPECIFICATIONS

ITEM	DIMENSIONS			WEIGHT	LOAD CAPACITY			# IN A STACK	MATERIAL
	Length	Width	Height		Static	Dynamic	*Edge Racking		
111206	48"	40"	6"	55 lbs	20,000	4,500	N/A	17	HDPE
111212	48"	45"	6"	58 lbs	20,000	4,500	N/A	17	HDPE

*Rated load capacities are intended as a guideline only. Capacity will vary depending on product. Nominal specifications subject to change without notice. Product performance characteristics vary with application.



RFCSP
Removal and Archival Storage of Confederate Monument
BKZ1900009779

Phoenix I Restoration and Construction, Ltd
14032 Distribution Way
Farmers Branch, Texas 75234
Office: 214.902.0111
Fax: 214.904.9635

Fee Schedule

Lump Sum: \$396,000.00

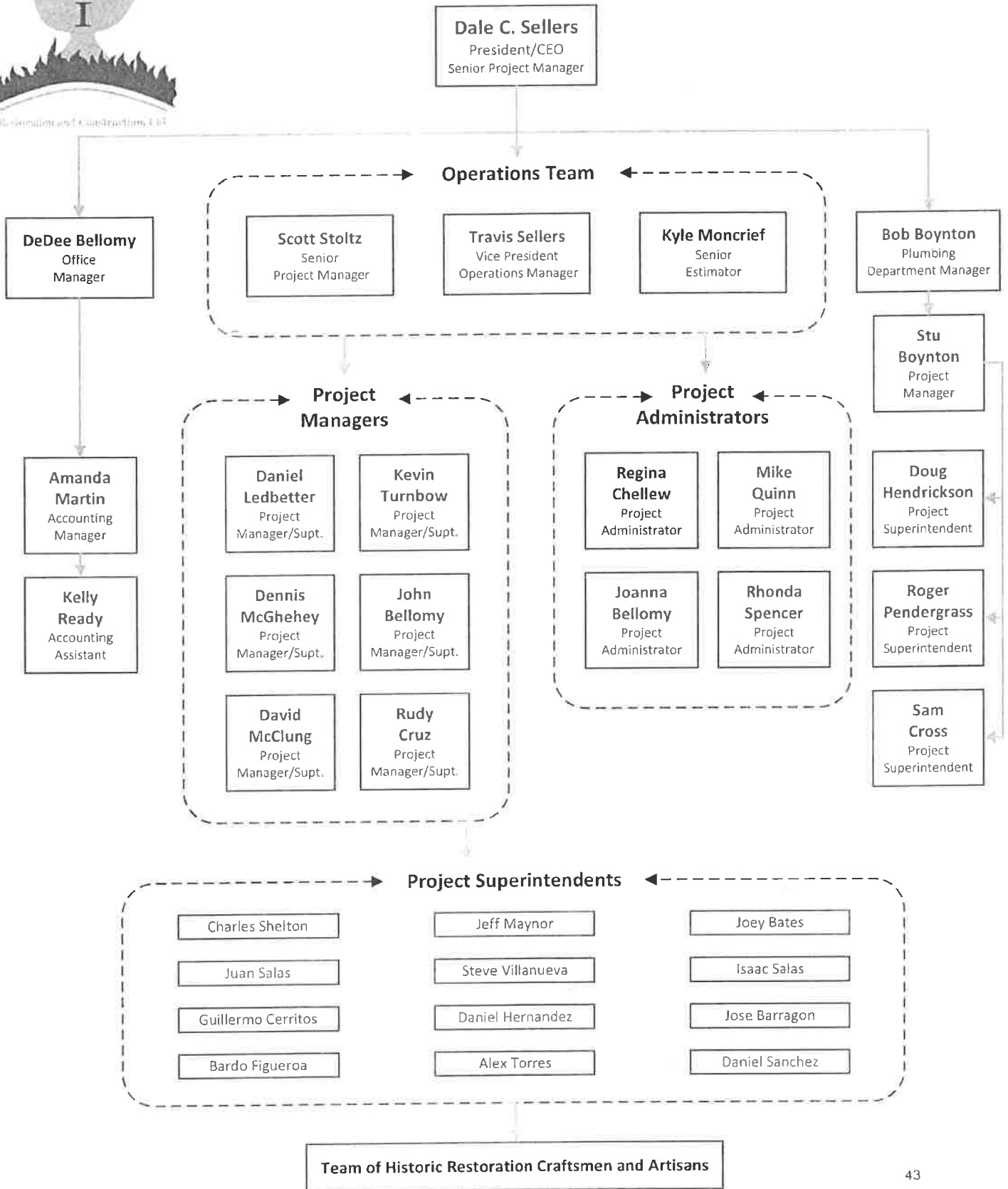
- Any additional work required by the City will be Cost + 10% Overhead & Profit

Phoenix I Restoration and Construction, Ltd.

14032 Distribution Way Farmers Branch, Texas 75234 • 214-902-0111 • 214-904-9635 (Fax)



Phoenix I Restoration & Construction, Ltd.





**Dale
C. Sellers**
B.S.M.E., E.M.B.A.

PRESIDENT/ Chief Executive Officer
Phoenix I Restoration and Construction, Ltd.

With both engineering and business degrees from prominent universities and 40 years of on-the-job experience, Dale offers the most rounded education and practical knowledge obtainable in the construction industry.

As Phoenix's C.E.O., Dale plans and directs all aspects of the company's operations, being personally involved in estimating, personnel management, and all construction projects. He coordinates on a daily basis, the company's project managers, being directly involved in scheduling, and the issuing of purchase orders, contracts, change orders, and billings.

Personally performs functions of:

- Senior Project Manager
- Chief Executive Officer
- Chief Financial Officer
- Chief Operations Officer
- Chief Estimator
- Construction Business Administrator

Of Note:

As an Engineering and Architectural Cost and Construction Consultant, Dale utilizes extensive mechanical engineering, roofing, waterproofing and historical restoration experience to provide critical input to the design team, from concept to completion.

EDUCATION & AFFILIATIONS

Executive Master of Business Administration
Southern Methodist University, Dallas, Texas
Degree conferred 1997

Bachelor of Science in Mechanical Engineering
University of Texas at Arlington
Degree conferred 1989

Strategic Account Management Seminar
Southern Methodist University, 1997

Lead Abatement Awareness Training, 1997

International Concrete Repair Institute, Member

Corporate Sponsor, Preservation Texas

RELEVANT PROJECT EXPERIENCE

- Lee Park Plinth Stone Removal and Relocation
- Texas State Capitol
- Old Main Municipal Building
- JFK Memorial
- Perot Museum-Fair Park
- Texas Discovery Gardens-Fair Park
- Texas Discovery Gardens Phase III
- Texas Discovery Gardens HVAC Modifications
- Dallas Children's Aquarium-Fair Park
- Women's Museum-Fair Park
- Dallas City News Studio-Fair Park
- Dallas Heritage Village-Fair Park
- Fair Park Concrete Repairs
- Fair Park Band Shell
- Fair Park Misc. Repairs
- Fair Park Pavers
- Motorized Sunscreens at Fair Park
- Pylon and Sculpture Base Reconstruction-Fair Park
- State Fair Big Tex Circle
- State Fair Dog Park
- State Fair Phase IV Site Development
- State Fair Observation Tower, Phase I, II
- State Fair Outdoor Arena
- Wayfinding Signage-Fair Park
- Morton H. Meyerson Symphony Center



Kyle Moncrief

Chief Estimator
Phoenix I Restoration and Construction, Ltd.

Kyle's analytical abilities to decipher and determine cost of various options and approaches to a project have proven to be invaluable in Phoenix's success. After each project is complete, a careful analysis is done of cost variances and these variances are used to benefit subsequent projects. He understands the "art" of estimating and negotiating and ensures we are competitive and providing value to the client with minimal risks.

Personally performs functions of:

- Project Estimating
- Budgetary Estimates and Analysis
- Contract Negotiations/ Value Engineering
- Establishment of Cost Codes/ Schedule of Values

Of Note: Over 400 successful estimates including:

- Women's Museum, Fair Park, Dallas, TX; Low bidder on a project involving exterior restoration
- Children's Aquarium at Fair Park
- Successfully negotiated a 10 million dollar bid down to the budget of 7.9 million dollars through value engineering.

EDUCATION

Louisiana Tech University, 2006

RELEVANT PROJECT EXPERIENCE

- Old Municipal Building
- JFK Memorial
- Perot Museum-Fair Park
- Texas Discovery Gardens-Fair Park
- Texas Discovery Gardens Phase III
- Texas Discovery Gardens HVAC modifications
- Dallas Children's Aquarium-Fair Park
- Women's Museum-Fair Park
- Dallas City News Studio-Fair Park
- Dallas Heritage Village-Fair Park
- Fair Park Concrete Repairs
- Fair Park Band Shell
- Fair Park Misc. Repairs
- Fair Park Pavers
- Motorized Sunscreens at Fair Park
- Pylon and Sculpture Base Reconstruction- Fair Park
- State Fair Big Tex Circle
- State Fair Dog Park
- State Fair Phase IV Site Development
- State Fair Observation Tower, Phase I, II
- State Fair Outdoor Arena
- Wayfinding Signage
- Texas State Capitol Exterior Preservation
- Polk County Courthouse
- Navarro County Courthouse
- Jefferson County Courthouse
- Hardeman County Courthouse
- Hopkins County Courthouse
- Brazoria County Historical Museum



Approach and Methodology:

Preliminary Planning/Disassembly Plan Phase:

The initial phase of the project will be the preliminary planning/disassembly plan phase. Phoenix I will hire JQ Engineering to perform a LIDAR scan of the monument and produce a 3D model and traditional drawings of the existing monuments and bases. Michael van Enter will also be part of the team to assist with developing a system for numbering and labeling each stone. This numbering system will be reflected on the drawings provided by JQ. A scaffolding/access plan will also be developed during this planning phase. All documentation developed during the planning phase will be submitted to the City of Dallas for approval.

Construction Phase:

Phoenix I will perform initial site setup per the attached "Proposed Site Plan". Water filled barricades will be utilized to eliminate ground penetrations and equipment mats will be placed in the lift zone to prevent ground disturbance. Scaffolding will be erected on three sides of the monument and an all-terrain forklift will be utilized on the fourth side. Dee Brown, Inc. will assist Phoenix I with the disassembly and of the monuments, and Michael van Enter will supervise ensuring that each stone is properly labeled and documented. Slaughter Services will assist Phoenix I with crating each stone in a manner that meets or exceeds AIC guidelines. Slaughter Services will also assist in transporting the crates as directed by the City of Dallas. Upon completion, Phoenix I will perform final cleaning of the site and demobilization.

Phoenix I Restoration and Construction, Ltd.

14032 Distribution Way, Farmer's Branch, TX 75234 • 214-902-0111 • 214-904-9635 (Fax)

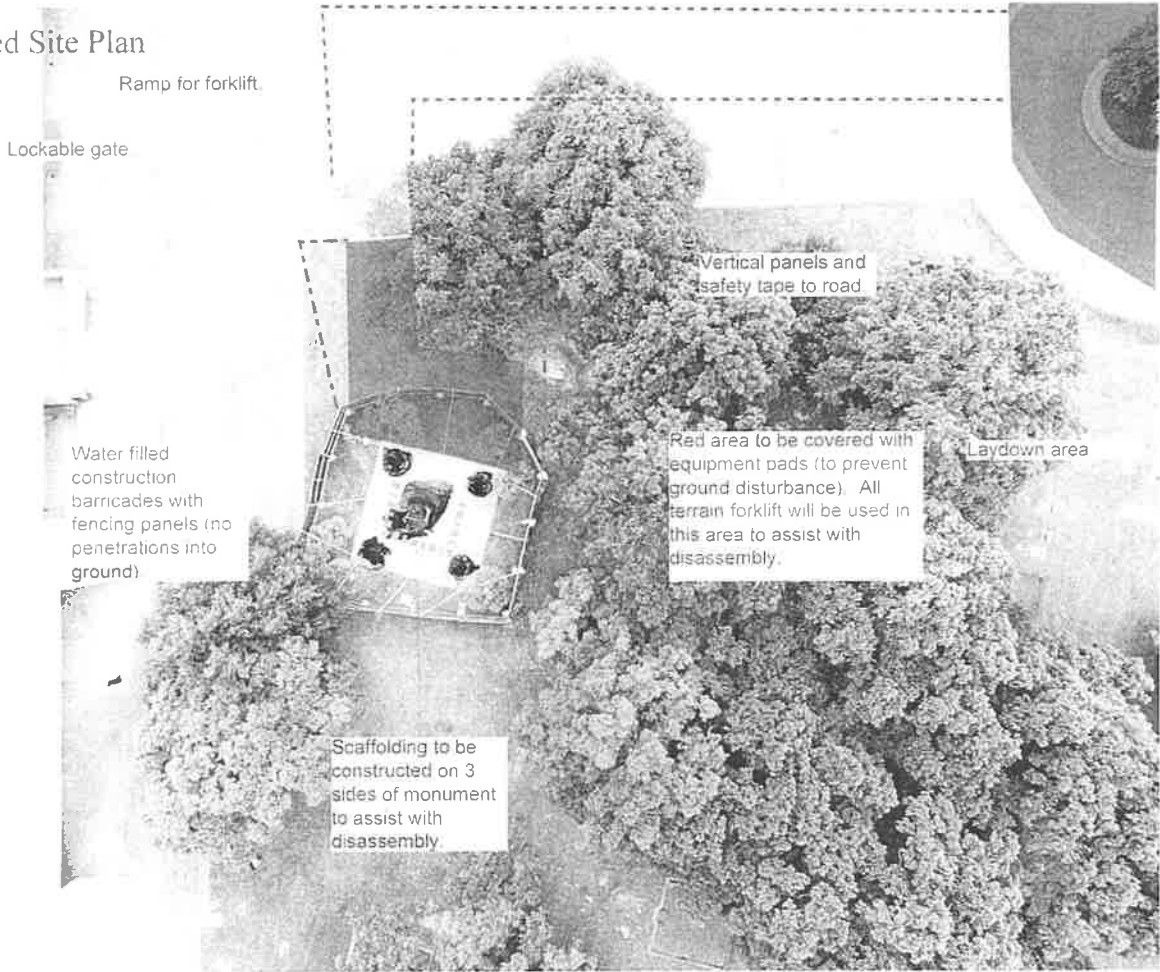
Final Report Phase:

Upon completion of the project, JQ Engineering and Michael van Enter will assist Phoenix I in preparing a final report to submit to the City of Dallas. The final report will include all developed documentation, numbering/labeling sequence, LIDAR scan/3D model, photographs during all phases of construction, and closeout documents.

Phoenix I Restoration and Construction, Ltd.

14032 Distribution Way, Farmer's Branch, TX 75234 • 214-902-0111 • 214-904-9635 (Fax)

Proposed Site Plan



Ramp for forklift.

Lockable gate.

Vertical panels and safety tape to road.

Water filled construction barricades with fencing panels (no penetrations into ground).

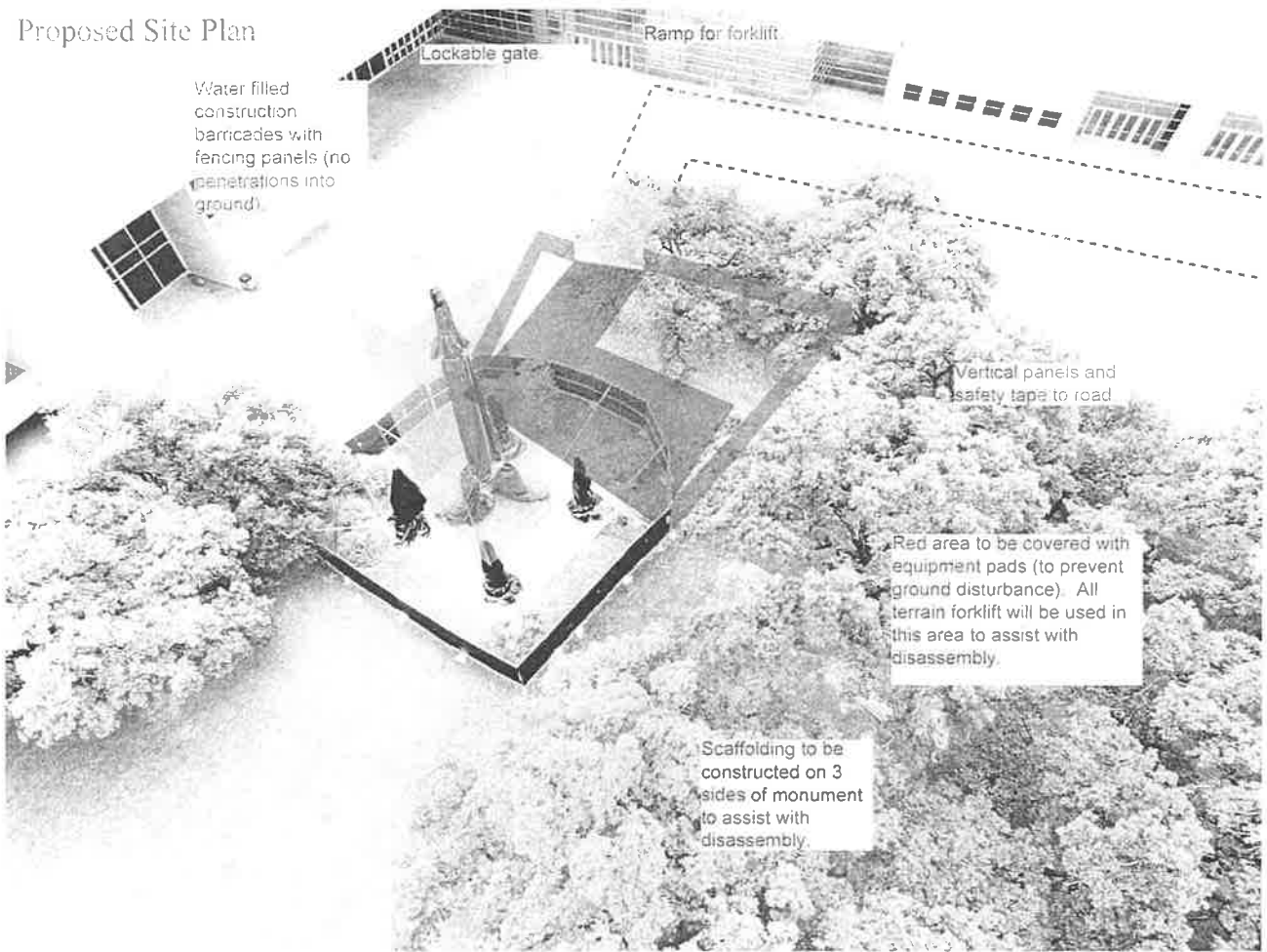
Red area to be covered with equipment pads (to prevent ground disturbance). All terrain forklift will be used in this area to assist with disassembly.

Laydown area.

Scaffolding to be constructed on 3 sides of monument to assist with disassembly.

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Proposed Site Plan



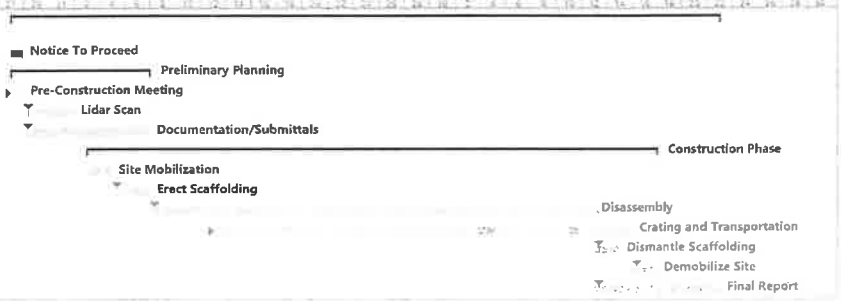
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Removal and Archival Storage of Confederate Monument

City of Dallas

Phoenix I Restoration & Construction, Ltd.

ID	Task Name	Duration	Start	Finish
1	Removal and Archival Storage of Confederate Monument	56 days	Tue 5/28/19	Mon 7/22/19
2	Notice To Proceed	1 day	Tue 5/28/19	Tue 5/28/19
3	Preliminary Planning	11 days	Tue 5/28/19	Fri 6/7/19
4	Pre-Construction Meeting	1 day	Tue 5/28/19	Tue 5/28/19
5	Lidar Scan	4 days	Wed 5/29/19	Sat 6/1/19
6	Documentation/Submittals	10 days	Wed 5/29/19	Fri 6/7/19
7	Construction Phase	45 days	Mon 6/3/19	Wed 7/17/19
8	Site Mobilization	2 days	Mon 6/3/19	Tue 6/4/19
9	Erect Scaffolding	3 days	Wed 6/5/19	Fri 6/7/19
10	Disassembly	35 days	Sat 6/8/19	Fri 7/12/19
11	Crating and Transportation	33 days	Thu 6/13/19	Mon 7/15/19
12	Dismantle Scaffolding	2 days	Sat 7/13/19	Sun 7/14/19
13	Demobilize Site	2 days	Tue 7/16/19	Wed 7/17/19
14	Final Report	10 days	Sat 7/13/19	Mon 7/22/19



190296

Insurance Requirements

SECTION A.

CONTRACTOR shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in **SECTION C** (a), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The CITY shall be named as an additional insured by endorsement to the policy and thus will be entitled to notice of cancellation of the policy in accordance with Section 1811 of the Texas Insurance Code. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY CONTRACTOR UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY.

SECTION B.

The CITY reserves the right to review the insurance requirements of this section during the effective period of the services or work performed by CONTRACTOR and to modify insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions or other relevant factors. The CONTRACTOR shall acquire and ensure execution of requests for deletions, revisions or modifications of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either CITY or CONTRACTOR).

SECTION C. REQUIRED PROVISIONS

The CONTRACTOR agrees, with respect to the required insurance as documented below, all certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a) The certificate of insurance or policy and endorsements shall be evidenced by delivery to:
 - (i) Office of Procurement Services, Attention: Doug Shelton, Project Manager, 1500 Marilla, 3F-North, Dallas, Texas 75201 and
 - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- b) All certificates of insurance shall identify the service or product being provided, by including the bid number and contract or solicitation name.
- c) All certificates of insurance shall name the City of Dallas as the Certificate Holder.

SECTION D. INSURANCE COVERAGE REQUIRED

Subject to CONTRACTOR'S right to maintain reasonable deductibles, CONTRACTOR shall obtain and maintain in full force and effect for the duration of its engagement with the CITY and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage in the following type(s) and amounts:

Insurance Requirements

1. WORKERS' COMPENSATION and EMPLOYERS' LIABILITY

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

- Bodily Injury by Accident: \$500,000 Each Accident
- Bodily Injury by Disease: \$500,000 Each Employee
- Bodily Injury by Disease: \$500,000 Policy Limit

The policy shall include:

- a) An endorsement to waive subrogation in favor of the City of Dallas, its officers, employees and elected representatives, for bodily injury (including death) or any other loss.

NOTES:

- i. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.
- ii. If CONTRACTOR is a non-subscriber or is self-insured, CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

2. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.

The policy shall include

- a) An endorsement naming the City of Dallas and its officers, employees and elected representatives as additional insureds.
- b) An endorsement to waive of subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- c) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.

NOTE:

- i. If CONTRACTOR has no owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a letter on official letterhead stating such to meet the requirement for owned autos.

Insurance Requirements

3. **COMMERCIAL GENERAL LIABILITY INSURANCE**

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate, \$2,000,000 general aggregate.

The policy shall include:

- a) An endorsement naming the City of Dallas and its officers, employees and elected representatives as additional insureds.
- b) An endorsement to waive subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- c) The policy shall include endorsement CG2503 Amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the project in question.
- d) Mobile Equipment (not excluded)
- e) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- f) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy.

SECTION E. SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION F. CONTRACTOR LIABILITY

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by CONTRACTOR or its subcontractors shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate CONTRACTOR from liability.

Insurance Requirements

SECTION G. INDEMNITY

CONTRACTOR agrees to defend, indemnify and hold the CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of its engagement with the CITY, or by any negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees, or subcontractors, in CONTRACTOR'S performance under its engagement with the CITY; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the CITY, its officers, agents or employees and in the event of joint and concurrent negligence or fault of CONTRACTOR and the CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.



City of Dallas

Agenda Information Sheet

File #: 19-288

Item #: 2.

STRATEGIC PRIORITY: Quality of Life
AGENDA DATE: February 13, 2019
COUNCIL DISTRICT(S): 2
DEPARTMENT: Mayor and City Council Office
EXECUTIVE: T.C. Broadnax

SUBJECT

A resolution declaring that *The Confederate Monument* in Pioneer Cemetery is a noncontributing structure for the historic overlay district and authorizing the City Manager to **(1)** take action necessary to secure approval from the Landmark Commission, and any related appeals, if necessary, to remove and store *The Confederate Monument*; **(2)** procure services to disassemble, remove, and transfer to storage *The Confederate Monument* with a vendor selected by the City Manager pursuant to a request for competitive sealed proposals and to enter into a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00; and **(3)** increase appropriations in an amount not to exceed \$480,000.00 in the Office of Cultural Affairs budget from General Fund Contingency Reserve - Not to exceed \$480,000.00 - Financing: Contingency Reserve Funds

BACKGROUND

On April 25, 2018, the City Council adopted a resolution directing the City Manager to take certain actions related to Confederate art and symbols. The City Council deferred any disassembly and removal of *The Confederate Monument* until the city manager reviewed other ideas to enhance and improve Pioneer Cemetery, including creating new statues or plaques or other alterations, such as recontextualizing *The Confederate Monument*.

The City Council was subsequently briefed on available options on February 6, 2019. Options included re-envisioning the monument and site, removing the monument, or taking no further action. Based on the City Council's discussion of those options, this action authorizes a resolution declaring that *The Confederate Monument* in Pioneer Cemetery is a noncontributing structure that is newer than the period of historic significance for the historic overlay district, and demolition or removal of the noncontributing structure will not adversely affect the historic character of Pioneer Cemetery or the integrity of the historic overlay district. It further authorizes the City Manager to exhaust all options to obtain the necessary approvals for disassembly, removal, and storage, to procure services to disassemble, remove, and store *The Confederate Monument*, and the use of General Fund contingency funds in an amount not to exceed \$480,000.00 for those contracted services.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On September 6, 2017, City Council authorized a resolution directing the City Manager to immediately remove and store the Alexander Phimister Proctor sculpture, Robert E. Lee and Confederate Soldier, and providing for related matters by Resolution 17-1385.

On September 22, 2017, the Mayor's Task Force on Confederate Monuments adopted recommendations related to the removal and relocation of public Confederate monuments and symbols, renaming of public places, including parks and streets, and other related matters.

The Public Art Committee of the Cultural Affairs Commission was briefed on the Task Force recommendations on October 10, 2017.

The Cultural Affairs Commission was briefed on the Task Force recommendations on October 12, 2017.

The Quality of Life, Arts and Culture Committee was briefed on the Task Force recommendations on October 23, 2017.

City Council received public comments related to the Task Force recommendations on October 25, 2017.

City Council was briefed on the Task Force recommendations on November 1, 2017.

City Council was further briefed on recommendations related to Confederate monuments on March 21, 2018.

On April 25, 2018, City Council adopted Resolution No. 18-0626 directing the City Manager to take certain actions related to Confederate art and symbols; however, City Council deferred any disassembly and removal of *The Confederate Monument* until the city manager reviewed other ideas to enhance and improve Pioneer Cemetery, including creating new statues or plaques or other alterations, such as recontextualizing *The Confederate Monument*.

City Council was briefed on recontextualization options for The Confederate Monument on February 6, 2019.

FISCAL INFORMATION

Contingency Reserve Funds - \$480,000.00

SEE ALSO

File: 19-0296

The following files contain information relating to this file and may be of interest. The information contained in these files may amend, repeal or otherwise affect the status of this file.

17-1385

17-1715

18-0415

18-0626

19-0235

CAUSE NO. DC-19-07054

CHRIS CARTER, ET AL.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
VS.	§	14TH JUDICIAL DISTRICT
	§	
CITY OF DALLAS, ET AL.,	§	
Defendants.	§	DALLAS COUNTY, TEXAS

DEFENDANTS’ SUPPLEMENT TO THEIR PLEA TO THE JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendants the City of Dallas (“City”) and the City Plan Commission (the “CPC”) (collectively “Defendants”) and file this supplement to their plea to the jurisdiction.

I. OVERVIEW

This is the fourth lawsuit attempting to block the City’s removal of City owned symbols of the Confederacy from City property. The three previous cases were dismissed for various reasons including the lack of jurisdiction.¹ Many of Plaintiffs’ contentions have been directly rejected in the prior rulings in those related cases. Any “new” claim is without merit. Plaintiffs lack standing to assert the claims alleged and there is no applicable waiver of governmental (sovereign) immunity for the asserted claims. Plaintiffs have not and cannot allege a viable or valid cause of action within any granted statutory standing or waiver of governmental immunity.

II. FACTUAL BACKGROUND

The Court may take judicial notice that the Civil War ended over 150 years ago. On June 17, 2015, a white supremacist entered a church in Charleston, South Carolina and shot and killed

¹ See *Return Lee to Lee Park v. Rawlings*, No. DC-18-05460 (14th Judicial District Court of Dallas County, Texas), *Patterson v. Rawlings*, 287 F. Supp. 3d 632 (N.D. Tex. 2018); *Johnson v. Rawlings*, No. 3:19-CV-0180-C (N.D. Tex.). Defendants request that the Court take judicial notice of the filings and proceedings in these three cases. Copies of the final judgments and orders are attached as Exhibits 26-28.

Defendants’ Supplement to Plea to the Jurisdiction

nine people. The killer had previously wrapped himself in the Confederate battle flag. On July 7, 2016, another individual using racial hatred as justification shot and killed five peace officers in Dallas, Texas. On August 12, 2017, in Charlottesville, Virginia, there was a demonstration by torch-wielding, Nazi-flag waving, and Confederate flag bearing individuals who circled around a statue of Robert E. Lee. Violence erupted that night and the following day, culminating in another hate filled individual driving a car into a crowd, killing one and injuring others.

On August 24, 2017, the Mayor of the City of Dallas created the Mayor’s Task Force on Confederate Monuments. (Ex. 1). The Task Force was to consider whether to remove symbols of the Confederacy currently on City property and whether to rename streets and other public places named for Confederate figures. (Ex. 1).

One of the Confederate symbols is a series of statues known as the Confederate Monument or Confederate Memorial located in Pioneer Cemetery Historic District, just across the street from Dallas City Hall.² The Confederate Monument was originally installed in Old City Park in 1896 and was moved to Pioneer Plaza in 1961. (Ex. 15). Because the Confederate Monument is located within a City-created historic district, any removal would first require that the City obtain a certificate of removal from the City’s Landmark Commission. (Dallas City Ordinance No. 24938, § 1.4). The governing City ordinance provides that structures in a historic overlay district may only be removed for certain specified reasons. Dallas, Tex., City Code § 51A-4.501(h). One of the permitted reasons for removal is “[t]he structure is noncontributing to the historic overlay district because it is newer than the period of historic significance.” *Id.* § 4.501(h)(B)(iv).

² The monument consists of four statues in a circle and a center obelisk with another statue on top. The four lower statues are of Jefferson Davis, Robert E. Lee, “Stonewall” Jackson, and Albert Sidney Johnston and the center statue is a Confederate soldier. (Ex. 15).

On September 6, 2017, the Dallas City Council passed a resolution concerning Confederate monuments, symbols, and names. Among other things, the resolution directed the Task Force to conduct public meetings, receive public input, and recommendations. (Exs. 2-4). The Task Force held several public meetings and formed recommendations. (Ex. 1). In addition to the Task Force, various City entities and the City Council held public meetings, received public comments, and was briefed on the recommendations. (Ex. 5-15). Plaintiffs spoke at several of these meeting. (Ex. 9, 12, 14)

On February 13, 2019, the City Council held a public meeting and passed a resolution directing the City Manager to seek “all necessary approvals for the disassembly, removal, and transfer to storage” of the Confederate Monument. The same resolution authorized and directed the City manager to procure and enter into a contract for the removal. (Ex. 16-18).

The City applied for the certificate of removal and requested that the Landmark Commission hear the matter on March 4, 2019. (Ex. 19).

On March 4, 2019, the Landmark Commission heard the application. (Ex. 19-20). Plaintiff Pieroni had previously sent an email sharing her views to the Landmark Commission. (Ex. 22). Both Plaintiffs appeared and spoke at the hearing. (Ex. 23). The Landmark Commission granted the application. (Ex. 20).

Pursuant to City Code, both Plaintiffs appealed the Landmark Commission’s decision to the CPC. (Ex. 21). A hearing was held on May 16, 2019 and the CPC affirmed the decision of the Landmark Commission. (Ex. 31). Plaintiffs filed this suit the following day.

III. PLEA TO THE JURISDICTION

A. Standards for a Plea to the Jurisdiction.

The plaintiff has the burden to allege and prove facts affirmatively demonstrating that the trial court has subject-matter jurisdiction. *See Tex. Ass'n of Business v. Tex. Air Control*, 852 S.W.2d 440, 446 (Tex. 1993). A plea to the jurisdiction contests a trial court's subject-matter jurisdiction. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999).

When a plea to the jurisdiction challenges the pleadings, the court determines whether the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *Tex. Ass'n of Bus.*, 852 S.W.2d at 446. The pleadings are construed liberally in favor of the plaintiff and look to the pleader's intent. *Id.* If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend. *County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002).

If a plea to the jurisdiction challenges the existence of jurisdictional facts, the court considers the relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000). If the challenge implicates the merits of the plaintiff's cause of action and the relevant evidence is undisputed or fails to raise a fact question regarding subject-matter jurisdiction, the trial court rules on the plea to the jurisdiction as a matter of law. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227-28 (Tex. 2004).

B. The standards for standing.

Standing is a necessary component of subject-matter jurisdiction. *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998); *Barshop v. Medina Cnty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996). Under common

Defendants' Supplement to Plea to the Jurisdiction

law, a plaintiff must demonstrate that he “possesses an interest in a conflict distinct from that of the general public, such that the defendant’s actions have caused the plaintiff some particular injury.” *Williams v. Lara*, 52 S.W.3d 171, 178-79 (Tex. 2001); *see also Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984) (standing consists of some interest peculiar to the person as an individual and not as a member of the general public). Common law standing requires that a plaintiff personally suffer a concrete and particularized, actual or imminent, and not hypothetical injury. *Heckman v. Williamson County*, 369 S.W.3d 137, 155 (Tex. 2012). The claimed injury must be fairly traceable to the defendant’s alleged conduct and plaintiff’s claimed injury will likely be redressed by the requested relief. *Id.*

The legislature may exempt litigants from the common law injury requirement, making the statute itself the proper analytical framework to determine standing. *Everett v. TK-Taito, L.L.C.*, 178 S.W.3d 844, 850 (Tex. App.—Fort Worth 2005, no pet.). For statutory standing to apply, the plaintiff must allege and show how he has been injured or wronged within the parameters of the statutory language. *Id.* at 851. For statutory standing, “the statute itself serves as the proper framework of a standing analysis” that “begins and ends with the statute itself.” *Id.*; *Marauder Corp. v. Beall*, 301 S.W.3d 817, 820 (Tex. App.—Dallas 2009, no pet.).

C. Standards for governmental immunity.

Absent waiver by the legislature, sovereign or governmental immunity generally deprives courts of subject-matter jurisdiction over suits against governmental entities or officers or employees acting within their official capacity. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 369–76 (Tex. 2009); *Miranda*, 133 S.W.3d at 224. For the waiver to be effective, a plaintiff must plead and establish a constitutional or legislative waiver with facts that make the waiver applicable. *See Gen. Servs. Comm’n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 599 (Tex. 2001); *Tex. Ass’n*

of Bus., 852 S.W.2d at 446. For there to be a waiver of governmental immunity, the plaintiff must plead a valid claim. *See Kaufman Cnty. v. Combs*, 393 S.W.3d 336, 345 (Tex. App.—Dallas 2012, pet. denied).

IV. PLAINTIFFS LACK STANDING

A. Plaintiffs lack standing to complain about any free speech deprivation.

Plaintiffs have failed to allege and cannot establish an injury in fact sufficient to establish individual or common law standing. Plaintiffs do not allege that they own any interest in the Confederate Monument. To the contrary, it is City-owned property situated on City property. (E.g. Ex. 15). Plaintiffs’ pleadings allege no connection whatsoever between Plaintiffs and the Confederate Monument. Except for vague and conclusory allegations, Plaintiffs’ pleading does not allege any type of harm, damage, or injury.

Plaintiffs assert they have standing because “this is a facial constitutional challenge to the City Resolution.” (Pls. First Am. Pet. at 3 [¶ 10]). Elsewhere they assert a First Amendment Claim based on the September 6, 2017 City Council’s resolution. (Pls. First Am. Pet. at 29-31 [¶¶ 86-88]). That resolution did not direct the removal of the Confederate Monument. (*See* Exs. 2-4). Even assuming that they complain about the resolution and other actions authorizing the removal of the Confederate Monument, Plaintiffs make no allegation as to how the removal or any other action has infringed on Plaintiffs’ First Amendment rights. They do not even allege that they have ever visited the Confederate Monument. Plaintiffs do not allege that they have been prevented or restricted from exercising their right of free speech.

To the contrary, Plaintiffs have appeared at and spoken at City Council, Landmark Commission, and CPC meetings. (Ex. 9, 12, 14, 20, 31). Ms. Pieroni has sent an email to the Landmark Commission expressing her opposition to the removal. (Ex. 22). Mr. Carter has

Defendants’ Supplement to Plea to the Jurisdiction

spoken to the media about his efforts.³ See

[https://www.dallasnews.com/opinion/commentary/2019/05/20/dallas-vows-not-remove-](https://www.dallasnews.com/opinion/commentary/2019/05/20/dallas-vows-not-remove-confederate-war-memorial-14-days-case-reaches-courtroom)

[confederate-war-memorial-14-days-case-reaches-courtroom](https://www.dallasnews.com/opinion/commentary/2019/05/20/dallas-vows-not-remove-confederate-war-memorial-14-days-case-reaches-courtroom). The City's actions regarding the Confederate Monument have not restricted or limited Plaintiffs' free speech rights in any way. Plaintiffs have not alleged any concrete and particularized or actual or imminent injury that has occurred or will occur to them because of City actions concerning Confederate symbols. As the court in *Williams v. Parker*, 843 F.3d 617, 622, 623 (5th Cir. 2016) found, "bare assertions" or "unadorned contentions" of violations of First Amendments rights are insufficient to confer standing.

In *Patterson*, a different set of plaintiffs also complained that the City's removal of Confederate symbols impacted their First Amendment rights. Judge Fitzwater, presiding, concluded they lacked standing. The holding applies with equal force to Plaintiffs' claim:

In this case, however, plaintiffs have not alleged that Patterson has been deprived of any First Amendment freedom for any period of time. Plaintiffs contend that Patterson holds the political viewpoint that "the men who fought for the Confederacy in the Civil War deserve our respect." *Id.* at 9. But they do not allege that the City has ever taken any action that would prevent Patterson from expressing this political view. They have at most alleged that Patterson shares the political viewpoint communicated to the general public by the Confederate monuments. This allegation, however, does not explain how the removal of Confederate monuments from City-owned property prevents Patterson from expressing his political viewpoint. See, e.g., *Serra v. U.S. Gen. Servs. Admin.*, 847 F.2d 1045, 1049 (2d Cir. 1988) (noting that "the Government's action in this case [(removing a sculpture from a federal plaza)] is limited to an exercise of discretion with respect to the display of its own property" and that "nothing GSA has done here encroaches in any way on Serra's or any other individual's right to communicate."). Plaintiffs have failed to cite any case in which a plaintiff's agreement with the message conveyed by someone else's speech—here, the City's—transforms that speech into the plaintiff's speech for First Amendment standing purposes. Accordingly, the court concludes that plaintiffs have failed to plausibly allege that the City's removal

³ After filing this lawsuit, Mr. Carter also appeared unannounced at a City councilmember's home in an attempt to speak about the issue.

of the Lee Statue and forthcoming removal of other Confederate monuments infringes Patterson's First Amendment free speech rights.

Patterson, 287 F. Supp. 3d at 641-42. Also see *McMahon v. Fenves*, 323 F.Supp.3d 874, 879-881 (W.D. Tex. 2018) (holding removal of an inanimate object conveying shared ideological interest insufficient for standing); *Brewer v. Nirenberg*, No. SA:17-CV-837-DAE (W.D. Tex. Sept. 17, 2018) (attached as Ex. 25 at 8-10) (plaintiffs suffered no injury in fact from removal of Confederate symbols). Like the plaintiffs in those cases, Plaintiffs have not suffered any injury or harm and, therefore, lack standing.

Additionally, Plaintiffs do not plead how their alleged injuries are different or distinct from the general public. In another lawsuit involving the removal of Confederate monuments from government property, the Sixth Court of Appeals of Texas held that the plaintiffs in that suit did not plead or prove a particularized injury distinct from the general public sufficient to confer standing under Texas law. See *Bray v. Fenves*, No. 06-15-00075-CV, 2016 WL 3083539, *5-8 (Tex. App.—Texarkana Mar. 24, 2016, pet. denied); see also *Moore v. Bryant*, 853 F.3d 245, 249-51 (5th Cir. 2017) (holding plaintiff lacked standing to complain about the presence of the Confederate battle flag as part of the state flag of Mississippi); *Callan v. Fischer*, No.3:16-CV-734-TBR, 2017 WL 4273106, *4 (W.D. Ky. Sept. 26, 2017) (holding plaintiff's complaint about removal of a Confederate monument was no more than a generalized grievance and failed to confer standing); *Gardner v. Mutz*, 360 F. Supp. 3d 1269, 1276 (M.D. Fla. 2019) (same). Plaintiffs have not alleged and cannot establish any injury distinct from the general public and, therefore, lack standing to complain about the removal of any Confederate symbol.

Finally, no First Amendment rights of anyone are implicated. The Supreme Court has held that "the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause."
Defendants' Supplement to Plea to the Jurisdiction

Pleasant Grove City v. Summum, 555 U.S. 460, 464 (2009). The Court reasoned that “[w]hen a government entity arranges for the construction of a monument, it does so because it wishes to convey some thought or instill some feeling in those who see the structure.” *Id.* at 470. Indeed, “[g]overnments have long used monuments to speak to the public.” *Id.* Further, a government entity “is entitled to say what it wishes” and “select the views that it wants to express.” *Id.* at 467-468. “Therefore, the removal of the [M]onument [] is a form of government speech and is exempt from First Amendment scrutiny.” *Monumental Task Comm., Inc. v. Foxx*, 157 F. Supp. 3d 573, 994 (E.D. La. 2016), *aff’d*, 678 F. App’x 250 (5th Cir. 2017).

Whether a city installs or removes a monument, it is exercising its government speech. The Defendants’ actions are not limiting the First Amendment rights of Plaintiffs or anyone else. *See Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015) (symbols on license plates were government speech and state was entitled to refuse and could not be forced to include Confederate battle flag on its license plates); *Gardner*, 360 F. Supp. 3d at 1276 (planned removal of Confederate monument was government speech and First Amendment claim was dismissed because plaintiff lacked a legally protected interest in that speech); *United Veterans Memorial and Patriots Ass’n of City of New Rochelle v. City of New Rochelle*, 72 F. Supp. 3d 468 (S.D. N.Y. 2014) (city decision to remove Gadsden flag from city flagpole was government speech and did not implicate the First Amendment); *Dawson v. City of Grand Haven*, No. 329154, 2016 WL 7611556 (Mich. Ct. App. Dec. 29, 2016) (per curiam) (city decision to prohibit previously allowed display of cross on city monument was government speech and removal did not implicate the First Amendment).

Under both a facial and factual challenge, Plaintiffs lack standing based on any claimed right of free speech.

Defendants’ Supplement to Plea to the Jurisdiction

B. Plaintiffs lack standing to complain about any purported violation of the Texas Antiquities Code.

Plaintiffs assert the removal of the Confederate Monument will violate the Texas Antiquities Code. Initially, Plaintiffs do not allege and cannot establish a particular injury, an injury distinct from that of the general public, or a concrete and particularized, actual or imminent, and not hypothetical injury. *Williams*, 52 S.W.3d at 178-79; *Heckman*, 369 S.W.3d at 155. They cannot establish constitutional or common law standing for a purported violation of the Texas Antiquities Code.

The Texas Antiquities Code provides that a Texas citizen may seek injunctive relief to enjoin threatened violations of the Antiquities Code. Tex. Nat. Res. Code, § 191.173(a). However, Plaintiffs have not alleged and cannot establish any violation within the parameters of the statutory grant of standing in Section 191.173(a) of the Texas Natural Resources Code. As Plaintiffs' pleadings acknowledge, the Court has already heard and rejected an identical claim brought in another case by the same counsel. (*See* Pl.'s Pet. at 18 (note 5)). In *Return Lee to Lee Park*, the plaintiffs also alleged that any removal of the Confederate Monument without a permit from the Texas Historical Commission would violate the Antiquities Code. The Court concluded Plaintiffs lacked standing as well as granting summary judgment against the claim. The assertion is equally without merit in this case.

Plaintiffs repeat that the Confederate Monument is protected as a State Archeological Landmark. (Pl.'s Org. Pet. at 18-19, 32, 39). However, to qualify as a State Archeological Landmark, two steps are required. First, the site, object, or building must be listed on the National Register of Historic Places. *Id.* § 191.092(g); *see also* Tex. Atty Gen. Op. JM-958 (Sept. 28, 1988) (“Before the committee may designate a structure or building as a state historical landmark, it must be listed on the National Register of Historic Places.”). Second, the Texas Historical Commission (formerly named the Texas Antiquities Committee) must designate the site, object, or building as

Defendants' Supplement to Plea to the Jurisdiction

a State Archeological Landmark. *Tex. Antiquities Comm. v. Dallas Comm’n Coll. Dist.*, 554 S.W. 2d 924, 926 (Tex. 1977) (no permit needed for buildings not designated as a State Archeological Landmark); *Bd. of Regents v. Walker Cnty. Historical Comm’n*, 608 S.W.2d 252, 253 (Tex. Civ. App.—Houston [14th Dist.] 1980, no writ).⁴

Plaintiffs do not allege and cannot establish that the Confederate Monument is listed on the National Register of Historic Places and has been designated as a State Archeological Landmark by the Texas Historical Commission. (*See* Ex. 29). There can be no plausible or valid claim of a violation of the Texas Natural Resources Code. As a matter of law, no possible claim is possible within the parameters of the statutory standing. Therefore, Plaintiffs lack standing. *Also see Bacon*, 411 S.W.3d at 178-182 (concluding plaintiff lacked standing to complain about the historical accuracy of a historical marker).⁵ Plaintiffs have not alleged and cannot establish a violation within the parameters of the statutory grant of standing in Section 191.173(a) of the Texas Natural Resources Code.

C. Plaintiffs lack standing to assert a claim under Tex. Gov’t Code § 2166.5011.

Plaintiffs assert that removal of the Confederate Monument will violate Section 2166.5011 of the Texas Government Code. (Pl.’s Pet. at 20). As with their other claims, Plaintiffs do not allege and cannot establish a particular injury, an injury distinct from that of the general public, or

⁴ *See also* Tex. Atty Gen. Op. MW-378 at 3 (Oct. 22, 1981) (“the Antiquities Committee has no jurisdiction over buildings which it has not designated as state archeological landmarks”); Tex. Atty Gen. Op. JM-104, at 1 (Dec. 29, 1983) (stating the Commission’s jurisdiction is limited to “properties designated as state archaeological landmarks”).

⁵ In their pleadings, Plaintiffs reference Texas Attorney General Opinion H-620. (Pl.’s Pet, at 4, 19). Just like the plaintiffs in *Return Lee to Lee Park*, Plaintiffs fail to note that H-620 was overruled by the supreme court in *Texas Antiquities Commission v. Dallas Community College District*, 554 S.W. 2d at 927-31. The Texas Attorney General regards H-620 as overruled. (Ex. 14).

a concrete and particularized, actual or imminent, and not hypothetical injury. *Williams*, 52 S.W.3d at 178-79; *Heckman*, 369 S.W.3d at 155. They cannot establish constitutional or common law standing.

Additionally, nothing in the statute grants statutory standing to others to seek enforcement of the statute. However, even if such a grant existed, Plaintiffs would lack standing because the grant would not apply to matters outside the reach of the statute. The statute defines a protected monument or memorial as an object “located on state property.” Tex. Gov’t Code § 2166.5011(a, b). The Confederate Monument is located on City property, not State property. Any contention that Section 2166.5011 applies to the Confederate Monument is frivolous.

D. Plaintiffs lack standing to complain about a claimed violation of the Texas Open Meetings Act.

Plaintiffs assert vague and conclusory claims that the City and the Landmark Commission violated the Texas Open Meetings Act (“TOMA”). (*See* Pls. Pet. at 1, 12, 21, 31-32). While TOMA does provide a limited grant of statutory standing, Plaintiffs do not allege a violation of TOMA but rather assert purported violations of the City’s and the Landmark Commission’s rules of procedure. Plaintiffs have not alleged and cannot establish that they were wronged or injured within the parameters of TOMA’s statutory grant of standing.

“An interested person” may seek by mandamus or injunctive relief “to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.” Tex. Gov’t Code § 551.142. TOMA provides that “a governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the government body.” Tex. Gov’t Code § 551.041. Generally, a notice is to be posted at least seventy-two hours before the scheduled time of the meeting. Tex. Gov’t Code § 551.043. If the facts of the content of a notice are undisputed, the adequacy of the notice is a question of law. *Friends of Canyon Lake, Inc. v.*

Guadalupe–Blanco River Auth., 96 S.W.3d 519, 529 (Tex. App.—Austin 2002, pet. denied). A
Defendants’ Supplement to Plea to the Jurisdiction

notice is adequate as long as it is sufficiently descriptive to alert a reader that a particular subject will be addressed. *Id.* at 531.

Plaintiffs do not complain that the notices given for the hearings before the Landmark Commission, the CPC, or the City Council were not adequate or timely or otherwise failed to comply with TOMA's requirements. The evidence establishes compliance. (Exs. 15, 19, 21). Instead of complaining about a TOMA violation, Plaintiffs complain that the City's application for the certificate of removal was incomplete and that the hearing before the Landmark Commission was scheduled contrary to the instructions given to the public on the City's website. (Pls. Pet. at 8-11, 31). Plaintiffs do not complain about a violation of TOMA and no statutory standing is granted to complain about the Landmark Commission's claimed failure to follow its rules.

Additionally, the Dallas court of appeals has concluded that a person who attended an open meeting and had the opportunity to participate in a meeting that was improperly noticed lacks standing to complain about a TOMA violation. *Dallas Indep. Sch. Dist. v. Peters*, No. 05-14-00759-CV, 2015 WL 8732420, *9-10 (Tex. App.—Dallas Dec. 14, 2016, no pet.). Both Plaintiffs attended and spoke at the Landmark Commission hearing and the CPC hearing.⁶ (Exs. 20, 31). Under *Peters*, the Open Meetings Act does not confer standing on either Plaintiff.

In the section concerning TOMA, Plaintiffs make conclusory references to ultra vires claims. (Pl.'s Pet. at 32). It is unclear if Plaintiffs are attempting to assert an ultra vires claim but if they are, it is without merit. Ultra vires claims cannot be asserted against the City or the CPC. *Heinrich*, 284 S.W.3d at 372-73, 380. Standing is still required to assert an ultra vires claim. *See Tex. Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, 905-906 (Tex. App.—Austin 2009, no pet.)

⁶ A representative for plaintiff Pieroni spoke on her behalf at the CPC hearing.

(declining to reach the validity of an ultra vires claim because plaintiffs lacked standing). Plaintiffs have not alleged any basis by which they have standing to assert ultra vires claims.

E. Plaintiffs lack standing to appeal the CPC’s decision.

Plaintiffs seek to appeal the CPC’s decision affirming the Landmark’s Commission’s decision to grant an application for removal. (Pl.’s Pet. at 17, 25-29). However, Plaintiffs do not allege and cannot establish a particular injury, an injury distinct from that of the general public, or a concrete and particularized, actual or imminent, and not hypothetical injury. *Williams*, 52 S.W.3d at 178-79; *Heckman*, 369 S.W.3d at 155. They cannot establish constitutional or common law standing to complain about the CPC’s decision.

Plaintiffs attempt to rely on a City Code provision that states an appeal of a CPC decision is to the state district court under a substantial evidence rule review. Dallas, Tex. City Code 51A-4.501(p). (Pl.’s Pet. at 17, 25). The City of Dallas does not have the authority to grant or deny standing. That authority rests with the courts and the Texas legislature. There is no statutory grant of standing. Plaintiffs lack standing to seek review of a decision that has not caused them an injury in fact.

F. Plaintiffs lack standing to assert an anti-SLAPP claim.

Plaintiffs assert that the City and the Landmark Commission somehow violated the Texas Citizen Participation Act (“TCPA”) found in Chapter 27 of the Texas Civil Practice and Remedies Code. (Pl.’s Pet. at 22-25, 33-34). Not only do Plaintiffs misstate and misapply the TCPA, they have failed to allege any standing by which they could assert a TCPA motion. Their contention is frivolous.

The TCPA provides that “[i]f a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.” Tex. Civ. Prac. & Rem. Code § 27.003(a). A legal action is defined as “a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any

Defendants’ Supplement to Plea to the Jurisdiction

other judicial pleading or filing that requests legal or equitable relief.” *Id.* at § 27.001(6). While Plaintiffs reference “anti-SLAPP”, they ignore that the acronym stands for anti-Strategic *Lawsuits Against Public Participation*. There is no lawsuit except the one filed by Plaintiffs; therefore, it is unclear what “legal action” Plaintiffs seek to dismiss. Defendants have not filed “a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing.” Neither the Landmark Commission hearing nor the CPC hearing constitute “legal actions” within the meaning of the TCPA. In addition, the City’s and the CPC’s conduct do not constitute “legal actions.” Further, Plaintiffs do not allege that any conduct by the City or the Landmark Commission was in response to Plaintiffs’ exercise of their right to free speech, to associate, or to petition. The City’s and Landmark Commission’s conduct was to seek and grant a certificate of removal of City-owned property from a City park through a City-created process before a City-created board. Plaintiffs were not “a party” to any of those matters and the City’s and Landmark Commission’s conduct had nothing to do with Plaintiffs. To the extent that the TCPA creates statutory standing to file a motion to dismiss, Plaintiffs do not fit within the statute’s grant of standing.

G. Plaintiffs cannot establish taxpayer standing.

Plaintiff Pieroni makes the conclusory alleges that she is a property taxpaying resident of the City of Dallas and has standing as a taxpayer because of the events described in the original petition will result in the expenditure of taxpayer dollars without proper authority. (Pl.’s Pet. at 2, 3). To establish taxpayer standing, Plaintiff Pieroni must show that (1) she is a taxpayer, and (2) public funds are to be expended on allegedly illegal activity. *Williams v. Huff*, 52 S.W.3d 171, 179 (Tex. 2001). The proposed expenditure must be illegal, not “merely ‘unwise or indiscreet.’” *Id.* at 180 (quoting *Osborne v. Keith*, 177 S.W.2d 198, 200 (Tex. 1944)). Citizens do not ordinarily have

a right to bring suit challenging governmental decision-making because “[g]overnments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official's public acts under judicial review.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000) (citing *Osborne*, 177 S.W.2d at 200). Thus, to establish that a decision was illegal, the party attacking the order must present a ‘very clear showing of abuse of discretion.’” *City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex. 2006) (quoting *City of San Angelo v. Boehme Bakery* 190 S.W.2d 67, 71 (1945)) (reviewing board of adjustment decision). The appealing party must establish that the council or commission could have reasonably reached only one decision. *Id.*

Initially, there is nothing illegal about the City removing City-owned property from City parks. The Supreme Court has held that “the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause.” *Summum*, 555 U.S. at 464, 470 (2009). A government entity “is entitled to say what it wishes” and “select the views that it wants to express.” *Id.* at 467-468. *Also see Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015); *Monumental Task Comm., Inc.*, 157 F. Supp. 3d at 994; *Gardner* 360 F. Supp. 3d at 1276. A plausible claim of free speech infringement is not alleged and cannot be established. Any claimed illegality does not exist and, therefore, taxpayer standing does not plausibly exist.

Any claim that the proposed removal is illegal under the Texas Antiquities Code or Section 2166.5011 of the Texas Government Code is not plausible since the Confederate Monument is not a State Archeological Landmark or on State property. Any claimed illegality does not exist and, therefore, taxpayer standing does not plausibly exist.

Any claim that the proposed removal violated TOMA is not plausible since proper and timely notice of all hearings was given and TOMA has no application to the City's or the Landmark Commission's purported rules of procedure. Any claimed illegality does not exist and, therefore, taxpayer standing does not plausibly exist.

Any claim that the removal violates the anti-SLAPP statute is not plausible since the TCPA is not applicable.

Any claim that the removal violates the Landmark Commission's rules does not constitute illegality. The Landmark Commission is charged with discretion in deciding the adequacy of applications, setting its own agenda, and deciding the matters pending before it. Exercising that discretion does not render any decision illegal.

Finally, there will be no funding with taxpayer funds. After the statue of Robert E. Lee was removed, it was placed for sale by auction. The winning bid amount was in excess of \$1.4 million. (Ex. 30). This amount exceeds the costs incurred in moving the Lee statue and procured costs for moving the Confederate Monument. (Ex. 30). In *Patterson*, Judge Fitzwater rejected taxpayer standing holding that the plaintiff there had failed to allege that tax money would be spent and that the City would not obtain full reimbursement. *Patterson*, at 287 F. Supp. 3d at 642-43. The City has obtained full reimbursement. Plaintiff Pieroni lacks taxpayer standing for any claim.

H. Plaintiffs lack standing to assert a Declaratory Judgment claim.

The Uniform Declaratory Judgments Act “merely serves as a procedural device for the determination of controversies already within the powers of the court, and it does not confer new substantive rights upon the parties nor does it confer any additional subject-matter jurisdiction on a court. *El Paso Cnty. Hosp. Dist. v. Gilbert*, 64 S.W.3d 200, 203 (Tex. App.—El Paso 2001, pet. denied). Nearly twenty years ago, the Dallas court of appeals observed:

The declaratory judgment act does not, however, establish jurisdiction, but is merely a procedural device for deciding cases already within a court's jurisdiction. *See Chenault v.*

Defendants' Supplement to Plea to the Jurisdiction

Phillips, 914 S.W.2d 140, 141 (Tex. 1996); *State v. Morales*, 869 S.W.2d 941, 947 (Tex. 1994). Thus, the declaratory judgment act is not a statute which confers standing on appellees.

City of Dallas v. Robinson, No. 05-98-02113-CV, 1999 WL 460065, *3 (Tex. App.—Dallas July 8, 1999, pet. denied). Since Plaintiffs lack standing under all their other theories, they likewise lack standing to seek a declaratory judgment.

V. GOVERNMENTAL IMMUNITY HAS NOT BEEN WAIVED FOR PLAINTIFFS' CLAIMS

A. Free speech claim.

Plaintiffs assert a claim under 42 U.S.C. § 1983 for claimed violation of their First Amendment rights. (Pl.'s Pet. at 29). Generally, Congress, through a Section 1983 claim, has created a means of seeking relief for claimed violations of the Constitution. *Hearth, Inc. v. Dep't of Pub. Welfare*, 617 F.2d 381, 382 (5th Cir. 1980); also see *Burns–Toole v. Byrne*, 11 F.3d 1270, 1273 n.3 (5th Cir. 1994) (“[T]he proper vehicle for [First and Fourteenth Amendment] allegations is § 1983.”).

To establish liability against a municipality under 42 U.S.C. § 1983, a plaintiff must establish three elements: “a policymaker; an official policy; and a violation of constitutional rights whose ‘moving force’ is the policy or custom.” *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). It is the plaintiff's burden to identify the policy, connect it to the city, and demonstrate that injury occurred because of the policy. *Graham v. Dallas Area Rapid Transit*, 288 F. Supp. 3d 711, 725 (N.D. Tex. 2017). The plaintiff is further required to establish that the moving force behind the alleged constitutional deprivations was the city's deliberate conduct. *Id.* The description of a policy or custom and its relationship to the underlying constitutional violation cannot be conclusory; it must contain specific facts. *Spiller v. City of Texas City Police Dep't*, 130 F.3d 162, 167 (5th Cir. 1997).

Defendants' Supplement to Plea to the Jurisdiction

Although municipal governments do not have immunity under Section 1983, a plaintiff must still allege viable claims under Section 1983 in order to fall within the limited waiver of the municipality's governmental immunity. *See City of Dallas v. Saucedo-Falls*, 268 S.W.3d 653, 657-58 (Tex. App.—Dallas 2008, pet. denied); *Rocha v. Potter County*, 419 S.W.3d 371, 376 (Tex. App.—Amarillo 2010, no pet.). Plaintiffs, here, have wholly failed to plead any of the elements of a valid Section 1983 claim. Also, as discussed above, they cannot establish the underlying First Amendment violations for their Section 1983 claims, and therefore, they have not sufficiently pled and cannot establish any claim that falls within the limited waiver of the City's governmental immunity for claims under Section 1983 in order to invoke this Court's jurisdiction.

B. Texas Antiquities Code claim.

As explained above, to the extent the Texas Antiquities Code creates a waiver of governmental immunity, it is limited to alleged violations of the Texas Antiquities Code. Since the Confederate Monument has not been designated a State Archeological Landmark, its removal is not governed the Texas Antiquities Code. No possible violation is alleged or can be established within the limited waiver of governmental immunity. Governmental immunity bars any claim of a violation of the Texas Antiquities Act.

C. Section 2166.5011 claim.

Section 2166.5011 has no terms suggesting a waiver of governmental immunity. Tex. Gov't Code § 2166.5011. Even if there were, no possible violation could be alleged or established since the Confederate Monument is not located on State property. Governmental immunity bars any claim of a violation of Section 2166.5011.

D. Texas Open Meetings Act claim.

In *City of Friendswood v. Horn*, 489 S.W.3d 515 (Tex. App.—Houston [1st Dist.] 2016, no pet.), the plaintiffs claimed an open meeting violation against the City of Friendswood and its mayor. The court of appeals held that the undisputed evidence established that there was compliance with TOMA and, therefore, concluded there was no subject-matter jurisdiction for the claim against the mayor or city. *Id.* at 529. The same is true here. As a matter of law, the City's notice complied with TOMA and the claim provides no basis for jurisdiction.

Furthermore, Plaintiffs have not alleged and there is no waiver of governmental immunity for a claim regarding purported City's or CPC's rules of procedure. Neither TOMA nor the Uniform Declaratory Judgment Act provide a waiver of governmental immunity to complain about whether a city council or the CPC properly complied with its own rules of procedure. In the absence of a waiver of governmental immunity, the Court lacks jurisdiction. *See Heinrich*, 284 S.W.3d at 369–76.

As noted above, in the TOMA section of their pleading, Plaintiffs make conclusory and unclear references to ultra vires claims. (Pl.'s Pet. at 32). Ultra vires is a limited exception to governmental immunity and allows certain claims against government officials in their official capacities. *Heinrich*, 284 S.W.3d at 369–76. But ultra vires claims provide no exception to or waiver of governmental immunity against the governmental entities. *Id.* at 372-73, 380. Ultra vires claims are not available against governmental entities. *Id.* Finally, a valid ultra vires claim exists only if the governmental official acted without legal authority or failed to perform a purely ministerial act. *Id.* at 373-74. Plaintiffs have failed to assert a claim against an official or that any official violated a ministerial duty.

Plaintiffs have not alleged any basis by which governmental immunity has been waived for their claims. Governmental immunity applies and the Court lacks jurisdiction.

E. Appeal of the Landmark Commission’s or CPC’s decisions claim.

Plaintiffs do not allege and no statutory waiver of governmental immunity exists waiving governmental immunity for Plaintiffs’ appeal of the Landmark Commission’s or the CPC’s decision. Governmental immunity applies and the Court lacks jurisdiction.

F. Anti-SLAPP claim.

The TCPA does not provide a waiver of governmental or sovereign immunity. *State ex rel. Best v. Harper*, 562 S.W.3d 1, 16-17 (Tex. 2018). In that case, the Texas Supreme Court did conclude “that sovereign immunity does not protect the state from a counterclaim for attorney’s fees under the TCPA.” *Id.* at 19. Defendants did not initiate a lawsuit and Plaintiffs do not bring a counterclaim. There is no waiver for Plaintiffs’ claims.

Further, any waiver under *Best v. Harper* is limited to the term of the TCPA. As discussed above, no “legal action” is involved; Plaintiffs are not “parties”; and the City’s, the Landmark Commission’s, and the CPC’s conduct were not related or in response to Plaintiffs’ exercise of the right of free speech, right to petition, or right of association. Plaintiffs have not pled and cannot establish any claim that falls within any limitation of the City’s governmental immunity for anti-SLAPP motions. Governmental immunity applies and the Court lacks jurisdiction.

G. Declaratory Judgment Act claim.

The Texas Uniform Declaratory Judgment Act provides a limited waiver of governmental immunity to challenge the validity of an ordinance or a statute. *Heinrich*, 284 S.W.3d at 377. Plaintiffs do not seek to challenge the validity of an ordinance or statute. Governmental immunity applies and the Court lacks jurisdiction.

Defendants’ Supplement to Plea to the Jurisdiction

VI. THE POLITICAL QUESTION/SEPARATION OF POWERS DEPRIVES THE COURT OF JURISDICTION.

The political question doctrine implicates jurisdiction and forecloses as nonjusticiable actions which would improperly require judicial review of decisions exclusively within the purview of the political branches of government. *American K-9 Detection Servs., LLC v. Freeman*, 556 S.W. 3d 246, 252-532 (Tex. 2018). Whether a particular case raises a political question is to be determined by considering various factors. *Id.* at 252, n. 18. The issue of what statues and monuments are to be installed on or removed from a local government's parks is a political question.

First, actions such as removing or retaining statues of Confederate figures is government speech. *See Sumnum*, 555 U.S. at 464; *Monumental Task Comm. 'n, Inc.*, 157 F. Supp. 3d at 594. The issue is committed to state and local legislatures and executives and not to the courts.

Second, there is no manageable judicial standard for resolving what statues or monuments should be placed or remain on City property. The issue is a nonjudicial, policy determination. Courts do not decree whose name should be on a building or whose statue should be placed in the city square. In the specific context of Confederate related symbols, a court cannot balance the opposing claims for retention or removal.

Third, any court resolution of the issue would disrespect and disregard the local executive or legislative branch's decision whether to install or remove particular statues and monuments from government-owned property. There is a vigorous political debate as to state and local governments' use or display of Confederate names, symbols, or figures. The courts should adhere to the decisions of the elected officials.

Finally, there is the very real potential of differing decisions by state and local governments on the continued governments' use or display of Confederate names, symbols, or figures. The decisions will be made by state and local governments weighing the various political factors.

A consideration of the various applicable factors establishes that only a political question is presented and the case should be dismissed. *See Bacon*, 411 S.W.3d at 183 (concluding that historical accuracy of a historical marker was not within the judiciary's jurisdiction).

CONCLUSION AND PRAYER

WHEREFORE, Defendants request that the Court sustain Defendants' plea to jurisdiction in whole, or alternatively in part, that Plaintiffs' case and claims be dismissed with prejudice, and, subject to and without waiving their immunity from suit, recover their costs, including attorney fees, and for such other and further relief, general or special, at law or in equity, as to which the Defendants may be entitled.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS
Christopher J. Caso
Interim Dallas City Attorney

By Charles S. Estee
Charles S. Estee
Senior Assistant City Attorney
State Bar of Texas No. 06673600
Email: charles.estee@dallascityhall.com

Stacy Jordan Rodriguez
Executive Assistant City Attorney
State Bar of Texas No. 11016750
Email: stacy.rodriguez@dallascityhall.com

Justin H. Roy
Assistant City Attorney
State Bar of Texas No. 24013428
Email: justin.roy@dallascityhall.com

7BN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
Telephone – 214/670-3519
Telecopier – 214/670-0622

CERTIFICATE OF SERVICE

I certify that opposing counsel was served with a true and correct copy of the foregoing document via e-service through and electronic filing service provider on this 6th day of June 2019.

s/ Charles S. Estee
Charles S. Estee

SUPPORTING EVIDENCE

- Exhibit 1 Mayor's Task Force on Confederate Monuments Report, September 29, 2017
- Exhibit 2 Excerpt of September 6, 2017 City Council agenda notice and item
- Exhibit 3 Excerpt of City Council minutes for September 6, 2017 meeting
- Exhibit 4 September 6, 2017 City Council resolution
- Exhibit 5 Oct. 10, 2017 agenda notice for Public Art Committee of the Cultural Affairs Commission
- Exhibit 6 Oct. 12, 2017 agenda notice for Cultural Affairs Commission
- Exhibit 7 Excerpt of 10-23-17 briefing re Task Force recommendations to City Council committee
- Exhibit 8 Excerpt of October 25, 2017 City Council agenda notice and item
- Exhibit 9 Excerpt of City Council minutes for October 25, 2017 meeting
- Exhibit 10 Excerpt of Nov. 1, 2017 City Council agenda notice and item
- Exhibit 11 Excerpt of March 21, 2018 City Council agenda notice and item
- Exhibit 12 Excerpt of City Council minutes for March 21, 2018 meeting
- Exhibit 13 Excerpt of April 25, 2018 City Council agenda notice and item
- Exhibit 14 Excerpt of City Council minutes for April 25, 2018 meeting
- Exhibit 15 Excerpt of February 6, 2019 City Council agenda notice and item
- Exhibit 16 Excerpt of February 13, 2019 City Council agenda notice and item
- Exhibit 17 Excerpt of City Council minutes for February 13, 2019 meeting
- Exhibit 18 February 13, 2019 resolution
- Exhibit 19 Excerpt of March 4, 2019 Landmark Commission agenda notice and item
- Exhibit 20 Excerpt of Landmark Commission minutes for March 4, 2019 meeting
- Exhibit 21 Excerpt of May 16, 2019 City Plan Commission agenda notice and item

Defendants' Supplement to Plea to the Jurisdiction

- Exhibit 22 Feb. 24, 2019 email from Ms. Pieroni to Landmark Commission
- Exhibit 23 Excerpt of transcript of Landmark Commission March 4, 2019 meeting
- Exhibit 24 Excerpt of Attorney General of Texas website re status of Attorney General opinions
- Exhibit 25 Order from *Brewer v. Nirenberg*, No. SA:17-CV-837-DAE (W.D. Tex. Sept. 17, 2018)
- Exhibit 26 Final judgment and order from *Return Lee to Lee Park v. Rawlings*, No. DC-18-05460 (14th Judicial District Court of Dallas County, Texas)
- Exhibit 27 *Patterson v. Rawlings*, 287 F. Supp. 3d 632 (N.D. Tex. 2018)
- Exhibit 28 Final judgment and order from *Johnson v. Rawlings*, No. 3:19-CV-0180-C (N.D. Tex.).
- Exhibit 29 Affidavit by Greg Smith
- Exhibit 30 Affidavit of John Ingram
- Exhibit 31 Authenticating Affidavit⁷

⁷ Defendants request that the Court also take judicial notice of Exhibits 1-28.

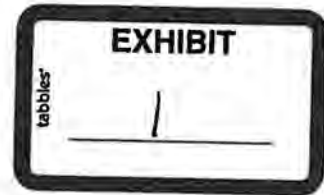
Memorandum



CITY OF DALLAS

DATE September 29, 2017

Honorable Mayor and Members of the City Council
TO Members of the Cultural Affairs Commission
Members of the Park and Recreation Board
Members of the Public Art Committee of the Cultural Affairs Commission



SUBJECT Recommendations of the Mayor's Task Force on Confederate Monuments

On August 24, 2017, Mayor Michael S. Rawlings appointed a task force charged with providing recommendations related to the removal and relocation of public Confederate monuments and symbols, and renaming of public places, including parks and streets. The task force received further instructions related to this charge from the City Council through Council Resolution No. 17-1385, approved on September 6, 2017. Specifically, the Task Force was instructed to provide recommendations to the City Council:

1. regarding the costs associated with removal and relocation of public Confederate monuments and symbols and with the renaming of public places, including parks, and streets along with available options for private funding;
2. regarding the process of disposal or relocation of Confederate monuments and symbols if deemed necessary;
3. suggesting additional standards for the naming of public places, including parks, and streets going forward if deemed necessary;
4. suggesting replacements for Confederate monuments and symbols recommended for removal to promote a more welcoming and inclusive Dallas if deemed necessary; and
5. suggesting replacement names for public places, including parks, and streets that also promote a more welcoming and inclusive Dallas if deemed necessary.

The Task Force held five public meetings between August 31, 2017 and September 22, 2017. City staff provided briefings on City processes related to public art, historic preservation and landmarks, park and street naming. Additional briefings were provided on the historical context of Confederate monuments, symbols and names, as well as a presentation by author Joyce King on the historical context of Dallas in the 1890s and 1930s. All briefing materials, handouts and other information presented to the Task Force were immediately published online at DallasCulture.org/ConfederateMonuments. Additionally, public comments were heard at two meetings of the Task Force, and written comments were received throughout the process and entered into the record of the Task

DATE September 29, 2017
 SUBJECT Recommendations of the Mayor's Task Force on Confederate Monuments

Force's proceedings. A total of 160 public comments were recorded on this matter. The public's position on this issue is summarized below.

Residency	Manner Received	In Favor of removal	Opposed to removal	General Information	TOTAL
Dallas	In Person	6	21	5	32
Dallas	Written	14	49	6	69
Total Dallas		20	70	11	101
Outside Dallas	In Person	0	2	0	2
Outside Dallas	Written	1	51	5	57
Total Outside Dallas		1	53	5	59
GRAND TOTAL		21	123	16	160

Following briefings and discussions of each of these matters, the Task Force adopted the following recommendations and submits them to the City Council and other boards, commissions and City departments, as each recommendation may appertain.

Confederate Monuments

1. The Task Force recommends that the City of Dallas seek to place the statue of Robert E. Lee designed by Alexander Phimister Proctor, which was recently removed from Oak Lawn Park (formerly Robert E. Lee Park), and the base of said statue, designed by Mark Lemmon and currently remaining in Oak Lawn Park, as well as the Confederate Monument designed by Frank Teich currently located within Pioneer Cemetery, on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that they may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

Fair Park

2. Recognizing that Fair Park is a local, state, and national landmark, the Task Force recommends that the historic art and architecture of Fair Park which contains symbols of, or references to, the Confederate States of America or persons associated therewith, remain in place as a piece of the history of Texas as presented at Fair Park. However, the Task Force recommends that appropriate

DATE September 29, 2017

SUBJECT Recommendations of the Mayor's Task Force on Confederate Monuments

signage, markers, digital tour guides, public art, educational programming, and/or exhibitions be added as necessary to provide the full context of the Civil War, Reconstruction, "Lost Cause" mythology, the "Jim Crow" era, and the creation of Fair Park for the 1936 Texas Centennial. Historical context should include reference to the many contributions of Mexicans, Tejanos and indigenous peoples made during the colonization of Texas, the Texas Revolution, and during and after the Mexican War leading to the 20th Century, to also include the participation or exclusion of various communities in those historic events.

3. The Task Force further recommends that the City of Dallas Park and Recreation Department and Landmark Commission work with the Dallas Historical Society concerning the foregoing, as well as with the African American Museum and the Public Art Committee in adding a substantive commemoration of the Hall of Negro Life, which was built for the 1936 Texas Centennial, recognition of the "Jim Crow" era and South Dallas bombings, and that the City of Dallas should allocate funding and seek additional private and grant funding for the accomplishment of this work.
4. The Task Force further recommends that attempts be made by the City to return to Dallas, or recreate, the murals which previously occupied the Hall of Negro Life at Fair Park.

Park Names

5. The Task Force recommends removal of the Robert E. Lee Park name. (The Park Board subsequently approved the name change to Oak Lawn Park on September 22, 2017.)
6. The Task Force recommends removal of the Confederate Cemetery name and requests the Park Board rename it in a proper context.
7. The Task Force recommends that a citywide engagement process be initiated to consider renaming City parks with placeholder names for historical abolitionists, the formerly enslaved, civil and human rights leaders, people from marginalized and underrepresented communities, and victims of police brutality.

Street Names

8. The Task Force recommends that streets named after a Confederate leader and/or general, who made a significant contribution to the Confederacy, specifically Gano, Lee and Cabell, be changed.

DATE September 29, 2017
SUBJECT Recommendations of the Mayor's Task Force on Confederate Monuments

9. The Task Force further recommends that the street names Stonewall and Beauregard be changed.
10. The Task Force further recommends that the renaming of these streets be accomplished on a priority basis within 90 days and the comment process be expanded to include the voices of people throughout the city whose ideas and testimony shall be given equal weight with those of adjacent property owners.

Other Recommendations

11. The Task Force recommends that this process be directed and led by paid local and regional artists, architects, preservationists, and historians.
12. The Task Force recommends that the City erect a marker at Akard and Main streets memorializing the lynching of Allen Brooks.
13. The Task Force recommends that the City of Dallas create a racial equity policy after public acknowledgement and apology for the policies and practices of the City that have furthered institutional racism and segregation.

Much thought and deliberation went into each recommendation submitted. All briefing materials, handouts, and other information presented to the Task Force, as well as video recordings will remain published online for public review at DallasCulture.org/ConfederateMonuments.

On behalf of the Task Force, I thank you for the opportunity to serve and represent the residents of Dallas on this important matter. Sincere gratitude is also expressed to the dedicated staff from each City department who participated in this process.



Frances Cudjoe Waters, J.D., Chair
Mayor's Task Force on Confederate Monuments

c: Members of the Mayor's Task Force on Confederate Monuments
T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Billerae Johnson, City Secretary (Interim)
Daniel F. Solis, Administrative Judge
Kimberly Bizar Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager

Jo M. (Jody) Puckett, P.E., Assistant City Manager (Interim)
Jon Fortune, Assistant City Manager
Joey Zapata, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Nadia Chandler Hardy, Chief of Community Services
Raquel Favela, Chief of Economic Development & Neighborhood Services
Theresa O'Donnell, Chief of Resilience
Directors and Assistant Directors

RECEIVED

2017 SEP -1 PM 9:11

CITY SECRETARY
DALLAS, TEXAS



COUNCIL BRIEFING AGENDA

September 6, 2017
Date



(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

AGENDA
CITY COUNCIL BRIEFING MEETING
WEDNESDAY, SEPTEMBER 6, 2017
CITY HALL
1500 MARILLA STREET
DALLAS, TEXAS 75201
9:00 A.M.

- 9:00 am Invocation and Pledge of Allegiance 6ES
- Special Presentations
- Open Microphone Speakers

VOTING AGENDA 6ES

1. Approval of Minutes of the August 16, 2017 City Council Meeting
2. Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

ITEMS FOR INDIVIDUAL CONSIDERATION

Mayor and City Council

3. A resolution **(1)** acknowledging that public Confederate monuments and the names of public places, including parks and streets, named for Confederate figures do not promote a welcoming and inclusive city; **(2)** supporting the Mayor's Task Force on Confederate Monuments, which is made up of a diverse group of city leaders who will provide various recommendations to the city council; **(3)** providing timelines for the Mayor's Task Force and the Cultural Affairs Commission, as well as requiring that the Task Force hold at least two public meetings to receive public input; **(4)** providing for the city council to take further action as needed, including authorizing the renaming of certain public places, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law; **(5)** directing the city manager to immediately remove and store the Alexander Phimster Proctor monument (of Robert E. Lee); **(6)** authorizing the city manager to transfer funds or appropriate funds from excess revenue, as necessary, to remove all public Confederate monuments; and **(7)** acknowledging that, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda - Financing: Current Funds

KEY FOCUS AREA: E-Gov
AGENDA DATE: September 6, 2017
COUNCIL DISTRICT(S): 1, 2, 6, 9, 14
DEPARTMENT: Mayor and City Council
CMO: T.C. Broadnax, 670-3297
MAPSCO: N/A

SUBJECT

A resolution **(1)** acknowledging that public Confederate monuments and the names of public places, including parks and streets, named for Confederate figures do not promote a welcoming and inclusive city; **(2)** supporting the Mayor's Task Force on Confederate Monuments, which is made up of a diverse group of city leaders who will provide various recommendations to the city council; **(3)** providing timelines for the Mayor's Task Force and the Cultural Affairs Commission, as well as requiring that the Task Force hold at least two public meetings to receive public input; **(4)** providing for the city council to take further action as needed, including authorizing the renaming of certain public places, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law; **(5)** directing the city manager to immediately remove and store the Alexander Phimster Proctor monument (of Robert E. Lee); **(6)** authorizing the city manager to transfer funds or appropriate funds from excess revenue, as necessary, to remove all public Confederate monuments; and **(7)** acknowledging that, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda - Financing: Current Funds

BACKGROUND

Following unrest across the country over the presence of Confederate Monuments in city centers, Councilmembers are requesting consideration and action on recommendations of policies and procedures for the removal of confederal monuments and symbols such as:

- Costs associated with the removal and relocation of the monuments and symbols, and with the renaming of public places;
- Process for disposal or relocation;

BACKGROUND (continued)

- Suggesting additional standards for the naming of public places going forward; and
- Replacement for the Confederate monuments and names for public places.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

This item has no prior action.

FISCAL INFORMATION

Current Funds

September 6, 2017

WHEREAS, the enslavement of the then Africans was one of the causes of the Civil War, which divided our country over 150 years ago;

WHEREAS, the Confederacy lost its war against the United States and the “negro” slave was then freed from slavery, transferring names from “negro” to “colored”;

WHEREAS, “colored” individuals continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era;

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, those now referred to as “blacks” were still denied equality by a society that discriminated against them even when hard-won laws call for equal treatment;

WHEREAS, through the progression of history, those African descendants who were formerly known as “negro” slaves, then “coloreds,” and then “blacks” are now referred to as African Americans;

WHEREAS, in spite of every obstacle placed in their path, the African-American community has always persisted and has in the most fundamental way prevailed;

WHEREAS, now, we are faced with the decision of keeping, removing, or replacing public monuments, images, and symbols, as well as names of public places, including parks, and streets that are continuous reminders of the Civil War;

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates continue to be glaring symbols of our country’s division, and create racial barriers in our city;

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures distort the violent and oppressive history of the Confederacy and preserve the principles of white supremacy;

WHEREAS, for many years, leaders of diverse backgrounds have consistently called for the removal of Confederate monuments and symbols from public property;

WHEREAS, the city of Dallas strives to be a welcoming and inclusive city for all its residents and visitors, regardless of their cultural or ethnic backgrounds; and

WHEREAS, it is time for a robust public discussion of the history of the Confederate monuments and commemorations, and the city of Dallas’ policy regarding the standards for public commemoration of persons, places, and historical events.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the display of public Confederate monuments and the names of public places, including parks, and streets named for Confederate figures do not promote a welcoming and inclusive city and, thus, are against the public policy of the city of Dallas.

SECTION 2. That, to accomplish the removal of these public Confederate monuments and symbols and the renaming of public places, including parks, and streets, the city council supports the Mayor's Task Force on Confederate Monuments ("Task Force"), which is made up of a diverse group of city leaders who will provide recommendations to the city council:

- a. regarding the costs associated with removal and relocation of public Confederate monuments and symbols and with the renaming of public places, including parks, and streets; and
- b. regarding the process of disposal or relocation of Confederate monuments and symbols; and
- c. suggesting additional standards for the naming of public places, including parks, and streets going forward; and
- d. suggesting replacements for Confederate monuments and symbols recommended for removal to promote a more welcoming and inclusive Dallas; and
- e. suggesting replacement names for public places, including parks, and streets that also promote a more welcoming and inclusive Dallas.

SECTION 3. That the Task Force shall convene at least two public meetings to receive public input and shall work with, and make recommendations to, the Cultural Affairs Commission by October 12, 2017.

SECTION 4. That the Cultural Affairs Commission shall make a final presentation to city council on November 1, 2017, reporting its findings and making its recommendations.

SECTION 5. That the city council shall take any further action, as needed, including authorizing the renaming of certain public places, including parks, and streets, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law.

SECTION 6. That the city manager shall immediately remove the Alexander Phimster Proctor monument (of Robert E. Lee) at Lee Park and store it at a safe location until the conclusion of the recommendations of the Task Force as this monument is not a designated city landmark.

SECTION 7. That the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove all public Confederate monuments.

SECTION 8. That, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda.

SECTION 9. That this resolution shall take effect on September 6, 2017, and it is accordingly so resolved.

MINUTES OF THE DALLAS CITY COUNCIL
WEDNESDAY, SEPTEMBER 6, 2017

17-1380

CITY COUNCIL BRIEFING
CITY COUNCIL CHAMBER, CITY HALL
CITY HALL, ROOM 6ES
MAYOR MICHAEL RAWLINGS, PRESIDING

PRESENT: [15] Rawlings, Caraway, Medrano (*9:30 a.m.), Griggs, Thomas (*9:12 a.m.), Callahan, Narvaez, Felder (*9:14 a.m.), Atkins, Clayton (*9:12 a.m.), McGough, Kleinman, Greyson (*9:18 a.m.), Gates, Kingston

ABSENT: [0]

The meeting was called to order at 9:06 a.m. with a quorum of the city council present.

The invocation was given by Pastor Brad Weir, Senior Pastor, City Church International.

Councilmember Kleinman led the pledge of allegiance.

The meeting recessed at 12:07 p.m. and convened to closed session at 1:40 p.m. which ended at 2:37 p.m. The meeting reconvened to open session at 2:40 p.m. (Caraway [*2:46 p.m.], Medrano [*2:41 p.m.], Thomas [*2:41 p.m.], McGough [*2:41 p.m.]), Kingston [*2:41 p.m.]

The meeting agenda, posted in accordance with Chapter 551, "OPEN MEETINGS," of the Texas Government Code, was presented.

After all business properly brought before the city council had been considered, the city council adjourned at 5:08 p.m.

Mayor

ATTEST:

Interim City Secretary

Date Approved

The annotated agenda is attached to the minutes of this meeting as EXHIBIT A.

The actions taken on each matter considered by the city council are attached to the minutes of this meeting as EXHIBIT B.

Ordinances, resolutions, reports and other records pertaining to matters considered by the city council, are filed with the City Secretary as official public records and comprise EXHIBIT C to the minutes of this meeting.

* Indicates arrival time after meeting called to order/reconvened



OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

SEPTEMBER 6, 2017

17-1385

Item 3: A resolution **(1)** acknowledging that public Confederate monuments and the names of public places, including parks and streets, named for Confederate figures do not promote a welcoming and inclusive city; **(2)** supporting the Mayor's Task Force on Confederate Monuments, which is made up of a diverse group of city leaders who will provide various recommendations to the city council; **(3)** providing timelines for the Mayor's Task Force and the Cultural Affairs Commission, as well as requiring that the Task Force hold at least two public meetings to receive public input; **(4)** providing for the city council to take further action as needed, including authorizing the renaming of certain public places, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law; **(5)** directing the city manager to immediately remove and store the Alexander Phimster Proctor monument (of Robert E. Lee); **(6)** authorizing the city manager to transfer funds or appropriate funds from excess revenue, as necessary, to remove all public Confederate monuments; and **(7)** acknowledging that, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda - Financing: Current Funds

Prior to the item being read into the record, Councilmember Callahan moved to defer the item to the November 15, 2017 voting agenda meeting of the city council and further moved to call a referendum on the issue to allow the voters (the people) to decide the outcome of whether to keep the statues in place or not.

Mayor Rawlings stated the motion was out of order due to the item not being read into the record.

At Councilmember Callahan's request, the city attorney clarified because the item had not been read into the record, the motion was out of order.

Prior to further discussion and as a result of Councilmember Kingston's procedural inquiry on how the item was placed on the briefing agenda, Mayor Rawlings stated the item is consistent with past agenda items of emergencies, construction contracts, architectural contracts and supplemental agreements.

The following individuals addressed the city council regarding the item:

Linda Abramson Evans, 5822 Clendenin Ave., representing Thanksgiving Square Inter-Faith Council

Will Hartnett, 4722 Walnut Hill Ln.

Michael Waters, 3203 Holmes St., representing North Texans for Historical Justice

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

17-1385

Page 2

John Fullinwider, 1851 Fuller Dr., representing Mothers Against Police Brutality
Jo Trizilla, 6818 South Point Dr., representing Mayor's Task Force on Confederate
Monuments
Barvo Walker, 1010 E. Clarendon Dr., representing Mayor's Task Force on Confederate
Monuments
Sam L. Hocker, 6154 Yorkshire Dr.
Sam Ratcliffe, 6915 Dalhart Ln.
Allen West, 9925 Wood Forest Dr.
Larry Waldrop, 17312 Village Ln.
Arnold Mozisek, 3708 Brown St.
Buddy Apple, 729 N. Winnetka Ave., representing Preservation Dallas
John Clay, 511 N. Akard St.
Linda Parsel, 3401 Lee Pkwy.
Eddie Morgan, 2426 Hondo Ave.
Joseph Hill, 6036 Birchbrook Dr.
Diane Ragsdale, 3611 Dunbar St.
Kirby White, 8650 Southwestern Blvd.
Bryce Weigand, 3733 Normandy Ave., Highland Park, representing Mayor's Task Force
on Confederate Monuments
Gerald Britt, 1610 S. Malcolm X Blvd., representing North Texans For Historical
Justice/CitySquare
Dick Zinnendorf, Private
Kristian Craige, 2122 Kidwell St., representing Mystic Media Foundation
Dominique Alexander, 2512 E. Overton Rd., representing Next Generation Action
Network
Baker Hughes, 2533 Cheyenne Ln., Crowley, TX
Beth Biesel, 3608 Southwestern Blvd., University Park, TX
Carole Haynes, 44 Indian Trl., Hickory Creek, TX
Robin Dillard, 329 Murray Farm Dr., Fairview, TX, representing Texas Freedom Force
John W. Lee, 3131 Turtle Creek Blvd.
Alia Salem, 301 Las Colinas Blvd., Irving, TX
Pete Rainone, 605 Westview Terrace, Arlington, TX, representing Rainone Galleries
Jacqueline Espinal, 1200 Main St.
Mark Enoch, 1805 Faulkner Dr., Rowlett, TX
Jeff Hood, 2723 Northcrest Rd., Denton, TX
Katherine McGovern, 4364 Royal Ridge Dr.
Noelle Brisson, 3611 Cole Ave.
Frank Elam, 927 Elliott Dr., Cedar Hill, TX
Mary Hogan, 6139 N. Jim Miller Rd.

The interim city secretary read the item into the record.

Mayor Pro Tem Caraway moved to adopt the item with the following changes:

- Section 1 is amended to read as follows: That the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community;

- Section 2 is amended to read as follows: That the city council supports the Mayor’s Task Force on Confederate Monuments (“Task Force”), which is made up of a diverse group of city leaders who will provide recommendations to the city council:
 - Section 2(a) is amended to add the following at the end of the sentence: “along with available options for private funding;”
 - Section 2(b) through 2(e) is amended to add the following at the end of each sentence: “if deemed necessary;”
- Section 7 is amended to read as follows: That the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove the Alexander Phimster Proctor monument of Robert E. Lee at Lee Park. The city manager will take all appropriate actions to seek private funding to reimburse the expenses associated with this action.

Motion seconded by Councilmember Atkins.

At Mayor Pro Tem Caraway’s request the interim city secretary read the amended resolution into the record; there was no objection voiced to the request.

WHEREAS, the enslavement of the then Africans was one of the causes of the Civil War, which divided our country over 150 years ago;

WHEREAS, the Confederacy lost its war against the United States and the “negro” slave was then freed from slavery, transferring names from “negro” to “colored”;

WHEREAS, “colored” individuals continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era;

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, those now referred to as “blacks” were still denied equality by a society that discriminated against them even when hard-won laws call for equal treatment;

WHEREAS, through the progression of history, those African descendants who were formerly known as “negro” slaves, then “coloreds,” and then “blacks” are now referred to as African Americans;

WHEREAS, in spite of every obstacle placed in their path, the African-American community has always persisted and has in the most fundamental way prevailed;

WHEREAS, now, we are faced with the decision of keeping, removing, or replacing public monuments, images, and symbols, as well as names of public places, including parks, and streets that may be continuous reminders of the Civil War;

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates may continue to be symbols of our country's division, and may create racial barriers in our city;

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures may distort the violent and oppressive history of the Confederacy and may preserve the principles of white supremacy;

WHEREAS, for many years, leaders of diverse backgrounds have consistently called for the removal of Confederate monuments and symbols from public property;

WHEREAS, the city of Dallas strives to be a welcoming and inclusive city for all its residents and visitors, regardless of their cultural or ethnic backgrounds; and

WHEREAS, it is time for a robust public discussion of the history of the Confederate monuments and commemorations, and the city of Dallas' policy regarding the standards for public commemoration of persons, places, and historical events.

Now, Therefore, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

Section 1. That the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the city of Dallas.

Section 2. That the city council supports the Mayor's Task Force on Confederate Monuments ("Task Force"), which is a made up of a diverse group of city leaders who will provide recommendations to the city council:

- a. regarding the costs associated with removal and relocation of public Confederate monuments and symbols and with the renaming of public places, including parks, and streets along with available options for private funding;
- b. regarding the process of disposal or relocation of Confederate monuments and symbols if deemed necessary;

- c. suggesting additional standards for the naming of public places, including parks, and streets going forward if deemed necessary;
- d. suggesting replacements for Confederate monuments and symbols recommended for removal to promote a more welcoming and inclusive Dallas if deemed necessary; and
- e. suggesting replacement names for public places, including parks, and streets that also promote a more welcoming and inclusive Dallas if deemed necessary.

Section 3. That the Task Force shall convene at least two public meetings to receive public input and shall work with, and make recommendations to, the Cultural Affairs Commission by October 12, 2017.

Section 4. That the Cultural Affairs Commission shall make a final presentation to city council on November 1, 2017, reporting its findings and making its recommendations.

Section 5. That the city council may take any further action, as needed, including authorizing the renaming of certain public places, including parks, and streets, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law.

Section 6. That the city manager shall immediately remove the Alexander Phimster Proctor monument (of Robert E. Lee) at Lee Park and store it at a safe location until the conclusion of the recommendations of the Task Force as this monument is not a designated city landmark.

Section 7. That the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove the Alexander Phimster Proctor monument (of Robert E. Lee) at Lee Park. The city manager will take all appropriate actions to seek private funding to reimburse the expenses associated with this action.

Section 8. That, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda.

Section 9. That this resolution shall take effect on September 6, 2017, and it is accordingly so resolved.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

17-1385

Page 6

Mayor Pro Tem Caraway requested a record vote on the item.

Councilmember Callahan moved a substitute motion to defer the item to the November 15, 2017 voting agenda meeting of the city council and further moved to call a referendum on the issue to allow the voters (the people) to decide the outcome of whether to keep the statues in place or not.

Motion seconded by Councilmember Greyson.

After discussion, Mayor Rawlings called a record vote on Councilmember Callahan's substitute motion to defer the item to the November 15, 2017 voting agenda meeting of the city council and also to call a referendum on the issue to allow the voters (the people) to decide the outcome of whether to keep the statues in place or not:

Voting Yes: [3] Medrano, Callahan, Greyson

Voting No: [12] Rawlings, Caraway, Griggs, Thomas,
Narvaez, *Felder, Atkins, Clayton,
McGough, Kleinman, Gates, Kingston

The interim city secretary declared the substitute motion failed.

*During discussion, Councilmember Felder stated his previous vote was in error and requested for the record to reflect his vote on Councilmember Callahan's substitute motion as "No."

After discussion, Mayor Rawlings called a record vote on Mayor Pro Tem Caraway's amended motion:

Voting Yes: [13] Rawlings, Caraway, Medrano, Griggs,
Thomas, Narvaez, Felder, Atkins, Clayton,
McGough, Kleinman, Gates, Kingston

Voting No: [1] Greyson

Absent when vote taken: [1] Callahan

The interim city secretary declared the amended item adopted.



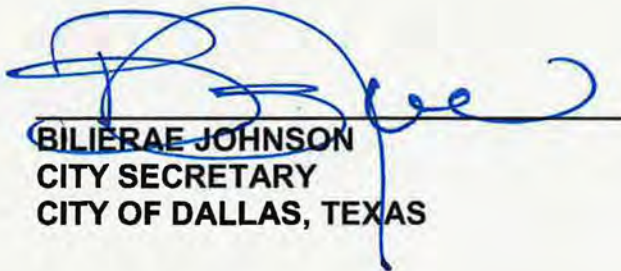
STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

RESOLUTION NO. 17-1385

which was passed by the Dallas City Council on **September 6, 2017**.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the 15th day of **August, 2018**.


BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ



September 6, 2017

WHEREAS, the enslavement of the then Africans was one of the causes of the Civil War, which divided our country over 150 years ago;

WHEREAS, the Confederacy lost its war against the United States and the "negro" slave was then freed from slavery, transferring names from "negro" to "colored";

WHEREAS, "colored" individuals continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era;

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, those now referred to as "blacks" were still denied equality by a society that discriminated against them even when hard-won laws call for equal treatment;

WHEREAS, through the progression of history, those African descendants who were formerly known as "negro" slaves, then "coloreds," and then "blacks" are now referred to as African Americans;

WHEREAS, in spite of every obstacle placed in their path, the African-American community has always persisted and has in the most fundamental way prevailed;

WHEREAS, now, we are faced with the decision of keeping, removing, or replacing public monuments, images, and symbols, as well as names of public places, including parks, and streets that may be continuous reminders of the Civil War;

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates may continue to be symbols of our country's division, and may create racial barriers in our city;

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures may distort the violent and oppressive history of the Confederacy and may preserve the principles of white supremacy;

WHEREAS, for many years, leaders of diverse backgrounds have consistently called for the removal of Confederate monuments and symbols from public property;

WHEREAS, the city of Dallas strives to be a welcoming and inclusive city for all its residents and visitors, regardless of their cultural or ethnic backgrounds; and

WHEREAS, it is time for a robust public discussion of the history of the Confederate monuments and commemorations, and the city of Dallas' policy regarding the standards for public commemoration of persons, places, and historical events.

Now, Therefore, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

Section 1. ~~That the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community~~ ~~That the display of public Confederate monuments and the names of public places, including parks, and streets named for Confederate figures do not promote a welcoming and inclusive city and, thus, are against the public policy of the city of Dallas.~~

Section 2. ~~That, to accomplish the removal of these public Confederate monuments and symbols and the renaming of public places, including parks, and streets, the city council supports the Mayor's Task Force on Confederate Monuments ("Task Force"), which is a made up of a diverse group of city leaders who will provide recommendations to the city council:~~

a. regarding the costs associated with removal and relocation of public Confederate monuments and symbols and with the renaming of public places, including parks, and streets along with available options for private funding;

b. regarding the process of disposal or relocation of Confederate monuments and symbols if deemed necessary;

c. suggesting additional standards for the naming of public places, including parks, and streets going forward if deemed necessary;

d. suggesting replacements for Confederate monuments and symbols recommended for removal to promote a more welcoming and inclusive Dallas if deemed necessary; and

e. suggesting replacement names for public places, including parks, and streets that also promote a more welcoming and inclusive Dallas if deemed necessary.

Section 3. That the Task Force shall convene at least two public meetings to receive public input and shall work with, and make recommendations to, the Cultural Affairs Commission by October 12, 2017.

Section 4. That the Cultural Affairs Commission shall make a final presentation to city council on November 1, 2017, reporting its findings and making its recommendations.

Section 5. That the city council may take any further action, as needed, including authorizing the renaming of certain public places, including parks, and streets, on November 8, 2017, and directing city staff to take any and all appropriate actions to

implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law.

Section 6. That the city manager shall immediately remove the Alexander Phimster Proctor monument (of Robert E. Lee) at Lee Park and store it at a safe location until the conclusion of the recommendations of the Task Force as this monument is not a designated city landmark.

Section 7. That the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove the Alexander Phimster Proctor monument of Robert E. Lee at Lee Park ~~all public Confederate monuments~~. The city manager will take all appropriate actions to seek private funding to reimburse the expenses associated with this action.

Section 8. That, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda.

Section 9. That this resolution shall take effect on September 6, 2017, and it is accordingly so resolved.



017 OCT -6 AM 11:14



PUBLIC ART COMMITTEE OF THE CULTURAL AFFAIRS COMMISSION

Tuesday, October 10, 2017
4:00 pm
Dallas City Hall, Council Briefing Room 6ES
1500 Marilla Street
Dallas, Texas 75201

AGENDA

1. CALL TO ORDER
2. PUBLIC SPEAKERS
3. Briefings, Discussion, and Recommendations related to Confederate Monuments
 - a. Robert E. Lee Monument and base
 - b. Confederate Monument
 - c. Fair Park Confederate Symbols
4. Recommendations for New Art Commissions
5. ADJOURN



Public Notice

17 10 08

POSTED CITY SECRETARY
DALLAS, TX



City of Dallas

**CULTURAL AFFAIRS COMMISSION
MEETING AGENDA**

Thursday, October 12, 2017
4:30 p.m.

Dallas City Hall, Council Briefing Room (6ES)
1500 Marilla Street
Dallas, Texas 75201

2017 OCT -6 PM 3:27

Call to Order

Public Speakers

Briefings, Discussion, and Recommendations Related to Confederate Monuments

- a. Robert E. Lee Monument and base
- b. Confederate Monument
- c. Fair Park Confederate Symbols

Director Report

- a. Bond Program Update
- b. Upcoming Council Agenda Items
- c. Cultural Planning Update

Chair Report

New Business

Adjournment



Public Notice

171024

POSTED CITY SECRETARY
DALLAS, TX

NOTE: Public speakers must register with the Commission Coordinator by 5 p.m., Wednesday, September 20, 2017. Contact: Jessica Trevizo at (214) 670-7952 or jessica.trevizo@dallascityhall.com.

EXECUTIVE SESSION NOTICE

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would

Memorandum



CITY OF DALLAS

DATE October 17, 2017

TO Honorable Members of the Quality of Life, Arts & Culture Committee: Sandy Greyson (chair), Mark Clayton (Vice Chair), Rickey D. Callahan, Jennifer S. Gates, Scott Griggs, B. Adam McGough, Omar Narvaez

SUBJECT Recommendations from Mayor's Task Force on Confederate Monuments

On Monday, October 23, 2017, you will be briefed on the Recommendations from Mayor's Task Force on Confederate Monuments. The briefing materials are attached for your review.

Please contact me if you have any questions or concerns.



Joey Zapata

Assistant City Manager

[Attachment]

c: Honorable Mayor and Members of City Council
T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Bilieraë Johnson, City Secretary (Interim)
Daniel F. Solis, Administrative Judge
Kimberly Bizar Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager

Jo M. (Jody) Puckett, P.E., Assistant City Manager (Interim)
Jon Fortune, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Nadia Chandler Hardy, Chief of Community Services
Raquel Favela, Chief of Economic Development & Neighborhood Services
Theresa O'Donnell, Chief of Resilience
Directors and Assistant Directors



Recommendations from Mayor's Task Force on Confederate Monuments

Quality of Life, Arts and Culture Committee
October 23, 2017

Jennifer Scripps, Director
Office of Cultural Affairs
City of Dallas



Purpose

- Review recommendations by the Mayor's Task Force on Confederate Monuments



Background

- Mayor's Task Force on Confederate Monuments was created on August 18, 2017
- The Task Force was charged to make recommendations on the following:
 - *Robert E. Lee and the Confederate Soldier*
 - *Confederate Monument*
 - Fair Park Art
 - Streets with Confederate Names
 - Places with Confederate Names
 - Robert E. Lee Park
 - Confederate Cemetery
 - See appendix for member list
- On September 6, 2017, City Council voted to immediately remove the *Robert E. Lee and the Confederate Soldier* and place it in storage, pending Task Force recommendations

3



Background

- The Task Force met on:
 - August 31, 2017
 - September 7, 2017
 - September 15, 2017
 - September 19, 2017
 - September 22, 2017
- Public comments were allowed at the September 7th and September 15th meetings, and online comments were open for two weeks
- All Task Force materials (agendas, briefings, videos, meeting minutes) are available on www.dallasculture.org/confederatemonuments



Background

- Briefings presented to the Task Force to inform their deliberations included:
 - Role of Public Art, the Dallas policies governing it, and its history
 - Public monuments honoring Confederates
 - Art at Fair Park with Confederate symbols
 - Parks with Confederate names and buildings
 - Landmarks process
 - Research regarding street names with confirmed Confederate linkages
 - Street name changing process
 - History of The Lost Cause
 - History of Dallas during the 1890s and 1930s – with a special emphasis on the history of Black Codes, Jim Crow, and segregation

5



History

- Monuments are common in America and have been supported, commissioned, and installed since the 1800s
 - Address our desire to memorialize individuals, groups and events of significance, e.g.:
 - Washington Monument
 - Jefferson Memorial
 - Vietnam Veterans Memorial
 - JFK Memorial
 - MLK Memorial
 - Rosa Parks Plaza in Dallas
 - Make a public statement about the social and historical viewpoints of the individuals and groups who commission them
 - Intentionally built to last – expecting that their significance will endure for a long time
 - While they are made by artists, they are not independent artistic expressions
 - The Confederate Monuments were donations to the City of Dallas before a public art process for the review of donations existed

6



History

- American Historical Association

- "History comprises both facts and interpretations of those facts."
- To remove a monument or to change the name of a school or street, is not to erase history, but rather to alter or call attention to a previous interpretation of history
- "A monument is not history itself; a monument commemorates an aspect of history, representing a moment in the past when a public or private decision defined who would be honored in a community's public spaces."
- Communities need to decide what is worthy of civic honor and those decisions will change over time as the communities values shift
- "Nearly all monuments to the Confederacy and its leaders were erected without anything resembling a democratic process."
- "African Americans had no voice and no opportunity to raise questions about the purposes or likely impact of the honor accorded to the builders the Confederate States of America."



The American Historical Association recommends that it is time to reconsider these decisions

7

Sources: American Historical Association Statement:
<http://blog.historians.org/2017/08/aha-statement-confederate-monuments/>

Quality of Life, Arts and Culture



City of Dallas

Monuments Recommendations

1a. (Task Force Recommendation #1) That the City of Dallas seek to place the statue of *Robert E. Lee* and the base of the sculpture on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that it may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

1b. (Task Force Recommendation #1) That the City of Dallas seek to place the Confederate Memorial on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that it may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

8



Timeline

- The Public Art Committee met on Tuesday, October 10, 2017 and the Cultural Affairs Commission met on Thursday, October 12, 2017
 - Both committees heard additional public comment and unanimously approved the two recommendations in their purview concerning Confederate monuments and art at Fair Park with Confederate images and symbols
- Quality of Life, Arts and Culture Committee discussion and recommendations, October 23, 2017

14



Confederate Monuments in Dallas

Title of Work	Artist	Date	Location	Information
Confederate Monument	Frank Teich	1896-97	Pioneer Cemetery, Young Street	<p>Donated by the United Daughters of the Confederacy</p> <p>Has Dallas Landmark Status</p> <p>1897 installed at Old City Park</p> <p>Relocated 1961</p>
Robert E. Lee and the Confederate Soldier	Alexander P. Proctor	1936	Lee Park, 3400 Turtle Creek Blvd	<p>Donated by the Southern Memorial Association</p> <p>On Park Property</p>

RECEIVED

2017 OCT 11 PM 2: 23

CITY SECRETARY
DALLAS, TEXAS

SPECIAL CALLED CITY COUNCIL MEETING

WEDNESDAY, OCTOBER 25, 2017

**DALLAS CITY HALL
1500 MARILLA ST
COUNCIL CHAMBERS
DALLAS, TEXAS 75201
6 P.M.**

1. Receive public comments on the recommendations made by the Mayor's Task Force on Confederate Monuments.

Citizens who wish to speak at the meeting are encouraged to register prior to the meeting. You may sign up with the City Secretary's Office no later than 5 p.m. on Tuesday, October 24.

Public Notice

Note: There will be no City Council action at this meeting.

171035

POSTED CITY SECRETARY
DALLAS, TX

HANDGUN PROHIBITION NOTICE FOR MEETINGS OF GOVERNMENTAL ENTITIES

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección 30.06 del código penal (Ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección 30.07 del código penal (Ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."

EXECUTIVE SESSION NOTICE

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]



MINUTES OF THE DALLAS CITY COUNCIL
MONDAY, OCTOBER 25, 2017

17-1707

CITY COUNCIL SPECIAL MEETING
COUNCIL CHAMBER, CITY HALL
MAYOR MICHAEL S. RAWLINGS, PRESIDING

PRESENT: [14] Rawlings, Caraway, Medrano, Griggs, Thomas, Callahan, Narvaez,
Felder, Atkins, Clayton, McGough, Greyson, Gates, Kingston

ABSENT: [1] Kleinman

The meeting was called to order at 6:04 p.m. with a quorum of the city council present.

The meeting agenda, which was posted in accordance with Chapter 551, "OPEN MEETINGS," of the Texas Government Code, was presented.

After all business properly brought before the city council had been considered, the city council adjourned at 7:56 p.m.

ATTEST:

Mayor

Interim City Secretary

Date Approved

The annotated agenda is attached to the minutes of this meeting as EXHIBIT A.



CITY COUNCIL SPECIAL MEETING

OCTOBER 25, 2017

17-1708

Receive public comments on the recommendations made by the Mayor’s Task Force on Confederate Monuments.

The following individuals addressed the city council on the item:

	SPEAKER NAME	RESIDENT ADDRESS	REPRESENTING (FIRM OR ORGANIZATION)
1	Katherine McGovern	4364 Royal Ridge Dr.	
2	John Heimburger	1627 Hollywood Ave.	
3	Mike Leger	3401 Lee Pkwy.	Mayfair HOA
4	Chris Carter	9523 Highedge Dr.	
5	Jean Robinson	3940 Northaven Rd.	
6	James Henderson	10118 Mapleridge Dr.	
7	Brent Sonntag	3223 Lockmoor Ln.	
8	Dee Genova	3401 Lee Pkwy.	
9	Dee Holley	3401 Lee Pkwy.	
10	Jim Temborius	3401 Lee Pkwy.	
11	Linda Parsel	3401 Lee Pkwy.	
12	Karen Pieroni	2927 Renaissance Cir.	
13	R.D. Dignan	1433 San Rafael Dr.	
14	Bill Ceverha	3401 Lee Pkwy.	
15	Sue Krider	3401 Lee Pkwy	
16	Mac Smith	3938 Vinecrest Dr.	
17	Deborah Cook	4021 Wellingshire Ln.	
18	Buddy Apple	821 N. Windomere Ave.	
19	John DuPre	3053 Allister St.	
20	Chandler Vaughan	2901 Turtle Creek Plz.	Juanita Craft Foundation Dallas Citizens for Unity and Reconciliation
21	Sam Hocker	6154 Yorkshire Dr.	
22	Coy Murchison	4624 Weehaven Dr.	
23	Peter Brodsky	9950 Strait Ln.	
24	Diane Benjamin	6530 Waggoner Dr.	
25	Margie Powe	7460 E. Northwest Hwy.	The Liberty Tree DFW
26	Soraya Colli	1920 Holcomb Rd.	Indivisible DFW
27	David Preziosi	2229 Lawndale Dr.	Preservation Dallas
28	Elaine Everitt	5106 Kelsey Rd.	
29	Matthew Jacobs	3615 Brown St.	Dallas Citizens for Unity and Reconciliation

CITY COUNCIL SPECIAL MEETING
 OCTOBER 25, 2017
 17-1708
 Page 2

	SPEAKER NAME	RESIDENT ADDRESS	REPRESENTING (FIRM OR ORGANIZATION)
30	Henry Tatum	4858 Forest Bend Rd.	Dallas Citizens for Unity and Reconciliation
31	Robert Wagon	4061 Travis St.	Dallas Citizens for Unity and Reconciliation
32	Jane Manning	3621 Turtle Creek Blvd.	Dallas Citizens for Unity and Reconciliation
33	Caroline Austin	5121 Kelsey Rd.	
34	Jacques Vroom III	5535 Wenonah Dr.	
35	Nan Coulter	4415 Shirley Dr.	
36	William Murchison	4625 Greenville Ave.	Dallas Citizens for Unity and Reconciliation
37	Alden Nellis	409 W. Westhill Dr. Cleburne, TX	
38	Linda Leach Johnston	4709 E. FM 4 Grandview, TX	Cleburne Cultural Arts Center
39	Beth Biesel	3608 Southwestern Blvd. University Park, TX	
40	Jeff Scoggin	7206 Augusta St., The Colony, TX	
41	Arthur Fleming	822 Westover Dr., Lancaster, TX	
42	Carole Haynes	44 Indian Trl. Hickory Creek, TX	Citizens Matter
43	Jerushea Royal	1225 Saturn Dr. Cedar Hill, TX	
44	Clint Wolverton	4356 Westside Dr. Highland Park, TX	
45	Bobby Clarkston	2325 Chandelle Dr. Irving, TX	
46	Terry Hulsey	1515 Postbridge Ct. Arlington, TX	
47	Robert Capps	4323 University Blvd. University Park, TX	
48	Thomas Vastine	4067 Beltway Dr. Addison, TX	
49	Julio Acosta	1644 Blackstone Dr. Carrollton, TX	Faith in Texas

RECEIVED

2017 OCT 27 PM 2: 14

CITY SECRETARY
DALLAS, TEXAS



COUNCIL BRIEFING AGENDA

November 1, 2017
Date

	EXHIBIT
tabbles	<u>10</u>

(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

AGENDA
CITY COUNCIL BRIEFING MEETING
WEDNESDAY, NOVEMBER 1, 2017
CITY HALL
1500 MARILLA STREET
DALLAS, TEXAS 75201
9:00 A.M.

9:00 am Invocation and Pledge of Allegiance 6ES

 Special Presentations

 Open Microphone Speakers

VOTING AGENDA 6ES

1. Approval of Minutes of the October 18, 2017 City Council Meeting
2. Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

BRIEFINGS 6ES

- A. Recommendations from Mayor's Task Force on Confederate Monuments
- B. Financial Management Performance Criteria - Reinvestment Zones

Lunch

Open Microphone Speakers 6ES

The above schedule represents an estimate of the order for the indicated briefings and is subject to change at any time. Current agenda information may be obtained by calling (214) 670-3100 during working hours.

Note: An expression of preference or a preliminary vote may be taken by the Council on any of the briefing items.

Memorandum



CITY OF DALLAS

DATE October 27, 2017

TO Honorable Mayor and Members of the City Council

SUBJECT **Recommendations from Mayor's Task Force on Confederate Monuments**

On Wednesday, November 1, 2017, you will be briefed on the Recommendations from Mayor's Task Force on Confederate Monuments. The briefing materials are attached for your review.

Please feel free to contact me if you have any questions or concerns.

A handwritten signature in blue ink, appearing to read 'Joey Zapata'.

Joey Zapata

Assistant City Manager

c. T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Biliera Johnson, City Secretary (Interim)
Daniel F. Sols, Administrative Judge
Kimberly Bizzor Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager

Jo M. (Jody) Puckett, Assistant City Manager (Interim)
Jon Fortune, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Nadia Chandler Hardy, Chief of Community Services
Raquel Favela, Chief of Economic Development & Neighborhood Services
Theresa O'Donnell, Chief of Resilience
Directors and Assistant Directors

Recommendations from Mayor's Task Force on Confederate Monuments

City Council Briefing
November 1, 2017

Jennifer Scripps, Director
Office of Cultural Affairs
City of Dallas



Purpose

- Review recommendations by the Mayor's Task Force on Confederate Monuments



Background

- Mayor's Task Force on Confederate Monuments was created on August 18, 2017
 - See appendix for member list
- On September 6, 2017, City Council voted to immediately remove the *Robert E. Lee and the Confederate Soldier* and place it in storage
- The Task Force met on:
 - August 31, 2017
 - September 7, 2017
 - September 15, 2017
 - September 19, 2017
 - September 22, 2017
- Public comments were allowed at the September 7th and September 15th meetings, and online comments were open for two weeks
- All Task Force materials (agendas, briefings, videos, meeting minutes) are available on www.dallasculture.org/confederatemonuments

3



Background

- The Task Force was charged to make recommendations on the following:
 - *Robert E. Lee and the Confederate Soldier*
 - *Confederate Monument*
 - *Fair Park Art*
 - *Streets with Confederate Names*
 - *Places with Confederate Names*
 - *Robert E. Lee Park*
 - *Confederate Cemetery*



Background

- Briefings presented to the Task Force to inform their deliberations included:
 - Role of Public Art, the Dallas policies governing it, and its history
 - Public monuments honoring Confederates
 - Art at Fair Park with Confederate symbols
 - Parks with Confederate names and buildings
 - Landmarks process
 - Research regarding street names with confirmed Confederate linkages
 - Street name changing process
 - History of The Lost Cause
 - History of Dallas during the 1890s and 1930s – with a special emphasis on the history of Black Codes, Jim Crow, and segregation

5



History

- Monuments are common in America and have been supported, commissioned, and installed since the 1800s
 - Address our desire to memorialize individuals, groups and events of significance, e.g.:
 - Washington Monument
 - Jefferson Memorial
 - Vietnam Veterans Memorial
 - JFK Memorial
 - MLK Memorial
 - Rosa Parks Plaza in Dallas
 - Make a public statement about the social and historical viewpoints of the individuals and groups who commission them
 - Intentionally built to last – expecting that their significance will endure for a long time
 - While they are made by artists, they are not independent artistic expressions
 - The Confederate Monuments were donations to the City of Dallas before a public art process for the review of donations existed

6



History

- American Historical Association

- "History comprises both facts and interpretations of those facts."
- To remove a monument or to change the name of a school or street, is not to erase history, but rather to alter or call attention to a previous interpretation of history.
- A monument is not history itself; a monument commemorates an aspect of history, representing a moment in the past when a public or private decision defined who would be honored in a community's public spaces."
- Communities need to decide what is worthy of civic honor and those decisions will change over time as the communities values shift.
- "Nearly all monuments to the Confederacy and its leaders were erected without anything resembling a democratic process."
- "African Americans had no voice and no opportunity to raise questions about the purposes or likely impact of the honor accorded to the builders the Confederate States of America."



The American Historical Association recommends that it is time to reconsider these decisions

7

Monuments Recommendations

1a. (Task Force Recommendation #1) That the City of Dallas seek to place the statue of *Robert E. Lee* and the base of the sculpture on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that it may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

1b. (Task Force Recommendation #1) That the City of Dallas seek to place the Confederate Memorial on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that it may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

8



Timeline

- The Public Art Committee met on Tuesday, October 10, 2017
- The Cultural Affairs Commission met on Thursday, October 12, 2017
 - Both committees heard additional public comment and unanimously approved the two recommendations in their purview concerning Confederate monuments and art at Fair Park with Confederate images and symbols
- Briefed Quality of Life, Arts and Culture Committee on Monday, October 23, 2017

15



RECEIVED

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CITY SECRETARY
DALLAS, TEXAS



COUNCIL BRIEFING AGENDA



March 21, 2018

Date

Public Notice

18 02 34

POSTED CITY SECRETARY
DALLAS, TX

(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

**AGENDA
CITY COUNCIL BRIEFING MEETING
WEDNESDAY, MARCH 21, 2018
CITY HALL
1500 MARILLA STREET
DALLAS, TEXAS 75201
9:00 A.M.**

9:00 am Invocation and Pledge of Allegiance 6ES

 Special Presentations

 Open Microphone Speakers

VOTING AGENDA 6ES

1. Approval of Minutes of the February 7, 2018 City Council Meeting and February 21, 2018 City Council Retreat
2. Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

BRIEFINGS 6ES

- A. Confederate Monuments Recommendations and Next Steps
- B. FY 2018-19 and FY 2019-20 General Fund Budget

Lunch

Open Microphone Speakers 6ES

The above schedule represents an estimate of the order for the indicated briefings and is subject to change at any time. Current agenda information may be obtained by calling (214) 670-3100 during working hours.

Note: An expression of preference or a preliminary vote may be taken by the Council on any of the briefing items.

Memorandum



CITY OF DALLAS

DATE March 16, 2018

TO Honorable Mayor and Members of the City Council

SUBJECT Confederate Monuments Recommendations and Next Steps

On Wednesday, March 21, 2018, you will be briefed on the Confederate Monuments Recommendations and Next Steps. The briefing materials are attached for your review.

Please feel free to contact me if you have any questions or concerns.

Joey Zapata
Assistant City Manager

- c: T.C Broadnax, City Manager
- Larry Casto, City Attorney
- Craig D. Kinton, City Auditor
- Billerie Johnson, City Secretary (Interim)
- Daniel F. Sof's, Administrative Judge
- Kimberly Bizar Tolbert, Chief of Staff to the City Manager
- Majed A. Al-Ghafry, Assistant City Manager

- Jo M (Jody) Puckett, Assistant City Manager (Interim)
- Jon Fortune, Assistant City Manager
- M. Elizabeth Reich, Chief Financial Officer
- Nad a Chandler Hardy, Chief of Community Services
- Raquel Favela, Chief of Economic Development & Neighborhood Services
- Theresa O'Donne, Chief of Resilience
- Directors and Assistant Directors

Confederate Monuments Recommendations and Next Steps

**City Council Briefing
March 21, 2018**

Jennifer Scripps, Director
Office of Cultural Affairs
City of Dallas



180415

Presentation Outline

- Background
- Purpose
- Task Force Recommendations
- Implementation Options & Alternatives, with Impacts
- Proposed Action
- Next Steps

Quality of Life, Arts & Culture



City of Dallas

180415

Background

The Mayor's Task Force on Confederate Monuments was created in August 2017 to make recommendations on the following:

- *Robert E. Lee and the Confederate Soldier (the "Lee")*
- *The Confederate Monument*
- Fair Park Art
- Streets with Confederate Names
- Places with Confederate Names
 - Robert E. Lee Park
 - Confederate Cemetery

Quality of Life, Arts & Culture



Background

- On September 6, 2017, City Council voted to immediately remove the Lee and place it in storage, pending Task Force recommendations
- The Confederate Monuments Task Force met from August 18 to September 22, 2017
 - All Task Force materials (agendas, briefings, videos, meeting minutes) are available on www.dallasculture.org/confederatemonuments
- City Council was briefed on October 23, 2017
 - Staff committed to prepare implementation options by March 2018

Quality of Life, Arts & Culture



180415
City of Dallas

Purpose

- Review implementation options based on recommendations made by the Mayor's Task Force on Confederate Monuments and staff recommendations

Quality of Life, Arts & Culture



180415

Task Force Recommendations

- 1a/1b: Place both monuments with a North Texas institution for preservation, education and full historical context
- 2: Maintain artistic pieces in place at Fair Park, using various media to promote full historical context
- 3: Add commemoration of the Hall of Negro Life at Fair Park
- 4: Return/recreate the Hall of Negro Life murals at Fair Park
- 5: Remove the Robert E. Lee Park name
- 6: Remove the Confederate Cemetery name and request the Park Board rename it in a proper context
- 7: Use citywide engagement to consider naming City parks with placeholder names for rights leaders, the marginalized, underrepresented, and victims of police brutality

Quality of Life, Arts & Culture



City of Dallas

180415

Implementation Options/Alternatives

1a/1b: As recommended by the Task Force, seek to place both monuments with the Texas Civil War Museum near Fort Worth

- *1a: Robert E. Lee and the Confederate Soldier*
 - Display in front of the museum with new base, fencing, and contextual signage as part of a long-term loan (~\$75,000 to move and place on new foundation)
 - Remove remaining plinth and granite seating areas around former site and pursue option of selling the granite (~\$125,000 to remove base and surrounding steps)
- *1b: The Confederate Monument*
 - Given the height and size of the entire piece, the most practical feasible option is to remove statues from their columns and display at museum with contextual signage (~\$150,000)
 - Demolition of remaining base (~\$280,000)

Quality of Life, Arts & Culture



Implementation Options/Alternatives

- Alternative 1a: Sell the *Lee* via a fine art auction house
 - Considerable interest in the *Lee* owing to its artistic quality and the artist's prominence
 - Appraised value of \$950,000, exclusive of the base
 - Fine art auction house commission range of 10-20% and increase assurance of a beneficial sale
 - If a reserve price were not met, the work would not sell and could still be placed on long-term loan or storage
 - Seek first right of purchase to prevent unwanted sale

Quality of Life, Arts & Culture






STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

FILE NO. 18-0415

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the 7th day of August, 2018.


BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ



OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

MARCH 21, 2018

18-0415

Briefing A: Confederate Monuments Recommendations and Next Steps

The city manager briefed the city council on the item.

The following individuals addressed the city council regarding the item:

John Fullinwider, 1851 Fuller Dr.
Chris Carter, 9523 Highedge Dr.
Maggie Murchison, 10131 Gaywood Rd.
David Preziosi, 2229 Lawndale Dr.
Mary Orsak, 6351 Waggoner Dr.
Linda Evans, 5822 Clendenin Ave.
Edward Sebesta, 1502 Seevers Ave.
Dee Latimer-Holley, 3401 Lee Pkwy.
Carole Haynes, 44 Indian Trail, Hickory Creek, TX
Alden Nellis, 409 W. Westhill Dr., Cleburne, TX (handout provided)
Bryce A. Weigand, 3733 Normandy Ave., Highland Park, TX
William Maddox, 5901 Still Forest Dr.

AGENDA
CITY COUNCIL MEETING
APRIL 25, 2018
CITY OF DALLAS
1500 MARILLA STREET
COUNCIL CHAMBERS, CITY HALL
DALLAS, TEXAS 75201
9:00 A.M.

Invocation and Pledge of Allegiance (Council Chambers)

Agenda Item/Open Microphone Speakers

VOTING AGENDA

1. Approval of Minutes of the April 11, 2018 City Council Meeting

CONSENT AGENDA

City Attorney's Office

2. Authorize settlement of the lawsuit styled Marko Princip v. City of Dallas, Cause No. CC-16-00202-B - Not to exceed \$75,000 - Financing: Current Funds
3. Authorize an Interlocal Agreement between the City of Dallas and the Dallas County District Attorney's Office to use designated space at the J. Erik Jonsson Central Library to run a homeless diversion program for a one year term - Financing: No cost consideration to the City
4. Authorize Supplemental Agreement No. 1 to the professional services contract with Carter Arnett PLLC, for additional legal services necessary in the lawsuit styled Petrina L. Thompson v. City of Dallas, Cause No. DC-18-3928 - Not to exceed \$50,000, from \$50,000 to \$100,000 - Financing: Current Funds



ITEMS FOR INDIVIDUAL CONSIDERATION (continued)**Department of Transportation**

32. Authorize **(1)** an Interlocal Agreement with the North Central Texas Council of Governments related to the transfer of ownership of Transportation Investments Generating Economic Recovery funded Modern Streetcar Project assets and streetcar project-related funds; **(2)** the receipt and deposit of funds from SLF III - The Canyon TIF, L.P. in an amount not to exceed \$3,000,000 in the Streetcar Developer Fund; **(3)** the establishment of appropriations in an amount not to exceed \$535,000 in the Streetcar Developer Fund; and **(4)** payment to Dallas Area Rapid Transit for operation and maintenance costs for the Dallas Streetcar System for Fiscal Year 2018 - Total not to exceed \$1,510,000 - Financing: General Funds (\$975,000) and Streetcar Developer Funds (\$535,000)
33. Authorize an amendment to the Interlocal Agreement with Dallas Area Rapid Transit to establish a \$1 fare for the Dallas Streetcar - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

Mayor and City Council Office

34. A resolution **(1)** directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks; **(2)** providing that streets with names linked to the Confederacy shall not be renamed; **(3)** directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*; and **(4)** directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

Office of Budget

35. An ordinance amending Ordinance No. 30651, previously approved on September 20, 2017, as amended by Ordinance No. 30752, previously approved on January 24, 2018, authorizing certain transfers and appropriation adjustments for FY 2017-18 for various departments, activities, and projects; and authorize the City Manager to implement those adjustments - Financing: No cost consideration to the City

STRATEGIC PRIORITY: Quality of Life

AGENDA DATE: April 25, 2018

COUNCIL DISTRICT(S): N/A

DEPARTMENT: Mayor and City Council Office

CMO: T.C. Broadnax, 670-3297

MAPSCO: N/A

SUBJECT

A resolution (1) directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks; (2) providing that streets with names linked to the Confederacy shall not be renamed; (3) directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*; and (4) directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

BACKGROUND

On August 24, 2017, Mayor Michael S. Rawlings appointed a task force charged with providing recommendations related to the removal and relocation of public Confederate monuments and symbols, and renaming of public places, including parks and streets. The task force received further instructions related to this charge from the City Council through Council Resolution No. 17-1385, approved on September 6, 2017.

The Task Force held five public meetings between August 31, 2017 and September 22, 2017. City staff provided briefings on City processes related to public art, historic preservation and landmarks, park and street naming. Additional briefings were provided on the historical context of Confederate monuments, symbols and names, as well as a presentation by author Joyce King on the historical context of Dallas in the 1890s and 1930s. All briefing materials, handouts and other information presented to the Task Force were immediately published online at DallasCulture.org/ConfederateMonuments.

BACKGROUND (continued)

Additionally, public comments were heard at two meetings of the Task Force, and written comments were received throughout the process and entered into the record of the Task Force's proceedings. Following briefings and discussions of each of these matters, the Task Force adopted several recommendations and submitted them to the City Council and other relevant boards, commissions and City departments.

Further consideration followed in the fall of 2017 by the Public Art Committee of the Cultural Affairs Commission, the full Cultural Affairs Commission, the City Council's Quality of Life, Arts and Culture Committee, and the full City Council, including extensive public comment periods. The City Council further discussed the Task Force recommendations in March 2018.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On September 6, 2017, City Council authorized a resolution directing the City Manager to immediately remove and store the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*, and providing for related matters.

On September 22, 2017, the Mayor's Task Force on Confederate Monuments adopted recommendations related to the removal and relocation of public Confederate monuments and symbols, renaming of public places, including parks and streets, and other related matters.

The Public Art Committee of the Cultural Affairs Commission was briefed on the Task Force recommendations on October 10, 2017.

The Cultural Affairs Commission was briefed on the Task Force recommendations on October 12, 2017.

The Quality of Life, Arts and Culture Committee was briefed on the Task Force recommendations on October 23, 2017.

City Council received public comments related to the Task Force recommendations on October 25, 2017.

City Council was briefed on the Task Force recommendations on November 1, 2017.

City Council was further briefed on recommendations related to Confederate monuments on March 21, 2018.

FISCAL INFORMATION

This action has no cost consideration to the City. Future costs to demolish and remove *The Confederate Monument* will be limited to an amount not to exceed \$400,000. Future costs to demolish and remove the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area will be limited to an amount not to exceed \$125,000. Future costs to create a proper memorial of the lynching of Allen Brook will be limited to an amount not to exceed \$100,000. Expenses will be paid for using funds from excess revenue or contingency funds subject to future City Council approval.

April 25, 2018

WHEREAS, the enslavement of African-Americans was the primary cause of the Civil War, which divided our country over 150 years ago; and

WHEREAS, the Confederacy lost its war against the United States; and

WHEREAS, the formerly enslaved continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era; and

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, blacks were still denied equality by a society that discriminated against them even when hard-won laws called for equal treatment; and

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates continue to be symbols of our country's division, and create racial barriers in our city; and

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures distort the violent and oppressive history of the Confederacy and preserve the principles of white supremacy; and

WHEREAS, the City of Dallas strives to be a welcoming and inclusive city for all its residents and visitors; and

WHEREAS, the City of Dallas is developing a comprehensive City equity policy for an equitable, inclusive and welcoming Dallas through its resilience and welcoming communities projects; and

WHEREAS, the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City of Dallas; and

WHEREAS, the City of Dallas convened a Mayor's Task Force on Confederate Monuments ("Task Force") for a robust public discussion of the history of the Confederate monuments, symbols, names, and commemorations, and the City of Dallas' policy regarding the standards for public commemoration of persons, places, and historical events; and

WHEREAS, the Confederate Monument Task Force convened five public meetings and gathered public input to make recommendations for consideration by the City Council; and

April 25, 2018

WHEREAS, the Task Force recommendations were briefed in public meetings to the Public Art Committee of the Cultural Affairs Commission on October 10, 2017, the Cultural Affairs Commission on October 12, 2017 and the City Council's Quality of Life, Arts, and Culture Committee on October 23, 2017; and

WHEREAS, the City Council discussed the Task Force recommendations at briefing meetings on November 1, 2017 and March 21, 2018.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager shall form a working group of local artists, historians, designers, educators, and community members to recommend **(1)** the scope for adding a full historical context to Confederate art and symbols at Fair Park and commemorating the Hall of Negro Life, including appropriate signage, markers, digital tour guides, public art, educational programming and/or exhibitions; and **(2)** a proper memorial of the lynching of Allen Brooks at the corner of Akard Street and Main Street to be located at Pegasus Plaza.

SECTION 2. That Dallas streets with names linked to the Confederacy, including Lee Parkway, Gano, Stonewall, Beauregard, and Cabell, shall not be renamed because of the significant residents' opposition on Lee Parkway, the contributions to Dallas of the Gano and Cabell families, and the unclear origins and associations (based on inconclusive City of Dallas records and archives) of the Beauregard and Stonewall street names.

SECTION 3. That the City Manager is hereby directed to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*.

SECTION 4. That the City Manager is hereby **(1)** directed to procure services to demolish and remove *The Confederate Monument* located in Pioneer Cemetery; **(2)** directed to obtain the required Certificate of Demolition from the Landmark Commission; and **(3)** authorized to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to demolish and remove *The Confederate Monument*, limited to an amount not to exceed \$400,000, and to demolish and remove the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area, limited to an amount not to exceed \$125,000, and to create a proper memorial of the lynching of Allen Brooks, limited to an amount not to exceed \$100,000.

SECTION 5. That this resolution shall take effect on April 25, 2018, and it is accordingly so resolved.



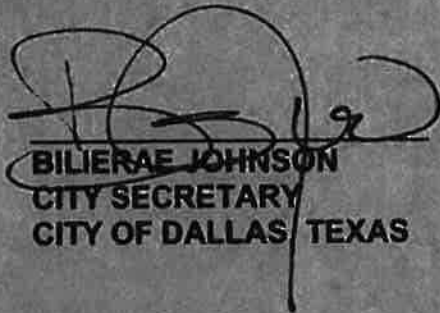
STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

FILE NO. 18-0626

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the 7th day of August, 2018.


BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ



OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

APRIL 25, 2018

18-0626

- Item 34: A resolution (1) directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks; (2) providing that streets with names linked to the Confederacy shall not be renamed; (3) directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee* and *Confederate Soldier*; and (4) directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee* and *Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

The following individuals addressed the city council on the item:

James Henderson, 10118 Mapleridge Dr.
John Fullinwider, 1851 Fuller Dr.
Dory Wiley, 6457 Glendora Ave.
Chris Carter, 9523 Highedge Dr.
Warren Johnson, 3883 Turtle Creek Blvd.
Marshall Miles, 5824 Ravendale Ln.
Linda Russell, 9016 Maguires Bridge Dr.
Rebecca Pratt, 9848 Robin Hill Ln.
Leslie Anderson, 2222 N. St. Augustine Rd.
David Preziosi, 2229 Lawndale Dr.
Deborah Hopes, 421 Penguin Dr.
Lawrence Cottle, 5086 Matilda St.
Michael Waters, 3203 Holmes St., representing Faith Forward Dallas
Albert Hendricks, 607 Mayrant Dr.
Erica Cole, 9246 Forest Hills Blvd.
Paul Holtzclaw, 11036 Paddock Cir.
Carmen Chapa, 3883 Turtle Creek Blvd.
Margie Powe, 7460 E. Northwest Hwy.
Linda Evans, 5822 Clendenin Ave.
Charles Henne, 9310 County View Rd.
Karen Pieroni, 2927 Renaissance Cir.
Ralph Green, 3502 Villaverde Ave.
William Russell, 9016 Maguires Bridge Dr.
Buddy Apple, 821 N. Windomere Ave.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

18-0626

Page 2

The following individuals addressed the city council on the item:

(Continued)

Arthur Fleming, 822 Westover Dr., Lancaster, TX, representing NAACP
Confederate Symbol Task Force
Arnold Mozisek, 3708 Brown St.
Carole Haynes, 44 Indian Trl., Hickory Creek, TX
Rhonda Tarr, 204 Jefferson Ave., New Castle, TX
James Williamson, 254 Private Rd., Hawkins, TX
Bryan Sorens, 4815 Live Oak St.
Elaine Everitt, 5106 Kelsey Rd.
Charles Coppedge, 7370 Lakeview Dr., Venus, TX
Brandon Burkhardt, 9110 E. Valley View Ln., San Antonio, TX, representing
Texas Freedom Force
Charlotte Niedemayer, 3555 Creston Ct., Fort Worth, TX
JoAnn Henry, 21 Old York Town Rd., York Town, TX
Robert Clark, 905 Westfield Dr., Anna, TX
Monica Clark, 905 Westfield Dr., Anna, TX
Lamar Henry, 21 Old York Town Rd., York Town, TX
Keri Hillyer, 6018 Flower Meadow, San Antonio, TX
Andrew J. Duncomb, 1235 Main St., Seminole, TX
Paul Dille, 1235 Dalhart Dr., Richardson, TX
Liz Case Pickens, Not Provided
Ruth Torres, Not Provided
Brandon Vance, 1819 Dancliff Dr., representing Stonewall Democrats/Texas
Coalition of Black Democrats
Asad Shalani, 7013 Portobello Dr., Plano, TX

Mayor Rawlings announced the item would be separated in order to consider each section individually; there was no objection voiced by the city council.

The city secretary read section (1) of the item as follows:

"A resolution:

directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks."

Councilmember Thomas moved to adopt section (1) of the item.

Motion seconded by Councilmember Atkins.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

18-0626

Page 3

During discussion, Councilmember Kingston asked Councilmember Thomas if he would accept a friendly amendment to Section I of the resolution to read as follows:

“That the Cultural Affairs Committee shall recommend (1) the scope for adding a full historical context to Confederate art and symbols at Fair Park and commemorating the Hall of Negro Life, including appropriate signage, markers, digital tour guides, public art, educational programming and/or exhibitions; and (2) a proper memorial of the lynching of Allen Brooks at the corner of Akard Street and Main Street to be located at Pegasus Plaza.”

Councilmember Thomas did not accept the friendly amendment as part of his motion.

Councilmember Kingston moved a substitute motion to Section I of the resolution to read as follows:

“That the Cultural Affairs Committee shall recommend (1) the scope for adding a full historical context to Confederate art and symbols at Fair Park and commemorating the Hall of Negro Life, including appropriate signage, markers, digital tour guides, public art, educational programming and/or exhibitions; and (2) a proper memorial of the lynching of Allen Brooks at the corner of Akard Street and Main Street to be located at Pegasus Plaza.”

Motion seconded by Councilmember Narvaez.

After discussion, Mayor Rawlings called a record vote on Councilmember Kingston's substitute motion:

Voting Yes: [6 5] ~~Caraway~~, Medrano, Griggs, Narvaez, Felder, Kingston

Voting No: [9 10] Rawlings, *Caraway, Thomas, Callahan, Atkins, Clayton, McGough, Kleinman, Greyson, Gates

The city secretary declared the motion failed.

Mayor Rawlings called a record vote on Councilmember Thomas' motion to adopt section (1) of the item:

Voting Yes: [15] Rawlings, Caraway, Medrano, Griggs, Thomas, Callahan, Narvaez, Felder, Atkins, Clayton, McGough, Kleinman, Greyson, Gates, Kingston

Voting No: [0]

The city secretary declared section (1) of the item adopted.

*Note: Mayor Pro Tem Caraway stated his previous vote was in error and requested for the record to reflect his vote on Councilmember Kingston's substitute motion as “No.”

OFFICE OF THE CITY SECRETARY

CITY OF DALLAS, TEXAS

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

18-0626

Page 4

The city secretary read section (2) of the item as follows:

"A resolution:

providing that streets with names linked to the Confederacy shall not be renamed"

Councilmember Callahan moved to adopt section (2) of the item.

Motion seconded by Councilmember Greyson.

After discussion, Mayor Rawlings called a record vote on Councilmember Callahan's motion:

Voting Yes: [10] Rawlings, Caraway, Griggs, Callahan, Atkins, Clayton,
McGough, Kleinman, Greyson, Gates

Voting No: [5] Medrano, Thomas, Narvaez, Felder, Kingston

The city secretary declared section (2) of the item adopted.

The city secretary read section (4) of the item as follows:

"A resolution:

directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee* and *Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval"

Councilmember Atkins moved to defer section (4) of the item with conditions.

Motion seconded by Councilmember Callahan.

During discussion, Councilmember Griggs called a point of order to specify the timeframe of the deferral.

The city attorney stated the motion was a deferral with conditions and will return once the conditions have been satisfied. The conditions were stated as follows:

- The city manager reviews proposals for other ideas that we have not yet considered to potentially enhance and improve Pioneer Cemetery;
- Include possible creation to new statues or plaques and any alterations to The Confederate Monument; and
- Review should also include potential changes to the Robert E. Lee and Confederate Soldier sculpture plinth and seating area in Lee Park.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

18-0626

Page 5

During further discussion, Councilmember Kingston moved a substitute motion to separate section (4) subsection 3.

Motion seconded by Councilmember Narvaez.

Mayor Rawlings called a record vote on Councilmember Kingston's substitute motion:

Voting Yes: [6] Medrano, Griggs, Narvaez, Felder, Clayton, Kingston

Voting No: [9] Rawlings, Caraway, Thomas, Callahan, Atkins, McGough, Kleinman, Greyson, Gates

The city secretary declared the substitute motion failed.

After discussion, Mayor Rawlings called a record vote on Councilmember Atkins' motion to defer section (4) of the item with conditions:

Voting Yes: [9] Rawlings, Caraway, Thomas, Callahan, Atkins, McGough, Kleinman, Greyson, Gates

Voting No: [6] Medrano, Griggs, Narvaez, Felder, Clayton, Kingston

The city secretary declared section (4) of the item deferred with conditions.

At 11:30 a.m., Mayor Rawlings announced a recess of city council and reconvened at 1:07 p.m.

The city secretary read section (3) of the item as follows:

"A resolution:

directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*"

Councilmember Greyson moved to deny section (3) of the item.

Motion seconded by Councilmember Callahan.

Mayor Rawlings called a record vote on Councilmember Greyson's motion to deny section (3) of the item:

Voting Yes: [10] Rawlings, Caraway, Thomas, Callahan, Atkins, Clayton, McGough, Kleinman, Greyson, Gates

Voting No: [5] Medrano, Griggs, Narvaez, Felder, Kingston

The city secretary declared section (3) of the item denied.

WHEREAS, the enslavement of African-Americans was the primary cause of the Civil War, which divided our country over 150 years ago; and

WHEREAS, the Confederacy lost its war against the United States; and

WHEREAS, the formerly enslaved continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era; and

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, blacks were still denied equality by a society that discriminated against them even when hard-won laws called for equal treatment; and

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates continue to be symbols of our country's division, and create racial barriers in our city; and

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures distort the violent and oppressive history of the Confederacy and preserve the principles of white supremacy; and

WHEREAS, the City of Dallas strives to be a welcoming and inclusive city for all its residents and visitors; and

WHEREAS, the City of Dallas is developing a comprehensive City equity policy for an equitable, inclusive and welcoming Dallas through its resilience and welcoming communities projects; and

WHEREAS, the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City of Dallas; and

WHEREAS, the City of Dallas convened a Mayor's Task Force on Confederate Monuments ("Task Force") for a robust public discussion of the history of the Confederate monuments, symbols, names, and commemorations, and the City of Dallas' policy regarding the standards for public commemoration of persons, places, and historical events; and

WHEREAS, the Confederate Monument Task Force convened five public meetings and gathered public input to make recommendations for consideration by the City Council; and

WHEREAS, the Task Force recommendations were briefed in public meetings to the Public Art Committee of the Cultural Affairs Commission on October 10, 2017, the Cultural Affairs Commission on October 12, 2017 and the City Council's Quality of Life, Arts, and Culture Committee on October 23, 2017; and

WHEREAS, the City Council discussed the Task Force recommendations at briefing meetings on November 1, 2017 and March 21, 2018.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager shall form a working group of local artists, historians, designers, educators, and community members to recommend (1) the scope for adding a full historical context to Confederate art and symbols at Fair Park and commemorating the Hall of Negro Life, including appropriate signage, markers, digital tour guides, public art, educational programming and/or exhibitions; and (2) a proper memorial of the lynching of Allen Brooks at the corner of Akard Street and Main Street to be located at Pegasus Plaza.

SECTION 2. That Dallas streets with names linked to the Confederacy, including Lee Parkway, Gano, Stonewall, Beauregard, and Cabell, shall not be renamed because of the significant residents' opposition on Lee Parkway, the contributions to Dallas of the Gano and Cabell families, and the unclear origins and associations (based on inconclusive City of Dallas records and archives) of the Beauregard and Stonewall street names.

SECTION 3. That this resolution shall take effect on April 25, 2018, and it is accordingly so resolved.

APPROVED BY
CITY COUNCIL

APR 25 2018

CITY SECRETARY

AGENDA ITEM # 34

STRATEGIC PRIORITY: Quality of Life

AGENDA DATE: April 25, 2018

COUNCIL DISTRICT(S): N/A

DEPARTMENT: Mayor and City Council Office

CMO: T.C. Broadnax, 670-3297

MAPSCO: N/A

SUBJECT

A resolution **(1)** directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks; **(2)** providing that streets with names linked to the Confederacy shall not be renamed; **(3)** directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*; and **(4)** directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

BACKGROUND

On August 24, 2017, Mayor Michael S. Rawlings appointed a task force charged with providing recommendations related to the removal and relocation of public Confederate monuments and symbols, and renaming of public places, including parks and streets. The task force received further instructions related to this charge from the City Council through Council Resolution No. 17-1385, approved on September 6, 2017.

The Task Force held five public meetings between August 31, 2017 and September 22, 2017. City staff provided briefings on City processes related to public art, historic preservation and landmarks, park and street naming. Additional briefings were provided on the historical context of Confederate monuments, symbols and names, as well as a presentation by author Joyce King on the historical context of Dallas in the 1890s and 1930s. All briefing materials, handouts and other information presented to the Task Force were immediately published online at DallasCulture.org/ConfederateMonuments.

BACKGROUND (continued)

Additionally, public comments were heard at two meetings of the Task Force, and written comments were received throughout the process and entered into the record of the Task Force's proceedings. Following briefings and discussions of each of these matters, the Task Force adopted several recommendations and submitted them to the City Council and other relevant boards, commissions and City departments.

Further consideration followed in the fall of 2017 by the Public Art Committee of the Cultural Affairs Commission, the full Cultural Affairs Commission, the City Council's Quality of Life, Arts and Culture Committee, and the full City Council, including extensive public comment periods. The City Council further discussed the Task Force recommendations in March 2018.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On September 6, 2017, City Council authorized a resolution directing the City Manager to immediately remove and store the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*, and providing for related matters.

On September 22, 2017, the Mayor's Task Force on Confederate Monuments adopted recommendations related to the removal and relocation of public Confederate monuments and symbols, renaming of public places, including parks and streets, and other related matters.

The Public Art Committee of the Cultural Affairs Commission was briefed on the Task Force recommendations on October 10, 2017.

The Cultural Affairs Commission was briefed on the Task Force recommendations on October 12, 2017.

The Quality of Life, Arts and Culture Committee was briefed on the Task Force recommendations on October 23, 2017.

City Council received public comments related to the Task Force recommendations on October 25, 2017.

City Council was briefed on the Task Force recommendations on November 1, 2017.

City Council was further briefed on recommendations related to Confederate monuments on March 21, 2018.

RECEIVED

Public Notice

2019 FEB -1 PM 2:01 City of Dallas

190111

CITY SECRETARY
DALLAS, TEXAS

1500 Marilla Street
Dallas, Texas 75201

POSTED CITY SECRETARY
DALLAS, TX



COUNCIL BRIEFING AGENDA

February 6, 2019



(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

9:00 a.m. Invocation and Pledge of Allegiance 6ES

Special Presentations

Open Microphone Speakers

VOTING AGENDA 6ES

1. 19-242 Approval of Minutes of the January 2, 2019 City Council Meeting
2. 19-243 Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

BRIEFINGS 6ES

A. Options for *The Confederate Monument*

B. Bulk and Brush Collections Program – Update

PUBLIC HEARING

MISCELLANEOUS HEARING

Police Department

3. 19-178 A public hearing to receive comments on the reinstatement of the Dallas juvenile curfew ordinance, which provides daytime and nighttime curfew hours for minors - Financing: No cost consideration to the City

Closed Session

Attorney Briefings (Sec. 551.071 T.O.M.A.)

- Legal issues related to the Texas Horse Park and the contract between the City of Dallas and River Ranch Educational Charities.
- E. Tobolowsky, deceased, Cause No. DC-18-17620
- Three Expo Events LLC v. City of Dallas, Cause No. 3:16-CV-00513-D; Cause No. 17-10632.

Memorandum



CITY OF DALLAS

DATE February 1, 2019

TO Honorable Mayor and Members of the City Council

SUBJECT **Options for *The Confederate Monument***

On Wednesday, February 6, 2019, you will be briefed on the Options for *The Confederate Monument*. The briefing materials are attached for your review. As noted in the presentation materials, the options, steps and timelines are as follows:

- **OPTION 1: Re-envision the monument and site**
 - OCA will contract with the artist and brief the proposal to City Council within 120 days
 - Upon approval by Council, staff will seek review from the Public Art Committee and the Arts and Culture Advisory Commission
 - Staff will file a certificate of appropriateness (CA) with the Landmark Commission and include the Arts and Culture Advisory Commission recommendation
 - Landmark Commission will hear the certificate application within 30 days and has 65 days to approve/deny the application
 - Only the applicant/city may appeal CA denial by the Landmark Commission within 30 days after the decision
 - City Plan Commission has no timeline to hear and decide an appeal
 - Future budget considerations
 - The cost and funding sources to make alterations to the monument and site are unknown at this time but will be determined through the proposal and public art process, and may require procurement
- **OPTION 2: Remove the monument**
 - Pending a record vote on an upcoming agenda to exhaust all options to remove the monument, staff will file a certificate for demolition or removal (CD) and Landmark Commission will hear the certification
 - Of five potential standards for CD, the only appropriate standard is "Noncontributing to the historic overlay district because it is newer than the period of significance"
 - City Manager's Office and OCA staff would present the case to Landmark Commission
 - Landmark Commission has 65 days to approve/deny the application
 - Any interested person may appeal a decision of the Landmark Commission within 30 days after their decision
 - If requested to "exhaust all options" for removal, staff would automatically appeal a Landmark Commission denial to the City Plan Commission (CPC), which must decide the appeal within 65 days after the appeal is filed
 - On appeal, CPC would not hear any new evidence and only decide whether the Landmark Commission erred in its decision
 - Estimated removal and storage cost is ~\$480,000
 - Future budget considerations
 - The final cost and funding sources to remove the monument are unknown at this time and may require procurement and City Council authorization
 - Note: Both Landmark Commission and CPC would be functioning as quasi-judicial bodies and therefore City Council members shall not speak to members of either board about the case once it is filed
- **OPTION 3: Take no further action**

Please feel free to contact me if you have any questions or concerns.



Joey Zapata
Assistant City Manager

c: T.C. Broadnax, City Manager
Chris Caso, City Attorney (I)
Carol Smith, City Auditor (I)
Biliera Johnson, City Secretary
Preston Robinson, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager

Majed A. Al-Ghafry, Assistant City Manager
Jon Fortune, Assistant City Manager
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer
M. Elizabeth Reich, Chief Financial Officer
Laila Aleqresh, Chief Innovation Officer
Directors and Assistant Directors

Options for *The Confederate Monument*

Briefing to City Council
February 6, 2019

Jennifer Scripps, Director
Kay Kallos, Public Art Program Manager
Office of Cultural Affairs



City of Dallas

Presentation Overview

- Purpose
- Background
- Related Projects and Approaches
- New Option: Re-envision the monument and site
- Options and Timelines
- Next Steps
- Appendix

Purpose

- Review and discuss options for *The Confederate Monument* and Pioneer Cemetery, including a new option requested by City Council to make enhancements and improvements to the site
 - Contract with artist lauren woods for a proposal to re-envision the monument and site

Background: Monument and Site

- *The Confederate Monument*
 - Designed by Frank Teich in 1896 and erected in 1897
 - Consists of five Confederate statues: three generals (Lee, Jackson, Johnston) and CSA president (Davis) and a Confederate soldier at center
 - Base inscribed with tributes to Confederate seamen, infantry, cavalry, and Southern women
 - Relocated to Pioneer Cemetery from Old City Park in 1961 due to highway construction
- **Pioneer Cemetery**
 - Pioneer Cemetery site was on the southern edge of Dallas when the first burial occurred in 1840's
 - The last body was interred in 1921
 - Originally comprised of four separate and historic cemeteries: Masonic, Odd Fellows, Jewish, and the City cemetery
 - Designated a Dallas Landmark in May 2002 (Historic overlay No. 114)



4

Background: Prior Actions

- **October 23, 2017: City Council Briefing**
 - Mayor's Task Force on Confederate Monuments recommended removal and either a long-term loan or donation to an institution in North Texas or storage for future disposition (see Appendix)
- **March 21, 2018: City Council Briefing**
 - Staff recommended an alternative approach to add historical context and information
 - Otherwise, removal and storage of the monument
- **April 25, 2018: City Council Resolution Adopted**
 - City Council directed the City Manager to present options to enhance and improve Pioneer Cemetery, such as new statues, plaques and alterations to the monument
 - City Manager committed to provide options by Fall 2018
 - By memorandum on October 15, 2018, Councilman Atkins, Councilman Felder and Mayor Pro Tem Thomas requested that consideration be scheduled after a District 4 Council Member was seated

5

Summary of Options and Timelines

- **OPTION 1: Re-envision the monument and site**
 - Contract with lauren woods for a proposal to re-envision the monument and site
 - Brief proposal to City Council within 120 days
 - Estimated cost is ~\$10,000 through concept proposal, with additional future budget considerations
- **OPTION 2: Remove the monument**
 - Schedule a record vote on an upcoming City Council agenda to exhaust all options to remove the monument
 - File a certificate for demolition or removal (CD) as a non-contributing structure in the Pioneer Cemetery landmark and Landmark Commission will hear the certification
 - Estimated removal and storage cost is ~\$480,000
- **OPTION 3: Take no further action**

11

Options and Timelines

- **OPTION 1: Re-envision the monument and site**
 - OCA will contract with the artist and brief the proposal to City Council within 120 days
 - Upon approval by Council, staff will seek review from the Public Art Committee and the Arts and Culture Advisory Commission
 - Staff will file a certificate of appropriateness (CA) with the Landmark Commission and include the Arts and Culture Advisory Commission recommendation
 - Landmark Commission will hear the certificate application within 30 days and has 65 days to approve/deny the application
 - Only the applicant/city may appeal CA denial by the Landmark Commission within 30 days after the decision
 - City Plan Commission has no timeline to hear and decide an appeal
 - Future budget considerations
 - The cost and funding sources to make alterations to the monument and site are unknown at this time but will be determined through the proposal and public art process, and may require procurement

12

Options and Timelines

- **OPTION 2: Remove the monument**
 - Pending a record vote on an upcoming agenda to exhaust all options to remove the monument, staff will file a certificate for demolition or removal (CD) and Landmark Commission will hear the certification
 - Of five potential standards for CD, the only appropriate standard is "Noncontributing to the historic overlay district because it is newer than the period of significance"
 - City Manager's Office and OCA staff would present the case to Landmark Commission
 - Landmark Commission has 65 days to approve/deny the application
 - Any interested person may appeal a decision of the Landmark Commission within 30 days after their decision
 - If requested to "exhaust all options" for removal, staff would automatically appeal a Landmark Commission denial to the City Plan Commission (CPC), which must decide the appeal within 65 days after the appeal is filed
 - On appeal, CPC would not hear any new evidence and only decide whether the Landmark Commission erred in its decision
 - **Estimated removal and storage cost is ~\$480,000**
 - **Future budget considerations**
 - The final cost and funding sources to remove the monument are unknown at this time and may require procurement and City Council authorization
 - **Note: Both Landmark Commission and CPC would be functioning as quasi-judicial bodies and therefore City Council members shall not speak to members of either board about the case once it is filed**

13

Options and Timelines

- OPTION 3: Take no further action

ADDITIONS:ITEMS FOR INDIVIDUAL CONSIDERATION**City Secretary's Office**

1. 19-249 An ordinance ordering a general election to be held in the City of Dallas on Saturday, May 4, 2019, for the purpose of electing 15 members to the City Council of the City of Dallas to represent Places 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 for the term beginning June 17, 2019 - Financing: No cost consideration to the City

Mayor and City Council Office

2. 19-288 A resolution declaring that *The Confederate Monument* in Pioneer Cemetery is a noncontributing structure for the historic overlay district and authorizing the City Manager to (1) take action necessary to secure approval from the Landmark Commission, and any related appeals, if necessary, to remove and store *The Confederate Monument*; (2) procure services to disassemble, remove, and transfer to storage *The Confederate Monument* with a vendor selected by the City Manager pursuant to a request for competitive sealed proposals and to enter into a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00; and (3) increase appropriations in an amount not to exceed \$480,000.00 in the Office of Cultural Affairs budget from General Fund Contingency Reserve - Not to exceed \$480,000.00 - Financing: Contingency Reserve Funds

Office of Procurement Services

3. 19-193 Authorize (1) an Advance Funding Agreement with the Texas Department of Transportation (TxDOT) (Contract No. CSJ 0918-47-245) to accept funding from the State Highway (SH) 161 Subaccount in the amount of \$1,000,000 for the development of a strategic mobility plan for the City; (2) the receipt and deposit of Regional Toll Revenue (RTR) Funds from TxDOT in the amount of \$1,000,000 in the TxDOT RTR SH 161-Strategic Mobility Plan Project Fund; (3) the establishment of appropriations in the amount of \$1,000,000 in the TxDOT RTR SH 161-Strategic Mobility Plan Project Fund; (4) a required local match in the amount of \$250,000 from General Fund; and (5) a eighteen-month consultant contract for the development of a five-year strategic mobility plan for the City - Kimley-Horn and Associates, Inc. in an amount not to exceed \$1,194,000, most advantageous proposer of four - Total amount of \$1,250,000 - Financing: General Fund (\$250,000) (subject to annual appropriations) and Regional Toll Revenue Funds (\$1,000,000)

MINUTES OF THE DALLAS CITY COUNCIL
WEDNESDAY, FEBRUARY 13, 2019

19-0240

VOTING AGENDA MEETING
PARK IN THE WOODS RECREATION CENTER
6801 MOUNTAIN CREEK PARKWAY
DALLAS, TX 75249
MAYOR MICHAEL S. RAWLINGS, PRESIDING

PRESENT: [15] Rawlings, Thomas, Medrano, Griggs, Arnold, Callahan, Narvaez (*2:29 p.m.), Felder, Atkins, Clayton (*2:20 p.m.), McGough, Kleinman, Greyson, Gates, Kingston

ABSENT: [0]

The meeting was called to order at 2:11 p.m. with a quorum of the city council present.

The invocation was given by Pastor Robert Summers of Mountain Creek Community Church.

Mayor Pro Tem Thomas led the pledge of allegiance.

The meeting agenda, posted in accordance with Chapter 551, "OPEN MEETINGS," of the Texas Government Code, was presented.

The meeting recessed at 5:37 p.m. and reconvened to open session at 6:18 p.m. [*Greyson (6:19 p.m.)]

After all business properly brought before the city council had been considered, the city council adjourned at 10:58 p.m.

Mayor

ATTEST:

City Secretary

Date Approved



The annotated agenda is attached to the minutes of this meeting as EXHIBIT A.

The actions taken on each matter considered by the city council are attached to the minutes of this meeting as EXHIBIT B.

Ordinances, resolutions, reports and other records pertaining to matters considered by the city council, are filed with the City Secretary as official public records and comprise EXHIBIT C to the minutes of this meeting.

* **Indicates arrival time after meeting called to order/reconvened**

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

FEBRUARY 13, 2019

19-0296

Addendum Item 2: A resolution declaring that The Confederate Monument in Pioneer Cemetery is a noncontributing structure for the historic overlay district and authorizing the City Manager to (1) take action necessary to secure approval from the Landmark Commission, and any related appeals, if necessary, to remove and store The Confederate Monument; (2) procure services to disassemble, remove, and transfer to storage The Confederate Monument with a vendor selected by the City Manager pursuant to a request for competitive sealed proposals and to enter into a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00; and (3) increase appropriations in an amount not to exceed \$480,000.00 in the Office of Cultural Affairs budget from General Fund Contingency Reserve - Not to exceed \$480,000.00 - Financing: Contingency Reserve Funds

The following individuals addressed the city council on the item:

John Fullinwider, 1851 Fuller Dr.
Gerald Britt, 1610 S. Malcolm X Blvd.
Alia Salem, 465 Bordeaux Ave.
Danna Miller Pyke, 10716 Lathrop Dr.
Akwte Tyehimba, 2804 Thomas Tolbert Ave.
Elaine Everitt, 5106 Kelsey Rd.

Mayor Pro Tem Thomas moved to adopt the item.

Motion seconded by Councilmember Atkins.

At the request of Councilmember Felder, the following individual addressed the city council on the item:

Arthur Fleming, 822 Westover Dr., Lancaster, TX

Councilmember Gates moved a substitute motion to re-envision the [confederate] monument and site.

Substitute motion seconded by Councilmember Callahan.

During discussion and after consulting with the city attorney, Mayor Rawlings stated Councilmember Gates' substitute motion was out of order.

Councilmember Gates moved a substitute motion to hold the item under advisement until the June 12, 2019 voting agenda meeting of the city council; to allow Lauren Woods an opportunity to re-envision the [confederate] monument and site, before the city council makes a decision.

Substitute motion seconded by Councilmember Callahan.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

19-0296

Page 2

After discussion, Mayor Rawlings called a record vote on Councilmember Gates' substitute motion:

Voting Yes: [5] Rawlings, Callahan, McGough, Greyson, Gates

Voting No: [10] Thomas, Medrano, Griggs, Arnold, Narvaez,
Felder, Atkins, Clayton, Kleinman, Kingston

The city secretary declared the motion failed.

Mayor Rawlings called a record vote on Mayor Pro Tem Thomas' original motion to adopt the item:

Voting Yes: [11] Rawlings, Thomas, Medrano, Griggs, Arnold,
Narvaez, Felder, Atkins, Clayton, Kleinman,
Kingston

Voting No: [4] Callahan, McGough, Greyson, Gates

The city secretary declared the item adopted.

February 13, 2019

WHEREAS, on April 25, 2018, the City Council adopted Resolution No. 18-0626 directing the City Manager to take certain actions related to Confederate art and symbols; and

WHEREAS, Section 4 of that resolution as presented for City Council consideration provided for the disassembly and removal of *The Confederate Monument* located in Pioneer Cemetery; and

WHEREAS, on April 25, 2018, the City Council deferred any disassembly and removal of *The Confederate Monument* until the City Manager reviewed other ideas to enhance and improve Pioneer Cemetery, including creating new statues or plaques or other alterations, such as recontextualizing *The Confederate Monument*; and

WHEREAS, the Office of Cultural Affairs briefed the City Council on recontextualization options on February 6, 2019; and

WHEREAS, the City Council reaffirms the recitals in Council Resolution No. 18-0626 that the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City of Dallas.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That *The Confederate Monument* in Pioneer Cemetery is a noncontributing structure that is newer than the period of historic significance for the historic overlay district, and demolition or removal of the noncontributing structure will not adversely affect the historic character of Pioneer Cemetery or the integrity of the historic overlay district.

SECTION 2. That the City Manager is hereby authorized and directed to exhaust all options to obtain the necessary approvals for disassembly, removal, and transfer to storage.

SECTION 3. That the City Manager is authorized to (1) procure services to disassemble, remove, and transfer to storage *The Confederate Monument* located in Pioneer Cemetery with a vendor to be selected by the City Manager pursuant to a request for competitive sealed proposals; and (2) execute a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00.



190296

February 13, 2019

SECTION 4. That the Chief Financial Officer is hereby authorized to transfer funds in an amount not to exceed \$480,000.00 from Fund 0001, Department NBG, Unit 1000, Revenue Code RTRF, to Fund 0001, Department OCA, Unit 4804, Revenue Code 9229; and a clearing entry, in the same amount, to Fund 0001, Department BMS, Balance Sheet Account 0991 (Debit) and to Fund 0001, Department BMS, Balance Sheet Account 0950 (Credit).

SECTION 5. That the City Manager is hereby authorized to increase the Office of Cultural Affairs appropriations in an amount not to exceed \$480,000.00, from \$19,973,188.00 to \$20,453,188.00 in the General Fund, Fund 0001, Department OCA, Unit 4804, Object 3070; total General Fund expenditure appropriations by \$480,000.00 from \$1,366,121,406.00 to \$1,366,601,406.00; and to increase total General Fund revenue appropriations by \$480,000.00 from \$1,366,121,406.00 to \$1,366,601,406.00.

SECTION 6. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$480,000.00 from Fund 0001, Department OCA, Unit 4804, Object 3070, Activity CA04, Encumbrance No./Contract No. OCA-2019-00009491, in an amount not to exceed \$480,000.00.

SECTION 7. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.



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CITY SECRETARY
DALLAS, TEXAS



Public Notice

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POSTED CITY SECRETARY
DALLAS, TX

**PUBLIC HEARING POSTING
LANDMARK COMMISSION HEARING
Monday, March 4, 2019**

Briefings: **5ES*** **9:00 a.m.**

(The Landmark Commission may be briefed on any item on the agenda if it becomes necessary.)

PUBLIC HEARINGS **Council Chambers*** **1:00 p.m.**

PURPOSE: To consider the attached agenda and any other business that may come before this Commission.

*** All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas**

Handgun Prohibition Notice for Meetings of Governmental Entities

"Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

"Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."



Landmark Commission Agenda
Monday, March 4, 2019

Section 51A-4.501(g)(6)(C)(ii).

5. Paint main structure. Brand: Pittsburgh Paint. Color: Main - PPG1041-3 "Billowing Clouds." Trim - PPG1013-6 "Gray Flannel." Accent - PPG1161-4 "Blue Promise" – Approve – Approve specifications dated 3/4/2016 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).

Task Force Recommendation:

1. Remove two windows on the south elevation of main structure – Approve
2. Replace eight aluminum windows with new wood windows on rear of main structure – Approved with conditions - Provide more detail on each window. 1-over-1 is typical, introducing 3-over-1 isn't approved.
3. Replace front and rear entry door with new doors and remove three door openings on rear of main structure. – Deny without prejudice - Deny door selection. Revise door selection as discussed to be period appropriate.
4. Plant twelve boxwood hedges in front yard – Approve - Approve trees in front easement.
5. Paint main structure. Brand: Pittsburgh Paint. Color: Main - PPG1041-3 "Billowing Clouds." Trim - PPG1013-6 "Gray Flannel." Accent - PPG1161-4 "Blue Promise" – Approve - Approve colors.

DISCUSSION ITEMS:

1. 1201 MARILLA ST

Pioneer Cemetery
CD189-007(LC)
Liz Casso

Request:

Remove Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance.

Applicant: City of Dallas - Jennifer Scripps

Application Filed: 02/07/19

Staff Recommendation:

Remove Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance. – Approve – The proposed removal meets the standards in City Code Section 51A-4.501(h)(4)(D). The monument is non-contributing to the historic overlay district; it was installed after the period of significance; and removal of the monument will not adversely affect the historic character of the property or the integrity of the historic overlay district.

Task Force Recommendation:

Remove Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance - Pending the Task Force on Monday,



CITY OF DALLAS

LANDMARK COMMISSION

MARCH 4, 2019

FILE NUMBER: CD189-007(LC)
LOCATION: 1201 Marilla St (1102 Young St)
STRUCTURE: Non-Contributing
COUNCIL DISTRICT: 2
ZONING: CA-1(A)

PLANNER: Liz Casso
DATE FILED: February 20, 2019
DISTRICT: Pioneer Cemetery (H-114)
MAPSCO: 45-P
CENSUS TRACT: 0204.00

APPLICANT: City of Dallas, Office of Cultural Affairs

REPRESENTATIVE: Jennifer Scripps

OWNER: CITY OF DALLAS

REQUEST:

Remove Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance.

BACKGROUND / HISTORY:

7/1/2002 – Landmark Commission approved the removal of the Texas 36 World War II monument from the cemetery (no case number).

11/4/2002 – Landmark Commission approved installation of a grave marker for Pierre Dusseau (no case number).

7/7/2003 – Landmark Commission approved installation of a grave marker for John W. Lane (no case number).

ANALYSIS:

On February 13, 2019, Dallas City Council voted to move forward with procedures to remove the Confederate Monument from Pioneer Cemetery. Pioneer Cemetery is a City of Dallas landmark, therefore a Certificate of Demolition or Removal from the Landmark Commission is required. This application is for removal of the monument from the cemetery only. It is not a request to demolish or destroy the monument. Should this request be approved, the monument would be removed in pieces and appropriately put into storage.

Pioneer Cemetery was designated a City of Dallas Landmark in 2002. Its designation **was intended to honor Dallas' early pioneers** buried in the cemetery who contributed to the early development of the city. Pioneer Cemetery includes the remnants of four

separate cemeteries: the Masonic Cemetery, the Odd Fellow's cemetery, the Jewish cemetery and the City cemetery. Notable citizens buried in the cemetery include multiple Dallas mayors like John Crockett, mayor in 1857 and 1859; multiple elected officials like Nicholas Darnell, who was Speaker of the House in 1842 and a member of the Constitutional Convention in 1845, and multiple doctors, etc. The period of significance for the cemetery is 1849, the date of the earliest known burial, to 1921, the date of the last burial.

The Confederate Monument is a feature in the cemetery that was installed there in 1961, after the period of significance for the cemetery. It is located at the southeast corner of the cemetery, in front of the easternmost portion of the Dallas Convention Center. The monument consists of a Confederate soldier facing south on top of the obelisk (based on Robert Hugh Gaston (1844-1862)). At the southwest corner is Jefferson Davis, President of the Southern States of the Confederacy (holding scroll); southeast corner is General Albert Sydney Johnson (hand at waist with short saber); at the northeast is Brigadier-General Stonewall Jackson (holding a hat and a saber) and at the northwest is General Robert E. Lee, commander in chief of the Confederate Army (holding binoculars with long saber.) The monument is marble with a granite base; the dimension of the central figure and obelisk is 60-ft high and the four figures are 19-ft high including the base. There are inscriptions on all four sides of the base of the obelisk and portrait rondel representing General W. T. Cabell on the west side.

The monument was commissioned by the Daughters of the Confederacy and installed in Old City Park in 1896. It was designed by Frank Teich, a San Antonio sculptor, originally from Germany, who is believed to have constructed at least one-third of all Confederate monuments in Texas. Due to the construction of R. L. Thornton Freeway in the 1960s, which erased most of the park, the monument had to be relocated. Pioneer Cemetery was selected as the new location because it had ample space available for the monument, would be more visible to the public brought in by events held at the Memorial Auditorium, and was to be part of a larger plan to restore the neighboring cemetery.

The original portions of the Dallas Convention Center, first opened in 1973, wrapped around the eastern and southern exposures of the monument, essentially blocking off the monument from public view from those directions. Concrete steps and retaining walls were also installed close to the eastern and southern sides of the monument as part of an entrance plaza for the Convention Center.

Although the landmark nomination form makes note of the Confederate Monument and its move near the cemetery, no specific mention of the monument is made in the **preservation criteria, with the monument notated oddly as the 'Civil War Memorial'** on the Exhibit B, which shows the limits of the historic overlay. While the preservation criteria notes that monuments are protected, there are several monuments and sculptures within the cemetery proper that the language might be referencing instead of just the Confederate Monument.

The Confederate Monument, and the area around the monument may have also been included as part of the historic overlay in an effort to protect unmarked graves like those

unearthed in 1999 when Ceremonial Drive was constructed on the southern side of the cemetery.

While Staff acknowledges the Confederate Monument is an impressive historic sculpture, as well as the oldest piece of city-owned art, it unfortunately is removed from its original historic context (Old City Park), although its placement closer to the burial place of Civil War veterans is admirable. However, Pioneer Cemetery is significant for being a cemetery, and the monument was not part of the original development of the cemetery or part of an overall landscaping or plan for the cemetery.

In addition, guidance from the National Park Service is that if a building is moved into a National Register district or a National Register structure is moved from its original location or context, the structure is automatically considered 'non-contributing.' Regardless of whether the monument has been on site for 58 years, Staff would consider it 'non-contributing' based on that National Park Service guidance. Plus, most City of Dallas historic districts that are also National Register districts encompass 'non-contributing' structures based on age or inappropriate alterations so the inclusion of a 'non-contributing' structure like the Confederate Monument to a local historic overlay district is not unusual or out of the ordinary.

Considering the following facts that the monument is not an original historic feature of the cemetery, was moved to its current location after the cemetery's period of significance, and its removal and storage would not have an adverse impact on the historic character and integrity of historic overlay district, Staff is recommending approval of the Certificate for Demolition or Removal.

STAFF RECOMMENDATION:

Remove Confederate monument from cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance. – Approve – The proposed removal meets the standards in City Code Section 51A-4.501(h)(4)(D). The monument is non-contributing to the historic overlay district; it was installed after the period of significance; and removal of the monument will not adversely affect the historic character of the property or the integrity of the historic overlay district.

TASK FORCE RECOMMENDATION:

Remove Confederate monument from cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance. – Pending the Task Force meeting on Monday, March 4, 2019.

Staff note: The application for removal of the monument was submitted after the regular Task Force meeting took place at the request of the City Manager's Office. Therefore there is no Task Force recommendation for this item at this time. A special Task Force meeting has been scheduled to take place on March 4th prior to the Landmark Commission public meetings. The Task Force recommendation will be presented to the Landmark Commission during their meetings on March 4th.

March 4, 2019



CITY OF DALLAS
LANDMARK COMMISSION MINUTES

The Dallas Landmark Commission held a meeting on March 4, 2019 with a briefing at 12:09 p.m. in room 5ES, the public hearing at 1:18 p.m. in the Council Chambers of City Hall.

The following Commissioners were present for the meeting:

* Alternates

Michael Amonett
Sam Childers
Krista De La Harpe
Mattia James Flabiano, Vice Chair
Rosemary Hinojosa
Evelyn Montgomery

Donald Payton
Courtney Peach
Leigh Richter
Katherine Seale - Chair
*Diane Sherman
Robert Swann

Renee Strickland
Courtney Spellicy
Katy Slade
Emily Williams

The following ex-officio member was present for the meeting: **No one**

The following ex-officio member was absent for the meeting: **No one**

The following Commissioners were absent from the Meeting:

No One

The following Commissioners were absent from the briefing:

No One

The following Positions are vacant: District 3

The following Staff was present:

Jennifer Anderson
Casey Burgess
Chris Caso
Liz Casso
Neva Dean

Mark Doty
Elaine Hill
Anna Lamberti Holmes
Melissa Parent
Theresa Pham

Marsha Prior
Kris Sweckard
Bert Vanderberg



Install two flat attached signs on south elevation. – Approve – Approve drawings dated 3/4/19 with the finding the proposed work is consistent with preservation criteria Section 5.6 for signs, Section 51A-7.1005(c) for flat attached signs on Type A facades and meets the standards in City Code Section 51A-4.501(g)(6)(C)(i).

9. 509 MAIN ST

West End Historic District
CA189-332(LC)
Liz Casso

Replace windows on Criminal Courts Building. – Approve – Approve drawings and images dated 3/4/19 with the finding the proposed work is consistent with preservation criteria Section 5.0 for construction and renovation and meets the standards in City Code Section 51A-4.501(g)(6)(C)(i).

10. 305 S WILLOMET AVE

Winnetka Heights Historic District
CA189-286(MLP)
Melissa Parent

1. Remove two windows on the south elevation of main structure. – Approve – Approve site plan dated 3/4/2019 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).
2. Replace eight aluminum windows with new wood windows on rear of main structure. – Approve – Approve specifications dated 3/4/2019 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).
3. Replace front and rear entry door with new doors and remove three door openings on rear of main structure. – Approve – Approve specifications dated 3/4/2019 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).
4. Plant twelve boxwood hedges in front yard. – Approve – Approve site plan dated 3/4/2019 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).
5. Paint main structure. Brand: Pittsburgh Paint. Color: Main - PPG1041-3 "Billowing Clouds." Trim - PPG1013-6 "Gray Flannel." Accent - PPG1161-4 "Blue Promise"– Approve – Approve specifications dated 3/4/2016 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).

DISCUSSION ITEMS

1. 1201 MARILLA ST

Pioneer Cemetery
CD189-007(LC)
Liz Casso

Speakers:

For:

Jennifer Scripps, John Fullinwider, Edward M. Sebesta, Gerald Britt, Gary Moore

Against:

Allison Reaves Poggi, Stephen McNallen, Carole Haynes, Judith Edwards, Rosa Rodriguez, Deborah Franklin, Rick Range, Landon

Simmons, Connie Marshall, Warren Johnson, Karen Pieroni, David Preziosi, Joanna Hampton, David Hendricks, James Henderson, Chris Carter, Larry Johnson, Sandra Crenshaw, Tami Brown Rodriguez, Siranno Baldeo

Motion #1

Deny the application to remove the Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because the proposed work does not meet the standard in Section 51A-4.501(h)(4)(D) in that having been built in 1896, it is not newer than the period of significance for the historic overlay district. This same Dallas City Code specifies that all existing grave markers, monuments, and tombs are protected. Protected is defined, within the ordinance, as an architectural or landscape feature that must be retained and maintain its historic appearance, as near as practical in all aspects. Therefore, as a monument, it is protected according to the ordinance.

Maker:	Williams				
Second:	Swann				MOTION FAILED
Results:	6/9				
		Ayes:	-	6	Childers, Flabiano, Richter, Williams Seale, Swann
		Against:	-	9	Amonett, De La Harpe, Hinojosa, Montgomery Payton, Peach, Slade, Spellicy, Strickland
		Absent:	-	0	
		Vacancies:	-	1	Dist. 3

Motion #2

Approve the removal of the Confederate monument from Pioneer Cemetery pursuant to Section 51A-4.501(h)(4)(D). The monument is non-contributing to the historic overlay district. The monument was installed after the period of historic significance for the historic overlay district and the removal of the monument will not adversely affect the historic character of the property or integrity of the historic overlay district.

Maker:	Strickland				
Second:	Hinojosa				
Results:	10/5				
		Ayes:	-	10	Amonett, De La Harpe, Hinojosa, Montgomery, Payton, Peach, Richter, Slade, Spellicy, Strickland
		Against:	-	5	Childers, Flabiano, Seale, Swann, Williams
		Absent:	-	0	
		Vacancies:	-	1	Dist. 3

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2019 MAY 10 PM 3:27

CITY SECRETARY
DALLAS, TEXAS



CITY OF DALLAS

PUBLIC HEARING POSTING
CITY PLAN COMMISSION
HEARING
Thursday, May 16, 2019

BRIEFINGS:

5ES*

10:00 a.m.

(The City Plan Commission may be briefed on any item on the agendas if it becomes necessary.)

PUBLIC HEARINGS:

Council Chambers*

1:30 p.m.

PURPOSE: To consider the attached agendas and any other business that may come before this Commission.

*** All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas**

Handgun Prohibition Notice for Meetings of Governmental Entities

"Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

"Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."



Authorization of a Hearing – Under Advisement:

Mark Doty
(CC District 6)

Consideration of authorizing a public hearing to determine the proper zoning on property zoned Subdistrict 2A within Planned Development District No. 714, Subdistrict 3 within Planned Development District No. 732, and CS Commercial Service in an area generally on the west side of Sylvan Avenue between Seale Street on the north and Ft. Worth Avenue on the south and containing approximately 3.714 acres with consideration being given to an historic overlay for Belmont Hotel. This is a hearing to consider the request to authorize the hearing and not the rezoning of the property at this time.

U/A From: March 21, 2019

Landmark Commission Appeal:

CD189-007(LC)
Liz Casso
(CC District 2)

An appeal of the Landmark Commission's approval of a Certificate for Demolition or Removal of the Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance (51A-4.501(h)(4)(D)) located at 1201 Marilla Street within the Pioneer Cemetery Historic District.

Staff Recommendation: **Approve.**

Landmark Commission Recommendation: **Approve.**

Other Matters:

Reconsideration:

Z178-223(CY)
Carolina Yumet
(CC District 2 & 14)

1. Suspension of the CPC Rules of Procedure to allow reconsideration of Z178-223(CY).

If #1 is approved then consideration of #2.

2. Reconsideration of action taken on April 4, 2019, which was to move to **hold** this case under advisement until such time as the item has been amended, reauthorized, and a community meeting held; or if the amendment fails to be reauthorized the item shall return as currently authorized on the agenda of considering determine proper zoning on property zoned Subarea C-1 within Subdistrict C; Subareas D-1, D-2, D-3, D-4, and D-5 within Subdistrict D; and Subdistricts E, E1, E2, F, G, H, H1 of Planned Development District No. 305, Cityplace; generally on the east and west sides of North Central Expressway with Carroll Avenue to the north, Hall Street to the south, Turtle Creek Boulevard to the west, and Ross Avenue to the east and consisting of approximately 116.62 acres with

Hill, Phyllis (Elaine)

From: Karen Pieroni [REDACTED]
Sent: Sunday, February 24, 2019 2:37 PM
To: Hill, Phyllis (Elaine); Doty, Mark
Cc: Karen Pieroni
Subject: Confederate War Memorial - Deny CD
Attachments: Pieroni Attachment - Landmark 2-2019.pdf

February 24, 2019

To Landmark Commission
Attn: Katherine Seale

I am writing to you as one who has lived in Dallas City and/or Dallas County for 31 years. I am writing to you also as an ancestor of over 40 Confederate veterans. I am writing as a private citizen and a registered voter.

First to address the Certificate of Demotion and Removal (CD) submitted by Dallas City Manager T.C. Broadnax upon the 11-4 vote of the Dallas City Council. I am dismayed, distressed, and disappointed in the less than ethical behavior of our City Leaders forcing this upon you as early as March 4th. They did **NOT** file by the first Thursday of the month by noon in order for it to be reviewed by the Landmark Commission on the first Monday of the following month and therefore I do not understand why you have it on your March 4th agenda. Nevertheless, it is.

In reviewing an application, the only demotion standard the City could possibly come up with is the one they did – non-contributing structure because newer than period of significance.

For this I beg to disagree:

The monument was erected in June of 1896. Because of the City, it was moved to Pioneer Cemetery in the early 1960's. The City and the Office of Cultural Affairs took part in its re-dedication in 1997. I'm sure at the time that seemed like a wonderful idea because there were already Confederate soldiers buried in that same cemetery and some of them, former Dallas dignitaries and citizens:

1. John Martin Stemmons – 16th Missouri Infantry
2. Robert M. Cooke – 19th Texas Cavalry (Burford's)
3. Nicholas Henry Darnell (Historical Marker) – 18th Texas Cavalry (Regiment named for him)
4. Alexander Harwood (Historical Marker) – Capt. – Field & Staff, TX Confederate States Army
5. James K. P. Record (Historical Marker) – Johnston's Mounted Volunteer – Field & Staff, CSA
6. D.W Broughton - Major – Company C, 20th (not 13th) Texas Cavalry
7. John Jay Good (Historical Marker) – Capt. TX Artillery (Unit named for him)
8. John W. Lane – 2nd Lieutenant, 18th TX Cavalry (under Darnell's leadership)
9. Samuel B. Pryor – 1st Lieutenant, Good's Artillery (under Good's leadership)
10. Barton Warren Stone – Colonel, Field & Staff, 6th Texas Cavalry (Unit named for him)

These are just ten that I have been able to research. I would think that there are other Confederate veterans buried in Pioneer Cemetery but as you know, there are many, many missing headstones.



In addition, William Lewis Cabell, is framed on the monument. The Confederate soldier at the top is said to be fashioned after W.H. Gaston. While those men are not buried at Pioneer Cemetery, (they are nearby at Greenwood Cemetery), they follow the same vein as those ten men previously mentioned. They are both also famous Dallas historical dignitaries.

I do not believe that there is enough to substantiate the monument being non-contributing nor is it newer than the period of significance. In 1962, it made sense to move the monument to Pioneer Park and it still does today. In 1997, when it was re-dedicated, no less than Dallas City Mayor Ron Kirk, an African-American, was present.

The **second** point I want to bring up is political in nature although I hope it actually ends up playing no part in the decision made by the Landmark Commission.

I realize that every commissioner was nominated by one of the City Council. However, I also understand that the Landmark Commission is a quasi-judicial functioning entity. Since the filing of the CD, no City Council member should have been contacting the Commissioner.

What this also means, is that no member of the Landmark Commission should do the bidding of the City Council, nor should any political aspiration of each's own come into play. As I mentioned, it is my fervent hope that I am concerned with this for no reason.

Lastly, this monument just like all the other hundreds throughout the country, was built as a Memorial. My own personal Confederate ancestors fought because they felt it was their obligation to do so. Their state went to war so they went to war. Is that any different today of men and women serving in today's military to protect their country? None of us were there in 1861 – 1865. None of us know exactly what their thought process was, but I, in my heart of hearts, cannot place blame nor fault on any one of them for joining the Confederacy. And for that, whether it be in Dallas, my home, or any other city/town which has a Confederate monument, I honor their memory as a perpetual memorial to their sacrifice.

The Landmark Commission is there for one thing and one thing only - To demonstrate outstanding interest in historic preservation and have knowledge and experience in the fields of history, art, architecture, or historic preservation.

The Certificate for Demolition and Removal does NOT fit the standard and therefore should be Denied (not Denied without Prejudice).

Sincerely,

Karen Ann Pieroni
2927 Renaissance Circle, Dallas TX 75287
214-502-2971
karen.pieroni@yahoo.com

TRANSCRIPTION OF EXCERPTS OF AUDIO RECORDING
LANDMARK COMMISSION PUBLIC HEARING
CITY OF DALLAS, TEXAS
CASE CD189-007 (LC)
1201 -MARILLA STREET (PIONEER CEMETERY)
DATE OF HEARING: MARCH 4, 2019
DATE OF TRANSCRIPTION: APRIL 8, 2019



1 for the political Taliban, the cultural Taliban. This
2 one is in a cemetery and now it's being targeted for
3 destruction because of politics and fake emergencies.

4 No one can force the city to open a library
5 or a park. But when a city pulls a book or removes a
6 statue already there because the message -- because of a
7 message they gave it, that's a First Amendment issue.

8 Free speech is impacted. Criminal penalties
9 come into play for those responsible for it. Save the
10 city council from this. Save historic preservation in
11 Dallas. Deny the city's request. Thank you.

12 MS. PERONI: Good afternoon, my name is
13 Karen Peroni, 2927 Renaissance Circle in Dallas. I'm
14 speaking as a Dallas city resident of over 30 years and
15 speaking as a private citizen and a registered voter.

16 I'm a descendent of over 40 Confederate
17 soldiers and I also happen to be a member of Dallas 6,
18 that's our monument. I'm begging you not to take it
19 down and read the letter that Dallas Preservation sent
20 you yesterday.

21 It says everything it needs to say and it
22 rebuts everything the city is trying to tell you. So
23 please read their letter from March 3rd. Thank you.

24 MR. PRESIOSI: David Presiosi with
25 Preservation Dallas, 2922 Swiss Avenue. The certificate

1 MR. MOORE: Thank you. My name is Gary
2 Moore. My wife and I are Vietnam vets who no longer
3 reside in the City of Dallas. We live in Lewisville
4 now. But we came to tell you that the world is
5 watching. The world is seeing everything that the city
6 council does.

7 The world is watching everything that this
8 Landmark Commission does. It is being spread throughout
9 the Web and it will be visible to everyone. Anything
10 that you do to destroy this monument, anything that you
11 have done to continue to keep this going simply means
12 that you're boldly saying and standing in the face of
13 history and saying this history was simply not good
14 enough for me.

15 This history was too nasty. It was too
16 ugly. We want to get rid of it. You did it when you
17 let the city rip out the Robert E. Lee statue and now
18 this is going again. I vote against it. I hope you
19 will vote against it. I hope you will stand tall.
20 Thank you.

21 MR. CARTER: My name is Chris Carter, I live
22 at 9523 Hige Drive here in Dallas. I have attended
23 every city council meeting regarding the Confederate
24 monuments as well as the mayor's task force.

25 In every meeting the public speakers have

1 been five to one against the removal of our Confederate
2 monuments. In the city council, this is not an issue of
3 history, it is not an issue of morality.

4 This is a bunch of young cravenly ambitious
5 city councilmen using these monuments as a political
6 football to further their own political career.

7 They are now attempting to co-op the
8 Landmark Commission, a deliberative, non-political body,
9 to rubber stamp this monument removal so as to
10 circumvent the wishes of the people of Dallas.

11 We have said many times, put this issue to a
12 public referendum and let the people of Dallas decide.
13 You cannot allow the Landmark Commission to be used as a
14 political tool. This is not what it was established
15 for.

16 You must go back to the city council with a
17 firm no. You must say that the Confederate monument is
18 not only a contributing structure, but a relevant
19 integral part of Pioneer Cemetery.

20 The monument is a memorial to the people
21 that settled Dallas most of whom were political -- were
22 Confederate Army veterans. Thank you.

23 MS. CRENSHAW: Sandra Crenshaw, a descendent
24 of Africans who have lived in Texas under all six flags
25 and never were enslaved, but fought in all the wars on

THE ATTORNEY GENERAL OF TEXAS

KEN PAXTON

Opinions Overruled, Modified, Affirmed, Withdrawn

This list of overruled, modified, affirmed, and withdrawn opinions is not entirely complete as there may be a recently enacted statute or a court of appeals or Texas Supreme Court decision that affects the conclusion of an attorney general opinion. However, we strive to stay abreast of such decisions and enactments. Please feel free to notify the Opinion Committee if you know of a court decision or statute that affects the conclusion of an attorney general opinion. All opinions affected by recent attorney general opinions should be accurate and up-to-date.

Ken Paxton	(2015 - present)	
KP-0062 (2016)	Superseded by statute	Tex. Special Districts Local Laws Code § 1118.055
Greg Abbott	(2002 - 2014)	
GA-0999 (2013)	Superseded by statute	Tex. Gov't Code § 2268.055(b)
GA-0700 (2009)	Superseded by statute	Tex. Gov't Code § 52.057(f)
GA-0668 (2008)	Modified by statute	Tex. Gov't Code Ann. § 551.0415
GA-0665 (2008)	Superseded by statute	Tex. Tax Code § 313.021 (2)(A)
GA-0649 (2008)	Superseded by statute	Tex. Hum. Res. Code § 42.041(b)(17)
GA-0615 (2008)	Overruled by	<i>Van Houten v. City of Fort Worth</i> , 827 F.3d 530, 538 (5th Cir. 2016)
GA-0612 (2008)	Superseded by statute	Tex. Loc. Gov't Code §§ 142.009, 157.906
GA-0600 (2008)	Superseded in part by	Tex. Tax Code § 312.402

EXHIBIT

24

H-1250 (1978)	Overruled by	Court Decision See Appendix item #28 and GA-0700 (2009)
H-1229 (1978)	Withdrawn by	H-1229A (1978)
H-1201 (1978)	Overruled by	JM-250 (1984)
H-1113 (1978)	Overruled by	JM-947 (1988) See Appendix item #11
H-1042 (1977)	Overruled by	JM-1092 (1989)
H-1028 (1977)	Superseded by statute	DM-421 (1996)
H-1027 (1977)	Overruled to extent inconsistent with	GA-0365 (2005)
H-998 (1977)	Overruled to extent inconsistent with	GA-0021 (2003)
H-993 (1977)	Overruled to the extent inconsistent with	MW-437 (1982)
H-948 (1977)	Overruled by	JM-1161 (1990)
H-922 (1977)	Overruled by	JM-947 (1988) See Appendix item #11
H-908 (1976)	Overruled by	JM-947 (1988) See Appendix item #11
H-895 (1976)	Affirmed by	JM-922 (1988)
H-876 (1976)	Superseded by statute	JC-0562 (2002)
H-856 (1976)	Affirmed by	Court Decision See Appendix item #13
H-741 (1976)	Cited and Approved by	Court Decision See Appendix item #8
H-727 (1975)	Overruled in part by	GA-0214 (2004)
H-715 (1975)	Overruled by	JM-19 (1983)
H-708 (1975)	Overruled	JM-399 (1985)
H-698 (1975)	Superseded by statute	JC-0562 (2002)
H-620 (1975)	Overruled by	Court Decision See Appendix item #18

O-1263 (1939)	Overruled in part by	GA-0214 (2004)
O-1258 (1939)	Affirmed by	M-872 (1971)
O-561 (1939)	Affirmed by	H-507 (1975)
O-360 (1939)	Overruled by	M-872 (1971)
O-283 (1939)	Overruled by	O-4454 (1942)
O-125 (1939)	Overruled to the extent inconsistent with	LA-85 (1974)
O-48 (1939)	Overruled by	M-872 (1971)

Attorney General Opinions**(1893 - 1938)**

No. 1809

Overruled by

JM-1161 (1990)

APPENDIX**CASES AFFECTING OPINIONS**

1. *Bradley v. Swearingen*, 525 S.W.2d 280 (Tex. Civ. App.-Eastland 1975, no writ) **overrules C-602**
2. *Broom v. Tyler County Commissioners Court*, 560 S.W.2d 435 (Tex. Civ. App.-Beaumont 1977, no writ) **affirms H-572 and H-39**
3. *Buel v. Jones*, No. 3-5464D (N.D. Tex., Apr. 1, 1974) **affirms H-367**
4. *Calvert v. Thompson*, 472 S.W.2d 311 (Tex. Civ. App.-Austin 1971) *judgm't aff'd in part, rev'd in part*, 489 S.W.2d 95 (Tex. 1972) **affirms M-449**
5. *Cartwright v. State*, 527 S.W.2d 535, 539 (Tex. Crim. App. 1975) **affirms H-569**
6. *City of Amarillo v. Paramount Terrace Christian Church*, 530 S.W.2d 323 (Tex. Civ. App.-Amarillo 1975, writ ref'd n.r.e.) **affirms H-399**

7. *City of Corpus Christi v. Herschbach*, 536 S.W.2d 653, 656 (Tex. Civ. App.-Corpus Christi 1976, writ ref'd n.r.e.) **affirms H-338 in part**
8. *City of San Antonio v. San Antonio Indep. Sch. Dist.*, 535 S.W.2d 671 (Tex. Civ. App.-El Paso 1976, writ ref'd n.r.e.) **affirms H-741**
9. *City of Waco v. Texas Retired Teachers Residence Corp.*, 484 S.W.2d 346 (Tex. 1971) **overrules WW-1424**
10. *City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 684 (Tex. Civ. App.-Waco 1980, no writ) **overrules H-304**
11. *Commissioners Court v. Criminal District Att'y*, 690 S.W.2d 932 (Tex. App.-Austin 1985, writ ref'd n.r.e.) **overrules H-1113, H-922, and H-908**
12. *Gilmore v. Carr*, No. CA-3-1777 (N.D. Tex.) **overrules M-16**
13. *Hokr v. State*, 545 S.W.2d 463, 465 (Tex. Crim. App. 1977) **affirms H-856**
14. *International Fidelity Ins. Co. v. Sheriff of Dallas County*, 476 S.W.2d 115 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.) **affirms M-1060**
15. *Ex Parte Menefee v. State*, 561 S.W.2d 822 (Tex. Crim. App. 1977) possibly **overrules M-1151**
16. *Pena v. Rio Grande City Consol. Indep. Sch. Dist.*, 616 S.W.2d 658 (Tex. 1981) **overrules MW-56**
17. *Texarkana Indep. Sch. Dist. v. Lewis*, 470 S.W.2d 727 (Tex. Civ. App.-Texarkana 1971, no writ) **sustains M-395**
18. *Texas Antiquities Comm'n v. Dallas County Community College Dist.*, 554 S.W.2d 924 (Tex. 1977) **overrules H-620**
19. *Vinson v. Burgess*, 773 S.W.2d 263 (Tex. 1989) **overrules JM-792**
20. *In the Matter of B.A.M.*, 980 S.W.2d 788 (Tex. App.-San Antonio 1998, pet. denied) **overrules DM-200**
21. *Alabama-Coushatta Indian Tribe v. Mattox*, 650 F.Supp 282 (W.D. Tex. 1986) **overrules JM-17**
22. *Ex parte Schroeter*, 958 S.W.2d 811 (Tex. Crim. App. 1997) **overrules LO-96-128**
23. *Trinity Indep. Sch. Dist. v. Walker County*, 287 S.W.2d 717 (Tex. Civ. App. - Galveston, 1956, writ ref'd n.r.e.) **overrules S-121 (1954)**
24. *Owens v. State*, 19 S.W.3d 480 (Tex. App.-Amarillo 2000, no pet.) **overrules in part DM-466 (1998)**
25. *Garcia v. State*, 800 S.W.2d 872, 879 (Tex. App.-San Antonio 1990, writ denied) **overrules JM-678 (1987)**
26. *HEB Ministries, Inc. v. Tex. Higher Educ. Coordinating Bd.*, 235 S.W.3d 627 (Tex. 2007) **Overrules JC-0200 (2000).**
27. *Desoto Wildwood Dev., Inc. v. City of Lewisville*, 184 S.W.3d 814 (Tex. App.-Fort Worth 2006, not pet.) **overrules LO-97-048**
28. *Gilt-Massar v. Dallas County*, 781 S.W.2d 612 (Tex. App.-Dallas 1989, no writ) **overrules H-1250 (1978)**

ADDITIONAL LINKS

ACCESSIBILITY & PRIVACY

REPORT FRAUD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RICHARD BREWER, and TEXAS §
DIVISION SONS OF CONFEDERATE §
VETERANS, INC., §

No. SA:17-CV-837-DAE

Plaintiffs, §

vs. §

RON NIRENBERG, ROBERTO §
TREVINO, WILLIAM SHAW, §
REBECCA VIAGRAN, REY §
SALDANA, SHIRLEY GONZALES, §
GREG BROCKHOUSE, ANA §
SANDOVAL, MANNY PALAEZ, §
JOHN COURAGE, CLAYTON §
PERRY, and the CITY OF SAN §
ANTONIO, §

Defendants. §

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT;
DENYING AS MOOT MOTION TO DISMISS

Before the Court are Defendants the Mayor of San Antonio, Texas, and ten members of the San Antonio City Council’s Motion for Summary Judgment or Alternatively, Motion to Dismiss (Dkt. # 54), and Defendants Nirenberg, Trevino, Shaw, Viagran, Saldana, Gonzales, Brockhouse, Sandoval, Palaez, Courage and Perry, in their individual capacities’ Rule 12(b)(6) Motion to Dismiss (Dkt. # 59). Pursuant to Local Rule CV-7(h), the Court finds these



matters suitable for disposition without a hearing. Upon careful consideration of the arguments asserted in the parties' memoranda, the Court, for the reasons that follow, **GRANTS** the Motion for Summary Judgment (Dkt. # 54), and **DENIES AS MOOT** the Motion to Dismiss (Dkt. # 59).

BACKGROUND

The Sons of Confederate Veterans ("Confederate Veterans) is an organization dedicated to preserving the memory of Americans who fought for the Confederacy during the Civil War.¹ (See Dkt. # 44.) According to the Confederate Veteran's website, its membership is limited to male descendants of Confederate Veterans. See <http://www.scv.org/new/>. Defendants are the Mayor and City Council members of the City of San Antonio. (Dkt. # 44 at 1–3.)

In August 2017, the San Antonio City Council enacted an ordinance for the removal of a Confederate Monument ("the Monument") located in Travis Park in downtown San Antonio. On August 31, 2017, the City Council voted to remove the Monument. One day before, on August 30, 2017, Plaintiffs Richard Brewer and the Texas Division of the Confederate Veterans (collectively, "Plaintiffs"), filed suit against Defendants in this Court, alleging federal claims under the First Amendment and for Due Process, as well as state law claims for attempted trespass to land and for breach of an easement. (Dkt. # 1.) Plaintiffs

¹ Although not clear from Plaintiffs' filings, the individual Plaintiff is presumably a member of the Confederate Veterans. (See Dkts. ## 1, 2.)

simultaneously filed a motion for Temporary Restraining Order (“TRO”), asking the Court to immediately restrain Defendants from removing the Monument. (Dkt. # 2.) After a hearing, the Court denied the motion for TRO, but directed that the removal of the Monument be carried out in such a manner as to preserve the integrity of the Monument, and that the Monument be stored in a secure location in order to protect it from damage or from being defaced pending resolution of this lawsuit. (Dkt. # 7 at 8–9.) On September 1 and 2, 2017, the City removed the Monument.

After several other filings in this case, Plaintiffs were granted leave to file a second amended complaint. (Dkt. # 44.) Plaintiffs’ second amended complaint added a new defendant, the City of San Antonio (“the City”), and added that suit be brought against each council member in both their official and individual capacities. (Id.) The complaint alleges causes of action for violation of free speech, violation of the Texas Antiquities Code, a claim for charitable trust/gift, and a conversion claim. (Id.)

On July 16, 2018, Defendants filed the motion for summary judgment or, in the alternative, motion to dismiss. (Dkt. # 54.) On August 13, 2018, Plaintiffs filed a response in opposition. (Dkt. # 56.) Defendants filed a reply on August 27, 2018. (Dkt. # 58.) On September 4, 2018, Defendant council members, in their individual capacities, filed the motion to dismiss. (Dkt. # 59.)

LEGAL STANDARD

I. Summary Judgment

A movant is entitled to summary judgment upon showing that “there is no genuine dispute as to any material fact,” and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); see also Meadaa v. K.A.P. Enters., L.L.C., 756 F.3d 875, 880 (5th Cir. 2014). A dispute is only genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party meets this burden, the nonmoving party must come forward with specific facts that establish the existence of a genuine issue for trial. Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc., 738 F.3d 703, 706 (5th Cir. 2013) (quoting Allen v. Rapides Parish Sch. Bd., 204 F.3d 619, 621 (5th Cir. 2000)). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” Hillman v. Loga, 697 F.3d 299, 302 (5th Cir. 2012) (quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)).

In deciding whether a fact issue has been created, the court must draw all reasonable inferences in favor of the nonmoving party, and it “may not make

credibility determinations or weigh the evidence.” Tiblier v. Dlabal, 743 F.3d 1004, 1007 (5th Cir. 2014) (quoting Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000)). However, “[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment.” United States v. Renda Marine, Inc., 667 F.3d 651, 655 (5th Cir. 2012) (quoting Brown v. City of Hous., 337 F.3d 539, 541 (5th Cir. 2003)).

II. Federal Rule of Civil Procedure 12

Rule 12(c) provides that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” The standard for deciding a motion under Rule 12(c) is the same as the one for deciding a motion to dismiss under Rule 12(b)(6). See Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305, 313 n.8 (5th Cir. 2002) (“A number of courts have held that the standard to be applied in a Rule 12(c) motion is identical to that used in a Rule 12(b)(6) motion.” (citation and internal quotation marks omitted)).

Under Rule 12(b)(6), the court evaluates the pleadings by “accept[ing] ‘all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff[s].’” In re Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir. 2007) (quoting Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit, 369 F.3d 464, 467 (5th Cir. 2004)). To survive defendants’ motions, plaintiffs’ pleadings

must allege enough facts “to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff[s] plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting Twombly, 550 U.S. at 556); see also Twombly, 550 U.S. at 555 (“Factual allegations must be enough to raise a right to relief above the speculative level[.]”). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘shown’—‘that the pleader is entitled to relief.’” Iqbal, 556 U.S. at 679 (alteration omitted) (quoting Rule 8(a)(2)).

Furthermore, under Rule 8(a)(2), a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although “the pleading standard Rule 8 announces does not require ‘detailed factual allegations,’” it demands more than “‘labels and conclusions.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). And “‘a formulaic recitation of the elements of a cause of action will not do.’” Id. (quoting Twombly, 550 U.S. at 555).

DISCUSSION

Defendants' motion for summary judgment seeks dismissal of Plaintiffs' claims on the basis that: (1) Plaintiffs lack standing to bring some or all of the claims; (2) Plaintiffs have failed to state a claim on which relief can be granted; (3) there is no evidence to support one or more element of Plaintiffs asserted causes of action; and (4) the Court lacks jurisdiction over some of the claims. (Dkt. # 54.) The Court will first consider whether Plaintiffs have standing to bring any of their claims.

Defendants argue that Plaintiffs do not have standing to bring some or all of their claims. (Dkt. # 54.) Defendants contend that Plaintiffs have not alleged any particularized interest and therefore have not alleged a sufficient injury in fact to confer standing. Defendants also assert that Plaintiff Brewer does not have taxpayer standing nor do Plaintiffs have organizational standing.

To have standing to sue, a plaintiff must show that he personally suffered some actual or threatened injury, that the injury is fairly traceable to the defendant's challenged action, and that the relief requested will redress the injury. Doe v. Tangipahoa Parish Sch. Bd., 494 F.3d 494, 496 (5th Cir. 2007); Center for Individual Freedom v. Carmouche, 449 F.3d 655, 659 (5th Cir. 2006) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)). In addition, the injury must be an "invasion of a legally protected interest which is (a) concrete and

particularized, and (b) actual or imminent, not conjectural or hypothetical.” Lujan, 504 U.S. at 560. The Fifth Circuit strictly enforces the standing requirement as an essential element of subject matter jurisdiction. See Doe, 494 F.3d at 498 (citing Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541–42 (1986)).

A. Concrete and Particularized

To satisfy the injury-in-fact prong, a plaintiff must allege an invasion of a “legally protected interest,” that is both “concrete and particularized.” Plaintiffs assert they have standing to sue on the basis that “Defendants impermissible restriction of plaintiffs’ right to expression of their political viewpoint is a restriction of a legally protected interest.” (Dkt. # 56 at 17–18.) In other words, Plaintiffs contend that the City engaged in viewpoint discrimination when the City removed the Monument. According to Plaintiffs, their viewpoint—glorifying a Confederate legacy—was reflected in the Monument. (Id.) Additionally, they allege they were injured “by [Defendants] rendering impossible the public charitable gift of political speech intended to benefit plaintiffs and expressed by the Monument group.” (Id.)

Plaintiffs further assert that their injuries were particularized because Defendants’ removal of the Monument terminated political speech that Defendants and Plaintiffs had jointly established in 1908. (Dkt. # 56 at 17.) Plaintiffs argue that “[t]his injury is particularized[] because no one else was involved in the

mutually joined speech act of placing the Monument ensemble, except plaintiffs and defendants.” (Id. at 17–18.) According to Plaintiffs, when the Monument was removed, Defendants “terminated plaintiffs’ jointly established political speech,” injuring Plaintiffs alone because Plaintiffs had “directed the establishment of the speech act and defendants acted in agreement for 110 years.” (Id. at 18.)

When standing is contested, the appropriate inquiry is whether the interest is cognizable in the abstract, and then, whether such interest is concrete and particularly felt by those bringing suit; if the interest alleged is both cognizable and particularly felt, it is an injury in fact. See Lujan, 504 U.S. at 563 (“[T]he injury in fact test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.”). Here, Plaintiffs’ interest is cognizable and Plaintiffs have satisfied a concrete interest—free speech. See Pleasant Grove City, Utah v. Sumnum, 555 U.S. 460 (2009); Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993). Concreteness, however, is not enough—the interest must also be particularized.

Notably, Plaintiffs have not complained that Defendants have taken any direct action against either Brewer or the Confederate Veterans. Instead, they complain, as stated above, that they “directed the establishment of the speech [contained in the Monument] and defendants acted in agreement for 110 years,” and were thus injured by the Monument’s removal. However, as our sister court in

Austin recently held on a very similar case, “[s]ubjective ideological interests—no matter how deeply felt—are not enough to confer standing.” McMahon v. Fenves, No. 1:17-CV-822-LY, 2018 WL 3118692, at *4 (W.D. Tex. June 25, 2018) (citing Sierra Club v. Morton, 405 U.S. 727, 729–35 (1972)). “Our system of governance assigns the vindication of value preferences to the democratic political process, not the judicial process, see Lujan, 504 U.S. at 576, 112 S.Ct. 2130, because limiting the right to sue to those most immediately affected ‘who have a direct stake in the outcome’ prevents judicial review ‘at the behest of organizations who seek to do no more than vindicate their own value preferences.’” Id. (quoting Sierra Club, 405 U.S. at 740). Here, Plaintiffs seek to do just that. Plaintiffs are likely more deeply attached to the values embodied by the Monument than the average person walking through Travis Park, “but their identities as descendants of Confederate veterans do not transform an abstract ideological interest in preserving the Confederate legacy into a particularized injury.” See id. Thus, the alleged free-speech injury of Plaintiffs, while perhaps cognizable in the abstract, is not an injury in fact.

B. Taxpayer Standing

Still, Plaintiff Brewer asserts that he has taxpayer standing to bring his claims. (Dkt. # 44.) Taxpayer standing is an exception to the general rule that the plaintiff must show a particularized injury distinct from that suffered by the public.

See Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 555–56 (Tex. 2000); Hendee v. Dewhurst, 228 S.W.3d 354, 373–74 (Tex. App.—Austin 2007, pet. denied). A plaintiff relying on taxpayer standing can seek to enjoin *prospective* expenditures of public funds, but cannot recover funds *already expended*.

Williams v. Huff, 52 S.W.3d 171, 180 (Tex. 2001) (emphasis added). To establish taxpayer standing, a plaintiff must show that (1) he is a taxpayer, and (2) public funds *are to be* expended on the allegedly illegal activity. Id. at 179; Ehm v. San Antonio City Council, 269 F. App'x 375, 377 (5th Cir. 2008) (per curiam).

The “illegal expenditure” exception is a long-recognized, but narrowly limited, exception to the general prohibition against recognizing taxpayer standing. See Williams, 52 S.W.3d at 180; Bland Indep. Sch. Dist., 34 S.W.3d at 555 (both quoting Osborne v. Keith, 177 S.W.3d 198, 200 (Tex. 1944)). The limited standing permitted a taxpayer under this exception applies only when the taxpayer seeks (1) to challenge a proposed, allegedly illegal, expenditure and (2) to enjoin the expenditure. See Williams, 52 S.W.3d at 181; Bland Indep. Sch. Dist., 34 S.W.3d at 556 (both citing Hoffman v. Davis, 100 S.W.2d 94, 96 (1937)).

Brewer asserts that he has taxpayer standing because he is a resident taxpayer of San Antonio and he has contested the removal of the Monument as unconstitutional. (Dkt. # 44 at 11.) He further argues that Defendants expended taxpayer funds in the illegal removal. (Id.) In response, Defendants contend that

Plaintiffs have no evidence that the City is *currently* spending taxpayer funds in relation to the Monument, nor any evidence that taxpayer funds will be spent in the future. (Dkt. # 54 at 12.) Defendants further argue that Brewer cannot maintain taxpayer standing because Plaintiffs' second amended complaint fails to plead any request for injunctive relief. (Id.)

Here, the Court must consider the issue of Brewer's standing as a taxpayer in context. Plaintiffs filed suit in this case just prior to the removal of the Monument, and thus it would seem likely, at that time, Brewer had taxpayer standing to challenge and enjoin the removal of the Monument since taxpayer funds were proposed to be prospectively spent on its removal. (See Dkt. # 56-1.) Thus, the Court proceeded to consider the merits of Plaintiffs' challenge in its Order on Plaintiffs' Motion for Temporary Restraining Order. (Dkt. # 7.) While the Court noted in its Order that Plaintiffs had not alleged how they had standing to challenge the removal, the Court nonetheless proceeded to review Plaintiffs' motion, stating that "even if Plaintiffs can demonstrate standing, they have not established the elements necessary for the Court's issuance of a TRO." (Id. at 4.) Thus, even though Plaintiffs had not yet pled or demonstrated standing, given the sensitive timing of the request, the Court assumed that Plaintiffs had, or could at least demonstrate, taxpayer standing.

Since that time, the Monument was removed and the taxpayer funds used on its removal were previously expended. As a result, there is nothing left to enjoin from Plaintiffs' original complaint. Indeed, Plaintiffs' second amended petition no longer seeks injunctive relief. (See Dkt. # 44.) Accordingly, the original issue for which Plaintiffs filed suit is moot. See Envtl. Conserv. Org. v. City of Dall., 529 F.3d 519, 524–25 (5th Cir. 2008) (“Mootness is the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).” (quoting U.S. Parole Comm’n v. Geraghty, 445 U.S. 388, 397 (1980))). Given this, the Court does not see how Plaintiffs can now maintain taxpayer standing to assert the claims alleged in their second amended complaint. The taxpayer funds have already been spent to remove the Monument, and Plaintiffs' second amended complaint no longer seeks to enjoin future, allegedly illegal expenditures of public funds. The second amended complaint alleges only that “Defendants *expended* taxpayer funds in the illegal removal.” (Dkt. # 44 at 11.)

While not binding on this Court, the Texas Supreme Court has determined that a taxpayer may maintain an action solely to challenge *proposed* illegal expenditures; he or she may not sue to recover funds *previously* expended or challenge expenditures that are merely “unwise or indiscreet.” Williams,

52 S.W.3d at 180 (citing Hoffman, 100 S.W.2d at 96; Osborne, 177 S.W.2d at 200). Only the public entity affected by an allegedly illegal expenditure has standing to sue to recover already expended funds. See Bland Indep. Sch. Dist., 34 S.W.3d at 556 (quoting Hoffman, 100 S.W.2d at 96). Accordingly, because Plaintiffs no longer seek to enjoin the prospective expenditure of taxpayer funds on allegedly illegal activity, the Court finds that Brewer lacks taxpayer standing to bring the claims alleged in Plaintiffs' second amended complaint.

C. Organizational Standing

To the extent the Confederate Veterans rely on associational or organizational standing to bring their claims, this too fails. An association seeking to "bring suit on behalf of its members" has standing only if "its members would otherwise have standing to sue in their own right." Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977).

Here, the Confederate Veterans have not alleged any injury different from that of Brewer. Though the Confederate Veterans argue the injury is unique to its members, it is the same injury alleged by Brewer and is not sufficient to confer standing. Because the Confederate Veterans plead no injury to its members other than an injury rejected by this Court, as stated above, it has not pleaded that "its members would otherwise have standing to sue in their own right."

Accordingly, the Confederate Veterans lack associational standing to bring this lawsuit.

An “organization can establish standing in its own name if it meets the same standing test that applies to individuals.” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). Plaintiffs’ response to Defendants’ motion for summary judgment fails to produce any argument or evidence in support of organizational standing. In any case, as addressed above, Plaintiffs have failed to allege a concrete, particularized, and imminent injury; therefore, Plaintiffs have not demonstrated that they have organizational standing.

D. State-Law Claims and Supplemental Jurisdiction

To the extent Plaintiffs have standing to bring any state-law causes of action, the Court will decline to exercise supplemental jurisdiction over them. A court may decline to exercise supplemental jurisdiction over state-law claims when it has “dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3); see also *Artis v. District of Columbia*, — U.S. —, 138 S. Ct. 594, 597–98 (2018) (“When district courts dismiss all claims independently qualifying for the exercise of federal jurisdiction, they ordinarily dismiss as well all related state claims.”); accord *Heggemeier v. Caldwell Cty., Texas*, 826 F.3d 861, 872–73 (5th Cir. 2016). The Sixth Court of Appeals of Texas considered and rejected similar state-law claims brought by some of these Plaintiffs. See *Bray v. Femes*,

No. 6-15-00075-CV, 2016 WL 3083539 (Tex. App.—Texarkana Mar. 24, 2016, pet. denied). Since all federal law claims have been dismissed for lack of standing,² this Court will not exercise its supplemental jurisdiction over any remaining state-law claims.

CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' Motion for Summary Judgment or, in the Alternative, Motion to Dismiss (Dkt. # 54), and **DENIES AS MOOT** Defendants Nirenberg, Trevino, Shaw, Viagran, Saldana, Gonzales, Brockhouse, Sandoval, Palaez, Courage and Perry, in their individual capacities' Rule 12(b)(6) Motion to Dismiss (Dkt. # 59). Plaintiffs' federal law claims are **DISMISSED** for **LACK OF STANDING**; Plaintiffs' state law claims are **DISMISSED WITHOUT PREJUDICE**. The Clerk's Office is **INSTRUCTED** to **CLOSE THE CASE**.

IT IS SO ORDERED.

DATED: San Antonio, Texas, September 17, 2018.



David Alan Ezra
Senior United States District Judge

² The Court takes no position on whether Plaintiffs' alleged injuries finds support in First Amendment case law or would ultimately be successful on the merits. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998) (refusing to decide merits before resolving Article III jurisdictional questions "because it carries the courts beyond the bounds of authorized judicial action").

CAUSE NO. DC-18-05460

RETURN LEE TO LEE PARK,
ET AL.,

Plaintiffs,

VS.

MIKE RAWLINGS, ET AL,
Defendants.

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

14TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FINAL JUDGMENT

On February 1, 2019, the Court considered Defendants' Plea to the Jurisdiction, and in the alternative Second Motion for Summary Judgment as to Plaintiffs' remaining claims. Plaintiffs, Return Lee to Lee Park, Katherine Gann, and Warren Johnson, appeared though counsel. Defendants, Mike Rawlings, Scott Griggs, Adam Medrano, Casey Thomas II, Dwaine Caraway, Rickey Callahan, Omar Narvaez, Kevin Felder, Tennell Atkins, Mark Clayton, Adam McGough, Lee Kleinman, Sandy Greyson, Jennifer Gates, and Philip Kingston, in their official capacities, and the City of Dallas, , appeared through counsel. The Court partially granted the plea and motion and directed the parties to provide further briefing on the mootness of the Plaintiffs' claim regarding alleged violation of the Texas Open Meetings Act. The parties submitted the briefing and the Court has reviewed the briefing, evidence submitted, and arguments of counsel, and the Court finds good cause to grant Defendants' plea to the jurisdiction and alternative summary judgment motion as to Plaintiffs' claims regarding the Texas Open Meetings Act.

IT IS, THEREFORE, ORDERED that the Court grants the Defendants' Pleas to the Jurisdiction and Motion to Dismiss and Plaintiffs' case and causes of action are dismissed with prejudice.

Final Judgment.



IT IS FURTHER ORDERED, in the alternative, that Defendants' second motion for summary judgment is granted, and that judgment is entered in favor of Defendants and against Plaintiffs.

IT IS FURTHER ORDERED, that based on this order and the Court's prior orders, dated November 14, 2018 and February 5, 2019, granting Defendants' pleas to the jurisdiction and the first summary judgment motion and part of the second summary judgment motion, that all of Plaintiffs' claims and causes of action have been dismissed with prejudice, or in the alternative, that summary judgment has been granted against all of Plaintiffs' claims and causes of action. Therefore, it is FURTHER ORDERED that Plaintiffs take nothing.

This is a final judgment that disposes of all claims and all parties and is appealable.

Costs are awarded in favor of Defendants.

SIGNED this 2 day of April 2019.



JUDGE PRESIDING

Final Judgment.

CAUSE NO. DC-18-05460

RETURN LEE TO LEE PARK, ET AL,
Plaintiffs,

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IN THE DISTRICT COURT

VS.

14TH JUDICIAL DISTRICT

MIKE RAWLINGS, ET AL,
Defendants.

DALLAS COUNTY, TEXAS

**ORDER GRANTING IN PART DEFENDANTS' PLEAS TO THE JURISDICTION,
MOTION TO DISMISS, AND IN THE ALTERNATIVE,
SECOND MOTION FOR SUMMARY JUDGMENT**

On February 1, 2019, the Court considered Defendants Mike Rawlings, Scott Griggs, Adam Medrano, Casey Thomas II, Dwaine Caraway, Rickey Callahan, Omar Narvaez, Kevin Felder, Tennell Atkins, Mark Clayton, Adam McGough, Lee Kleinman, Sandy Greyson, Jennifer Gates, and Philip Kingston, and the City of Dallas ("City") (collectively "Defendants") Pleas to the Jurisdiction, and in the alternative Second Motion for Summary Judgment as to Plaintiffs' remaining claims. The Court finds that good cause has been shown for the granting of the pleas and motion, except as limited below.

IT IS, THEREFORE, ORDERED that the Court defers its ruling on Plaintiffs' claim and cause of action regarding an alleged violation of the Open Meetings Act related to the removal of the Lee monument. The Court orders Plaintiffs to file a response by February 8, 2019 strictly limited to the issue of whether Plaintiffs' Open Meetings Act claim and cause of action is moot. The Court orders Defendants to file a reply by February 15, 2019 strictly limited to the issue of whether Plaintiffs' Open Meetings Act claim and cause of action is moot.


IT IS FURTHER ORDERED, the Court will rule on any remaining claims following the above submissions without hearing.

Order on City of Dallas's Pleas to Jurisdiction; Motion to Dismiss; and Second Motion for Summary Judgment.

IT IS FURTHER ORDERED that, except as limited above, the Court grants the Defendants' Pleas to Jurisdiction and Motion to Dismiss and Plaintiffs' case and causes of action are dismissed with prejudice.

IT IS FURTHER ORDERED, in the alternative, except as limited above, that Defendants' second motion for summary judgment is granted, and that judgment is entered in favor of Defendants and against Plaintiffs.

SIGNED this 5 day of February 2019.



JUDGE PRESIDING

Order on City of Dallas's Pleas to Jurisdiction; Motion to Dismiss; and Second Motion for Summary Judgment.

Page 2 of 2

CAUSE NO. DC-18-05460

RETURN LEE TO LEE PARK,
KATHERINE GANN
Plaintiffs,

VS.

MIKE RAWLINGS, ET AL,
Defendants.

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IN THE DISTRICT COURT

14TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**ORDER GRANTING IN PART
DEFENDANTS' PLEA TO JURISDICTION, MOTION TO DISMISS, AND IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

On November 7, 2018, the Court considered the Plea to Jurisdiction, Supplement to Plea to Jurisdiction, Motion to Dismiss, and in the alternative Motion for Summary Judgment filed by Defendants Mike Rawlings, Scott Griggs, Adam Medrano, Casey Thomas II, Dwaine Caraway, Rickey Callahan, Omar Narvaez, Kevin Felder, Tennell Atkins, Mark Clayton, Adam McGough, Lee Kleinman, Sandy Greyson, Jennifer Gates, and Philip Kingston, and the City of Dallas's ("City") (collectively "Defendants"). After considering the pleadings, motions, responses, evidence on file, and arguments of counsel, the Court finds that the plea and motions should be GRANTED IN PART, as follows.

IT IS ORDERED that the Court GRANTS the Defendants' plea to the jurisdiction and summary judgment motion and dismisses with prejudice all claims concerning the Texas Antiquities Code, the Texas Uniform Declaratory Judgment Act, and requested injunctive and mandamus relief.

Defendants' Proposed Order on City of Dallas's Plea to Jurisdiction; Motion to Dismiss, and Motion for Summary Judgment.

Page 1 of 2

IT IS FURTHER ORDERED that the Court GRANTS the Defendants' plea to the jurisdiction and summary judgment motion regarding competitive bidding claims pursuant to Section 252.061 of the Texas Local Government Code, dismissing such claims with prejudice only as to those claims made by plaintiffs Return Lee to Lee Park and Katherine Gann.

IT IS FURTHER ORDERED that the Court reserves for future resolution Defendants' challenge to Plaintiffs' supplementation of their First Amended Petition filed November 6, 2018 and the competitive bidding claims pursuant to Section 252.061 of the Texas Local Government Code made by new plaintiff Warren Johnson.

IT IS FURTHER ORDERED that the Court reserves for future resolution the adjudication of Plaintiffs' claims involving the Texas Open Meetings Act.

SIGNED this 14 day of November 2018.


JUDGE PRESIDING

APPROVED AS TO FORM

Charles S. Estee
Attorney for Defendants

Warren Norred
Attorney for Plaintiffs

Defendants' Proposed Order on City of Dallas's Plea to Jurisdiction; Motion to Dismiss, and Motion for Summary Judgment.

287 F.Supp.3d 632

United States District Court, N.D. Texas, Dallas Division.

Hiram PATTERSON and Texas Division, Sons of Confederate Veterans, Inc., Plaintiffs,

v.

Mike RAWLINGS, In His Official Capacity as Mayor of the City of Dallas, et al., Defendants.

Civil Action No. 3:17CV-2361-D

Signed 02/07/2018

Synopsis

Background: Activist organization brought suit against mayor and city council, in their official capacities, alleging violations of organization’s constitutional rights to free speech and due process, breach of copyright interest, breach of term in grant of title, and sought a temporary restraining order to prevent removal of monuments. City filed motion to dismiss for lack of standing.

Holdings: The District Court, Sidney A. Fitzwater, J., held that:

[1] organization did not have standing to sue for copyright infringement under the Copyright Act;

[2] organization did not have standing to claim breach of revisionary term;

[3] organization did not have standing to sue for quiet title to cemetery;

[4] removal of Confederate statue did not infringe on individual activist’s First Amendment free speech rights;

[5] individual activist lacked taxpayer standing;

[6] organization failed to show that one of its members had standing in own right; and

[7] organization failed to allege organizational standing on own behalf.

Motion granted.

West Headnotes (31)

[1] **Federal Civil Procedure**

— In general; injury or interest

Federal Courts

— Case or Controversy Requirement

Requirement that a claimant have standing is an essential and unchanging part of the case-or-controversy requirement of Article III. U.S. Const. art. 3; Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[2] **Federal Civil Procedure**

— In general; injury or interest

“Standing” involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[3] **Federal Civil Procedure**

— In general; injury or interest

Federal Civil Procedure

— Causation; redressability

The irreducible constitutional minimum of standing contains three elements, which are (1) an injury-in-fact that is concrete and actual or imminent, not hypothetical, (2) a fairly traceable causal link between the injury and the defendant’s actions, and (3) that the injury will likely be redressed by a favorable decision. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote



[4]

Injunction

↪ Persons entitled to apply; standing

For purposes of standing, to obtain injunctive relief, a plaintiff must be likely to suffer future injury. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[5]

Federal Courts

↪ Injunctions

Injunction

↪ Persons entitled to apply; standing

For purposes of standing, past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[6]

Federal Civil Procedure

↪ In general; injury or interest

For purposes of standing, the threat of future injury to the plaintiff must be both real and immediate, not conjectural or hypothetical. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[7]

Federal Civil Procedure

↪ In general; injury or interest

Prudential standing does not emanate from the Constitution, and embodies judicially self-imposed limits on the exercise of federal jurisdiction. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[8]

Constitutional Law

↪ Civil Remedies and Procedure

Federal Civil Procedure

↪ In general; injury or interest

Federal Civil Procedure

↪ Rights of third parties or public

The doctrine of prudential standing asks whether a plaintiff's grievance arguably falls within the zone of interests protected by the statutory provision invoked in the suit, whether the complaint raises abstract questions or a generalized grievance more properly addressed by the legislative branch, and whether the plaintiff is asserting his or her own legal rights and interests rather than the legal rights and interests of third parties. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[9]

Federal Courts

↪ Pleadings and motions

Federal Courts

↪ Evidence; Affidavits

When challenging subject matter jurisdiction for lack of standing, a party can make a facial attack or a factual attack. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[10]

Federal Courts

↪ Pleadings and motions

Federal Courts

↪ Presumptions and burden of proof

If the party merely files a motion to dismiss for lack of standing, it is considered a facial attack, and the court looks only at the sufficiency of the allegations in the pleading and assumes them to be true. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [11] **Federal Courts**
↪ Pleadings and motions

If allegations in a pleading are sufficient to allege jurisdiction, the court must deny a motion to dismiss for lack of standing. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [12] **Federal Courts**
↪ Evidence; Affidavits

A party can make a factual attack on subject matter jurisdiction by submitting evidence, such as affidavits or testimony. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [13] **Federal Courts**
↪ Evidence; Affidavits

A factual attack on the subject matter jurisdiction of the court challenges the facts on which jurisdiction depends and matters outside of the pleadings, such as affidavits and testimony, are considered. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [14] **Federal Courts**
↪ Necessity of Objection; Power and Duty of Court
Federal Courts
↪ Evidence; Affidavits

When presented with a factual attack on subject matter jurisdiction by filing a motion to dismiss for lack of standing, a court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [15] **Federal Courts**
↪ Evidence; Affidavits
Federal Courts
↪ Presumptions and burden of proof

When presented with a factual attack on subject matter jurisdiction by filing a motion to dismiss for lack of standing, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [16] **Federal Courts**
↪ Evidence; Affidavits
Federal Courts
↪ Weight and sufficiency

The plaintiff in a factual challenge arising from a motion to dismiss for lack of standing, as the party seeking to invoke jurisdiction, must submit facts through some evidentiary method and prove by a preponderance of the evidence that the trial court does have subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [17] **Copyrights and Intellectual Property**
↪ Persons entitled to sue

Activist organization did not have standing to

sue for copyright infringement based on city's removal of Confederate statue from city property; organization did not own copyright to the statue, had not been granted exclusive license by copyright owner, and was not in process of negotiating any such ownership or license rights. 17 U.S.C.A. § 101 et seq.; Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

^[18] **Copyrights and Intellectual Property**

➤ Persons entitled to sue

Only two types of claimants have standing to sue for copyright infringement under the Copyright Act: (1) owners of copyrights, and (2) persons who have been granted exclusive licenses by owners of copyrights.

Cases that cite this headnote

^[19] **Associations**

➤ Actions by or Against Associations

Cemeteries

➤ Title and rights of owners of lots in general

Cemeteries

➤ Tombstones and monuments

Activist organization did not have standing to claim breach of revisionary term in grant of title to cemetery to City and subsequent removal of Confederate monument by City, where interests or rights in cemetery were never transferred to organization, and monument was not located on granted property. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

^[20] **Associations**

➤ Actions by or Against Associations

Activist organization did not have standing to sue for quiet title to cemetery which was granted

to City, where warranty deed transferring cemetery to City was recorded in the county land records, City had performed mowing, maintenance, and litter removal at cemetery and had not authorized or approved anyone else's taking such action, and organization was not formed until after granting of deed. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

^[21] **Constitutional Law**

➤ Particular Issues and Applications in General
Constitutional Law

➤ Parks and forests

Municipal Corporations

➤ Parks and Public Squares and Places

City's removal of Confederate statues and forthcoming removal of other Confederate monuments did not infringe on individual activist's First Amendment free speech rights, absent showing that activist had been deprived of any First Amendment freedom. U.S. Const. Amend. 1; Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

^[22] **Civil Rights**

➤ Injury and Causation

The loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury sufficient to satisfy Article III's standing requirement. U.S. Const. Amend. 1.

Cases that cite this headnote

^[23] **Municipal Corporations**

➤ Restraining Action by Municipality or Officers

Individual activist lacked taxpayer standing in action related to City's removal of Confederate

statue from cemetery, absent showing that tax money was spent in connection with removal of statue or other Confederate monument. Fed. R. Civ. P. 12(b)(1).

2 Cases that cite this headnote

[24] **Municipal Corporations**
← Nature and scope in general

A plaintiff only meets the injury requirement of municipal taxpayer standing if he shows that he pays taxes to the relevant entity and tax revenues are expended on the disputed practice.

1 Cases that cite this headnote

[25] **Associations**
← Actions by or Against Associations

An association has standing to bring a suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members.

Cases that cite this headnote

[26] **Associations**
← Actions by or Against Associations

When a defendant contests an organization's standing based on a factual challenge to the standing of a member whose standing to sue in his own right controls the organization's standing, the motion to dismiss for lack of standing is also a factual attack. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[27] **Associations**
← Actions by or Against Associations

City's challenge to activist organization's standing on own behalf was facial, where City did not produce any evidence challenging organization's standing on own behalf. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[28] **Associations**
← Actions by or Against Associations

To establish standing on its own behalf, an organization must show that it has constitutional standing in the same manner as any individual.

Cases that cite this headnote

[29] **Associations**
← Actions by or Against Associations

Because an organization that has standing on own behalf does not rely on independent standing of any of organization's members or any other plaintiff, a challenge to this form of standing is facial unless defendant adduces evidence attacking a jurisdictional fact on which standing relies. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[30] **Associations**
← Actions by or Against Associations

Activist organization failed to show that one of its members had standing in own right, and thus organization did not have representational standing in action related to City's removal of

Confederate statue from cemetery, where only identified member did not have standing to bring suit. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

removal of a statue of General Robert E. Lee from City property and to bring claims related to the removal of other Confederate monuments and to title to two cemeteries located within the City of Dallas. Concluding that plaintiffs lack standing, the court grants defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(1) and dismisses this action without prejudice by judgment filed today.

1311 Constitutional Law

Government property in general

Activist organization failed to allege organizational standing on own behalf to bring First Amendment claim against City related to City's removal of Confederate statue from City property, absent showing that organization had been deprived of any First Amendment freedom, or that tax money was spent in connection with removal of statue or other Confederate monument. U.S. Const. Amend. 1; Fed. R. Civ. P. 12(b)(1).

1 Cases that cite this headnote

I

In 2017 the City's Mayor and City Council adopted a resolution ("Resolution") directing the City Manager to immediately remove the Alexander Phimster Proctor monument of Robert E. Lee at Lee Park ("Lee Statue"), located on City property, and safely store it until a mayoral task force ("Task Force") could make recommendations concerning the statue's disposition. The Resolution authorized the City Manager to transfer funds or appropriate funds from excess revenue to remove the Lee Statue and to take appropriate actions to seek private funding to reimburse the expenses associated with this action.

The same day the Resolution was adopted, plaintiffs Hiram Patterson ("Patterson") and Texas Division, Sons of Confederate Veterans, Inc. ("SCV") filed this lawsuit against the Mayor and City Council, in their official capacities, alleging violations of plaintiffs' constitutional rights to free speech and due process and seeking a temporary restraining order ("TRO") preventing the removal of the Lee Statue and Confederate monuments at Pioneer Park in Dallas. The court temporarily restrained the removal of the Lee Statue. At the conclusion of a hearing held the following day, the court concluded that plaintiffs had failed to show that they were entitled to a restraining order and dissolved the TRO.

A few days after the court dissolved the TRO, the City removed the Lee Statue and placed it in storage. Plaintiffs then filed an amended complaint and a second amended complaint ("SAC"). In the SAC, plaintiffs bring a claim under 42 U.S.C. § 1983 for alleged violations of their First Amendment free speech rights. They also assert that the City breached SCV's copyright interest in the Lee Statue; that the City breached the reversionary term in the grant of title in the Pioneer Park Cemetery; and that title to the Confederate Cemetery resides in the SCV because title was never delivered, and the City has not exercised possession of the property. Plaintiffs seek damages and

Attorneys and Law Firms

*635 Kirk David Lyons, Black Mountain, NC, David Duane Vandenberg, Austin, TX, Warren V. Norred, The Law Office of Warren V. Norred, Arlington, TX, for Plaintiffs.

Stacy Jordan Rodriguez, Charles Estee, Christopher J. Caso, Dallas City Attorney's Office, Dallas, TX, for Defendants.

MEMORANDUM OPINION AND ORDER

SIDNEY A. FITZWATER, UNITED STATES DISTRICT JUDGE

*636 The court must decide whether plaintiffs have standing to challenge the City of Dallas' ("City's")

declaratory and injunctive relief.

Defendants now move under Rules 12(b)(1) and 12(b)(6) to dismiss the SAC.¹ Plaintiffs oppose the motion.

II

The court first considers defendants' motion to dismiss under Rule 12(b)(1) for lack of standing.

A

¹¹¹ ¹²¹ “[T]he requirement that a claimant have ‘standing is an essential and unchanging part of the case-or-controversy requirement of Article III.’ ” *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 733, 128 S.Ct. 2759, 171 L.Ed.2d 737 (2008) (quoting *637 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). Standing “involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.” *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

¹³¹ ¹⁴¹ ¹⁵¹ ¹⁶¹ It is well-settled that “the irreducible constitutional minimum of standing contains three elements.” *Lujan*, 504 U.S. at 560, 112 S.Ct. 2130. These elements are (1) an injury-in-fact that is concrete and actual or imminent, not hypothetical; (2) a fairly traceable causal link between the injury and the defendant’s actions; and (3) that the injury will likely be redressed by a favorable decision. *See, e.g., Bennett v. Spear*, 520 U.S. 154, 167, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997); *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009). To obtain injunctive relief, a plaintiff must be “likely to suffer future injury.” *City of L.A. v. Lyons*, 461 U.S. 95, 105, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983). “Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief[.]” *O’Shea v. Littleton*, 414 U.S. 488, 495, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974). The threat of future injury to the plaintiff “must be both real and immediate, not conjectural or hypothetical.” *Lyons*, 461 U.S. at 102, 103 S.Ct. 1660 (internal quotation marks and citations omitted).

¹⁷¹ ¹⁸¹ Prudential standing, by contrast, does not emanate

from the Constitution, and it instead “embodies ‘judicially self-imposed limits on the exercise of federal jurisdiction.’ ” *Cibolo Waste, Inc. v. City of San Antonio*, 718 F.3d 469, 474 (5th Cir. 2013) (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004)). The doctrine asks

whether a plaintiff’s grievance arguably falls within the zone of interests protected by the statutory provision invoked in the suit, whether the complaint raises abstract questions or a generalized grievance more properly addressed by the legislative branch, and whether the plaintiff is asserting his or her own legal rights and interests rather than the legal rights and interests of third parties.

Ass’n of Cmty. Orgs. for Reform Now v. Fowler, 178 F.3d 350, 363 (5th Cir. 1999).

B

¹⁹¹ ¹⁰¹ ¹¹¹ When challenging subject matter jurisdiction under Rule 12(b)(1), a party can make a facial attack or a factual attack. *See Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. May 1981). If the party merely files its Rule 12(b)(1) motion, it is considered a facial attack, and the court looks only at the sufficiency of the allegations in the pleading and assumes them to be true. *Id.* If the allegations are sufficient to allege jurisdiction, the court must deny the motion. *Id.* This is akin to a Rule 12(b)(6) motion in that the “pleading’s allegations are presumed to be true, and ‘[i]f those allegations sufficiently allege a claim for recovery the complaint stands and the federal court must entertain the suit.’ ” *Vinmar Overseas, Ltd. v. OceanConnect, LLC*, 2012 WL 3599486, at *4 (S.D. Tex. Aug. 20, 2012) (quoting *Jones v. SuperMedia Inc.*, 281 F.R.D. 282, 286 (N.D. Tex. 2012) (Boyle, J.)).

¹²¹ ¹³¹ ¹⁴¹ ¹⁵¹ ¹⁶¹ A party can also make a factual attack on subject matter jurisdiction by submitting evidence, such as affidavits or testimony. *IBEW–NECA Sw. Health & Benefit Fund v. Winstel*, 2006 WL 954010, at *1 (N.D. Tex. Apr. 12, 2006) (Fitzwater, J.) (citing *Paterson*, 644

F.2d at 523). “A factual attack on the subject matter jurisdiction of the court... challenges the facts on which jurisdiction depends and matters outside of the pleadings, such as affidavits and testimony, are considered.” *Vinmar Overseas*, 2012 WL 3599486, at *4 (quoting *Oaxaca v. Roscoe*, 641 F.2d 386, 391 (5th Cir. Unit A April 1981)). The “court is free *638 to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. May 1981). “[N]o presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” *Id.* The plaintiff in a factual challenge, as the party seeking to invoke jurisdiction, must “submit facts through some evidentiary method and...prov[e] by a preponderance of the evidence that the trial court does have subject matter jurisdiction.” *Paterson*, 644 F.2d at 523.

III

The court begins with defendants’ contention that the evidence establishes that plaintiffs lack standing, which constitutes a factual attack on the court’s subject matter jurisdiction.

A

¹⁷The court first considers plaintiffs’ copyright claim. In the SAC, plaintiffs allege:

[w]hen the City removed the [Lee Statue], it separated the pedestal from the bronze monument that had been one integral design of the sculptor and had been intended to remain in perpetuity. The City intentionally and with gross negligence destroyed and mutilated an artistic work of recognized international stature, thereby, infringing the sculptor’s estate’s copyright.

SAC ¶ 23; *see also id.* ¶ 35 (“Defendants willfully infringed the Proctor Estate’s copyrighted work.”). In support of their request for preliminary injunction, plaintiffs contend that “the Proctor Estate has [the] copyright, has orally agreed to assignment of title to the SCV, and defendants have infringed [the] copyright by damaging the [Lee Statue], as well as removing the Monument from permanent public display in Lee park.” *Id.* ¶ 62 (footnote omitted). In a footnote, plaintiffs contend that SCV and the Proctor Estate “are negotiating a written assignment of the Estate’s copyright interest to the SCV.” *Id.* ¶ 62 n.7.

Defendants move to dismiss plaintiffs’ copyright claim, contending that plaintiffs do not have even a potential interest in the copyright to the Lee Statue. In support, defendants cite an email from Laura Proctor Ames (“Ames”), on behalf of the Proctor Foundation, in which Ames states that “the Proctor Foundation is not involved with any legal complaint against the City of Dallas,” Ds. App. 42, does not approve of being included in the SAC, and is “not in any way connected to the attorney who prepared [the SAC], or the organization filing the complaint,” *id.* Ames also states that she had spoken with plaintiffs’ attorney “and he acknowledged we were included without our approval and agreed to remove us immediately.” *Id.* Defendants contend that this evidence establishes plaintiffs’ lack of standing for any claimed copyright violation.

¹⁸Plaintiffs do not respond to defendants’ motion to dismiss their copyright claim, do not dispute defendants’ evidence that SCV has no interest or even potential interest in the copyright to the Lee Statue, and do not offer any evidence that would demonstrate that they suffered any injury-in-fact as a result of any alleged copyright violation. “[O]nly two types of claimants have standing to sue for copyright infringement under the Copyright Act: (1) owners of copyrights, and (2) persons who have been granted exclusive licenses by owners of copyrights.” *Isbell v. DM Records, Inc.*, 2004 WL 1243153, at *4 (N.D. Tex. June 4, 2004) (Fish, C.J.). The undisputed evidence shows that plaintiffs do not own the copyright to the Lee Statue, have not been granted an exclusive license by *639 the copyright owner, and are not in the process of negotiating any such ownership or license rights. Accordingly, the court grants defendants’ motion to dismiss plaintiffs’ copyright claim alleged in count 1 of the SAC.²

B

The court now turns to plaintiffs' claim that defendants breached the reversionary term in the grant of title in the Pioneer Park Cemetery.

¹¹⁹In count 3 of the SAC, plaintiffs allege that the City took title to Pioneer Park Cemetery from Tannehill Lodge No. 52 and Dallas Lodge No. 44 (the "Lodges"), with the understanding that the City would "use and maintain" the property as a "Memorial Cemetery Park." SAC ¶ 53. Plaintiffs assert that, by publicly announcing that it would remove the Confederate War Memorial in Pioneer Park Cemetery, the City "refus[ed] and fail[ed] to use the memorial park for the purpose mandated in the transfer of title to the City," and that, as a result, title must revert to the Lodges. *Id.* ¶¶ 53, 55. Without citing supporting authority, plaintiffs request that the court "[e]nter judgment that quiets title to Pioneer Cemetery Park in favor of plaintiffs." *Id.* ¶ 71(f).

Defendants move to dismiss count 3, contending that plaintiffs have failed to allege, and there is no supporting evidence, that any of the Lodges' interests or rights was ever transferred to plaintiffs; that Dallas Lodge No. 44 expressly denies conveying any interest to plaintiffs, *Ds. App.* 133–34; that plaintiffs do not allege that the Confederate monument is located on the property previously owned by the Lodges (and the documents located so far indicate that it was not placed on the local Lodges' former property); and that the evidence therefore establishes that plaintiffs lack standing for any claimed interest in Pioneer Cemetery Park.

As with plaintiffs' copyright claim, they have failed to respond to defendants' motion to dismiss count 3. Because plaintiffs have neither pleaded nor introduced any evidence showing that they have any interest in Pioneer Cemetery Park, the court grants defendants' motion to dismiss count 3 based on plaintiffs' lack of standing.³

C

The court next considers plaintiffs' claim for a judgment quieting title to the Confederate Cemetery.

¹²⁰In count 4 of the SAC, plaintiffs allege that the Sterling Price Camp of the United Confederate Veterans—to which SCV is the successor association—gave the

Confederate Cemetery to the Dallas Parks and Recreation Department in 1936. They assert that, because no record exists of *640 conveyance of title, title still resides with the grantor—the SCV—and they request that the court enter judgment quieting title to the Confederate Cemetery in their favor.

Defendants move to dismiss count 4, contending that plaintiffs lack standing. They have produced evidence that, contrary to plaintiffs' allegations, the property was conveyed to the City on November 17, 1936, and the warranty deed was recorded in the Dallas County land records⁴; that, contrary to the allegations in the SAC, the City has performed the mowing, maintenance, and litter removal at the cemetery and has not authorized or approved anyone else's taking such action at the Confederate Cemetery; and that Sterling Price Camp Number 31, a unit of United Confederate Veterans, became inactive in 1917, SCV was not formed until 2001, and none of SCV's corporate filings suggests that it is a successor to Sterling Price Camp Number 31.

Plaintiffs do not respond to defendants' motion to dismiss count 4. Because plaintiffs have failed to introduce any evidence that they have an interest in the Confederate Cemetery, the court grants defendants' motion under Rule 12(b)(1) to dismiss count 4 on the ground that plaintiffs lack standing.⁵

IV

The court now turns to defendants' contention—framed as a facial challenge to this court's subject matter jurisdiction—that plaintiffs lack standing to bring a First Amendment claim.

A

Defendants maintain that plaintiffs' First Amendment claim must be dismissed because plaintiffs do not allege any concrete and particularized or actual or imminent injury that has occurred or will occur to them caused by moving the Lee Statue or any other action by the City regarding its other property; plaintiffs do not plead how their injuries are different or distinct from the general public's; and, to the extent Patterson asserts standing

based on his status as a city taxpayer, he has not alleged and cannot demonstrate facts that would support a suit in that narrowly-prescribed capacity.

Plaintiffs respond⁶ that, as a resident taxpayer of the City, Patterson has standing to challenge the City's allegedly unconstitutional removal and planned removal of Confederate monuments; that plaintiffs have suffered a concrete injury-in-fact because the City has removed the Lee Statue and is planning to remove the Confederate War Memorial in Pioneer Park Cemetery, *641 the Confederate Memorial in Confederate Cemetery, and the Confederate public art in Fair Park, which has infringed and will infringe plaintiffs' political viewpoint communicated by the monuments; that their injury is particularized because it is distinct from any effect on the general public, and SCV membership is limited in number and restricted to males who can prove descent from, and blood kinship with, Confederate veterans; that SCV and its members were uniquely injured because they have a dissenting political viewpoint that was communicated by the Lee Statue; that the City has imputed repugnant (and erroneous) political viewpoints onto the Lee Statue; and the City's imminent plans to remove other Confederate monuments will have the identical effect that the City's removal of the Lee Statue had, i.e., impairment of viewpoint and denial of free speech.

Defendants argue in reply that the court should not consider allegations in plaintiffs' response that are not pleaded in the SAC; that the removal of the Lee Statue and other Confederate monuments is government speech to which the First Amendment Free Speech Clause does not apply, and because no possible infringement of free speech is alleged, no possible harm is alleged and plaintiffs lack standing; that plaintiffs do not allege that they have been restricted in any way from exercising *their* First Amendment rights; and that plaintiffs' claim of harm is only a generalized grievance since plaintiffs do not assert that they have ever visited or ever saw any of the City's Confederate symbols.

B

The court first addresses whether Patterson has standing.

1

¹²¹Defendants argue that Patterson lacks standing because he has not suffered an injury-in-fact. Reduced to its essence, plaintiffs' responsive argument appears to be that, because Patterson holds the political viewpoint that "the men who fought for the Confederacy in the Civil War deserve our respect," Ps. Br. 9, and because the Confederate monuments at issue also communicate the same viewpoint, the removal of these monuments from City property somehow infringes Patterson's First Amendment rights.

¹²²The court acknowledges that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" sufficient to satisfy Article III's standing requirement. *Id.* at 8 (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)). In this case, however, plaintiffs have not alleged that *Patterson* has been deprived of any First Amendment freedom for any period of time. Plaintiffs contend that Patterson holds the political viewpoint that "the men who fought for the Confederacy in the Civil War deserve our respect." *Id.* at 9. But they do not allege that the City has ever taken any action that would prevent *Patterson* from expressing this political view. They have at most alleged that Patterson *shares* the political viewpoint communicated to the general public by the Confederate monuments. This allegation, however, does not explain how the removal of Confederate monuments from City-owned property prevents Patterson from expressing *his* political viewpoint. *See, e.g., Serra v. U.S. Gen. Servs. Admin.*, 847 F.2d 1045, 1049 (2d Cir. 1988) (noting that "the Government's action in this case [removing a sculpture from a federal plaza] is limited to an exercise of discretion with respect to the display of its own property" and that "nothing GSA has done here encroaches in any way on Serra's or any other individual's right to communicate."). Plaintiffs have failed to cite any case in which a plaintiff's *642 agreement with the message conveyed by someone else's speech—here, the City's—transforms that speech into the plaintiff's speech for First Amendment standing purposes. Accordingly, the court concludes that plaintiffs have failed to plausibly allege that the City's removal of the Lee Statue and forthcoming removal of other Confederate monuments infringes *Patterson's* First Amendment free speech rights.

2

¹²³Patterson also lacks taxpayer standing. Plaintiffs do not actually plead taxpayer standing in the SAC: they allege only that Patterson “is a citizen of the State of Texas, a resident taxpayer of Dallas, and a descendant of Confederate veterans.” SAC ¶ 1.7 In their response, however, plaintiffs contend that “[s]ince Mr. Patterson is a resident taxpayer in the City of Dallas and he has contested that the removal and planned removal of the Confederate Monuments is unconstitutional, Mr. Patterson has taxpayer standing in this matter.” Ps. Br. 7. The court disagrees.

¹²⁴It is insufficient for plaintiffs merely to allege that Patterson is a taxpayer and that the City’s conduct is unconstitutional.⁸ “A plaintiff [only] meets the ‘injury’ requirement of municipal taxpayer standing if he shows that ‘he pays taxes to the relevant entity’ and ‘tax revenues are expended on the disputed practice.’” *Ehm v. San Antonio City Council*, 269 Fed. Appx. 375, 377 (5th Cir. 2008) (per curiam) (citing *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 408 (5th Cir. 1995); *Cammack v. Waihee*, 932 F.2d 765, 770 (9th Cir. 1991)); see also *Freedom From Religion Found. v. Zielke*, 845 F.2d 1463, 1470 (7th Cir. 1988) (stating that “[a] plaintiff’s status as a municipal taxpayer is irrelevant for standing purposes if no tax money is spent on the allegedly unconstitutional activity.”); *Shea v. Brister*, 26 F.Supp.2d 943, 945 (S.D. Tex. 1998) (holding that plaintiff’s status as taxpayer did not confer standing where no “expenditure of public revenues [was] utilized in connection with the acquisition, installation, preservation, maintenance, or display of the copy of the Ten Commandments” and there was a “total absence of any connection between public funds and the display challenged.”).

In the SAC, plaintiffs allege that the Resolution “directs the city manager to transfer funds to remove all public Confederate monuments.” SAC ¶ 31. But what the Resolution *actually* states⁹ is that the City Manager is *authorized* to transfer or appropriate funds from excess revenue to remove the Lee Statue, and that he is to seek private funding to reimburse the removal expenses. See Ds. App. 13 (§ 7 of the Resolution, which states that “the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove the [Lee *643 Statue]. The city manager will take all appropriate actions to seek private funding to reimburse the expenses associated with this action.”). Plaintiffs do not allege that the City Manager used (or intends to use) tax revenues in connection with the removal of the Lee Statue or any other Confederate monuments, or that, assuming the City Manager *did* use such revenue in connection with the removal of the Lee Statue, he did not obtain full reimbursement from “private

funding,” as the Resolution directs. Accordingly, because, at the very least, plaintiffs have failed to adequately plead that tax money was spent in connection with the removal of the Lee Statue or any other Confederate monument, the court holds that Patterson lacks taxpayer standing.

C

The court now considers whether plaintiffs have plausibly alleged that SCV has associational standing.

1

¹²⁵ ¹²⁶There are two ways for an organization to demonstrate standing. First, the organization can assert representational standing on behalf of its members.

An association has standing to bring a suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members.

Texans United for a Safe Econ. Educ. Fund v. Crown Cent. Petroleum Corp., 207 F.3d 789, 792 (5th Cir. 2000) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977); *Friends of the Earth, Inc. v. Chevron Chem. Co.*, 129 F.3d 826, 827–28 (5th Cir. 1997)). When a defendant contests an organization’s standing based on a factual challenge to the standing of a member whose standing to sue in his own right controls the organization’s standing, the Rule 12(b)(1) motion is also a factual attack.

¹²⁷ ¹²⁸ ¹²⁹Second, an organization may have standing on its own behalf. To establish standing on its own, the

organization must show that it has constitutional standing in the same manner as any individual. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982). Because this method of establishing standing does not rely on the independent standing of any of the organization’s members or any other plaintiff, a challenge to this form of standing is facial unless the defendant adduces evidence attacking a jurisdictional fact on which standing relies. Defendants have not produced any evidence challenging SCV’s standing on its own behalf, and therefore the court treats this challenge as facial. *See Jones*, 281 F.R.D. at 286.

2

¹³⁰SCV has failed to show representational standing because the only member it identifies is Patterson, who does not have standing to bring this suit. SCV has therefore failed to show that one of its members has standing in his own right.

3

¹³¹SCV has not adequately alleged organizational standing. Although plaintiffs do not separately address whether SCV has organizational standing, they contend in their response that

[t]he SCV’s purpose is to protect Confederate–American memorials, images, symbols, monuments, and gravesites for the communication of the political viewpoint that Confederate–American heroes sacrificed for a noble cause that the victors in the war have almost uniformly *644 whitewashed from history. Individual plaintiff, the SCV, and all SCV members have made public affirmations of the values of the military service of their ancestors in the Civil War and in the restoration and reconciliation of the nation subsequently. When

the City of Dallas removed [the Lee Statue] and is now threatening all other Confederate–American memorials and symbols in the city, the City’s actions established past and imminent concrete injury-in-fact to plaintiffs by the infringement of their political viewpoint communicated by the Monuments....The City’s suppression of the political viewpoint communicated in the [Lee Statue] injured plaintiffs, because the suppressed political viewpoint is the same viewpoint that plaintiffs have long protected and promoted.

Ps. Br. 10–11, 13–14. This argument is no different from plaintiffs’ standing arguments in relation to Patterson. Accordingly, for the reasons explained above, *see supra* § IV(B), the court holds that plaintiffs have failed to adequately plead that SCV has standing on its own behalf to bring a First Amendment claim.

D

Because plaintiffs lack standing to bring a First Amendment-based § 1983 claim based on the City’s removal of the Lee Statue or the forthcoming removal of other Confederate monuments, the court grants defendants’ motion to dismiss this claim.¹⁰

V

Also pending before the court are plaintiffs’ motion to strike defendants’ second brief, plaintiffs’ amended motion to strike, plaintiffs’ motion for sanctions, and defendants’ objection and motion to strike affidavits. The court denies these motions.

A

On September 15, 2017 the court filed a preliminary injunction application scheduling order that directed plaintiffs to file their supporting materials and a separate brief. Plaintiffs filed their brief on motions for preliminary injunction and declaratory judgment on September 26, 2017. After moving on September 29, 2017 to dismiss plaintiffs' SAC, defendants responded on October 12, 2017 to plaintiffs' brief on motions for preliminary injunction. Plaintiffs seek to strike defendants' October 12, 2017 response on various grounds, including that defendants have submitted a redundant pleading, that the court expressly limited defendants to a single response brief, and that defendants' second brief, although styled as a responsive pleading, is formatted as a brief. In their amended motion to strike, plaintiffs maintain that the court should strike defendants' October 12, 2017 brief because it is redundant and was submitted in violation of the court's scheduling order; the court should strike both of defendants' briefs because the briefs are legally insufficient; and, if the court does not strike defendants' second brief, it should consolidate the two briefs and permit plaintiffs to reply to the consolidated brief.

On October 27, 2017 defendants filed their reply in support of their motion to dismiss. On November 8, 2017 plaintiffs filed a motion for sanctions, characterizing the reply as a surreply and a "second unauthorized pleading," Ps. 11/8/17 Br. 3, and requesting "sanctions against defendants and defendants' attorneys for disobedience of the Court's Scheduling Order by filing unauthorized briefs or pleadings and subsequently refusing to withdraw *645 these pleadings when given the opportunity." *Id.* at 4.

B

The court has reviewed defendants' filings and holds that

Footnotes

- 1 Several other motions are currently pending, *see infra* § V, including plaintiffs' motion for preliminary injunction. Because the court is dismissing this action today under Rule 12(b)(1) for lack of standing, it denies plaintiffs' motion for a preliminary injunction.
- 2 Defendants also make a facial attack on plaintiffs' copyright claim, contending that plaintiffs have failed to allege an injury in fact, to allege causation between defendants' action and any claimed injury, and to allege how any claimed injury would be redressed by a favorable decision. The court agrees that plaintiffs have failed to plead standing with respect to their copyright claim.

they are procedurally proper. Defendants' October 12, 2017 response to plaintiffs' motion for preliminary injunction was expressly permitted by the court's preliminary injunction application scheduling order. And their October 27, 2017 reply brief filed in support of their motion to dismiss is authorized under the local civil rules. Accordingly, because defendants have complied with the requirements of the federal and local civil rules and have not violated any applicable scheduling order, the court denies plaintiffs' motions to strike and motion for sanctions.

C

Because the court is granting defendants' motion to dismiss, it denies as moot their November 3, 2017 objection and motion to strike affidavits.

* * *

Accordingly, for the reasons explained, the court grants defendants' motion under Rule 12(b)(1) to dismiss plaintiffs' action for lack of standing, and it dismisses this action without prejudice by judgment filed today. All other pending motions are denied.

SO ORDERED.

All Citations

287 F.Supp.3d 632, 2018 Copr.L.Dec. P 31,225

- 3 As with plaintiffs' copyright claim, defendants also mount a facial challenge to plaintiffs' claim related to Pioneer Cemetery Park. Defendants contend that plaintiffs do not allege any relationship to the original grantors or otherwise explain how they have any rights or interest in the property; fail to allege that the monument is even located on the property formerly owned by the Lodges; and fail to allege how removing a monument that was moved to the property after its transfer to the City violates maintaining the property as a memorial cemetery park. In sum, defendants posit that plaintiffs have failed to allege an injury in fact, causation, or that any claimed injury would be redressed by a favorable decision. The court agrees with these grounds for defendants' motion and holds that plaintiffs have failed to plead standing with respect to count 3.
- 4 Defendants contend that plaintiffs have misstated a question and answer page from the Mayor's Task Force. Defendants maintain that plaintiffs allege that certain statements are admissions of non-ownership when, in fact, the actual statements are that, as of the time the questions and answers were written, there was no official action found accepting the cemetery, but that further research was ongoing.
- 5 Defendants also bring a facial challenge to plaintiffs' quiet title action in the Confederate Cemetery. They contend that plaintiffs have not alleged a plausible basis for their ownership of, or any legal interest in, the Confederate Cemetery; that plaintiffs do not plausibly allege any basis to believe they have any of the rights of the Sterling Camp Number 31; and that plaintiffs do not allege any type of injury from the supposed lack of filing of the record of conveyance. The court agrees and holds for these and the reasons discussed above that plaintiffs lack standing to assert the claim alleged in count 4.
- 6 Although plaintiffs' brief is entitled "plaintiffs' reply brief for motions for preliminary injunction & declaratory judgment," the brief is in substance a response to defendants' motion to dismiss. Accordingly, the court will therefore treat it as a response brief.
- 7 Moreover, plaintiffs do not allege that Patterson *actually paid* any taxes to the City of Dallas. See SAC ¶ 1.
- 8 The court assumes *arguendo*, for purposes of Patterson's taxpayer standing arguments, that the City's removal of Confederate monuments is unconstitutional.
- 9 Defendants maintain that their standing challenge to plaintiffs' First Amendment-based § 1983 claim is facial. In deciding defendants' facial challenge to this court's jurisdiction, the court is permitted, as in a Rule 12(b)(6) motion, to consider the contents of the Resolution, which is [a publicly-available document that is] referenced in the SAC. See *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) ("The court's review [of a Rule 12(b)(6) motion] is limited to the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.").
- 10 Because the court concludes that plaintiffs have not alleged an injury-in-fact in relation to their First Amendment claim, it does not address defendants' contention that plaintiffs have failed to plead a justiciable claim, and, instead, plead only a political question.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

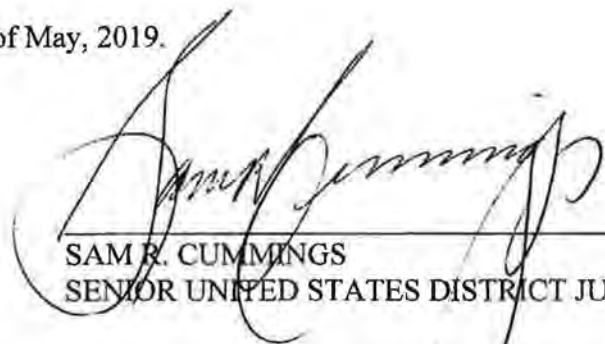
WARREN JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF DALLAS, <i>et al.</i> ,)	
)	
Defendants.)	Civil Action No. 3:19-CV-0180-C

ORDER

On this day, the Court considered Defendants’ Motion to Dismiss, filed May 1, 2019. The Court notes the docket in this civil action reflects that Plaintiff has failed to file a timely response to the pending Motion.¹ Thus, it appears Plaintiff is unopposed to the relief sought therein.

Accordingly, the Court is of the opinion that Defendants’ Motion to Dismiss should be **GRANTED** in its entirety. It is therefore **ORDERED** that all claims asserted in the above-styled and -numbered civil action are hereby **DISMISSED** with prejudice for the reasons stated in Defendants’ Motion.

SO ORDERED this 24th day of May, 2019.



 SAM R. CUMMINGS
 SENIOR UNITED STATES DISTRICT JUDGE

¹ See N.D. Tex. L.R. 7.1(e) “[a] response and brief to an opposed motion must be filed within 21 days from the date the motion is filed.”



AFFIDAVIT OF GREG SMITH

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Greg Smith, who, being by me first duly sworn, deposed and stated as follows:

“My name is Greg Smith. I am over 21 years of age and have never been convicted of any felony or crime involving dishonesty or moral turpitude. I am an employee of the Texas Historical Commission. I have personal knowledge of all the facts stated herein and they are true and correct.

I have researched and reviewed the records of the Texas Historical Commission and have found no records indicating that the following properties and structures located in the City of Dallas are currently listed on the National Register of Historic Places or currently designated as State Archeological Landmarks as of the date of this affidavit.

- Confederate Monument located at Pioneer Cemetery
- Pioneer Cemetery
- The Robert E. Lee Statue formerly located at Lee Park (now known as Oak Lawn Park)
- Lee Park (now known as Oak Lawn Park)

Further Affiant Sayeth Not.”



Greg Smith

SUBSCRIBED AND SWORN TO BEFORE ME on May 8, 2018 by Greg Smith to witness my hand and seal of office.





NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



AFFIDAVIT OF JOHN INGRAM

THE STATE OF TEXAS §
COUNTY OF DALLAS §


Before me, the undersigned authority, personally appeared JOHN INGRAM, who, being by me duly sworn, deposed as follows:

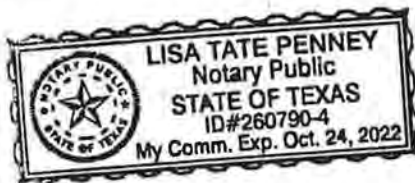
My name is John Ingram and I am of sound mind, capable of making this affidavit, have personal knowledge of the matters stated herein, and they are true and correct.

I am a Manager I for the City of Dallas's Office Procurement Services. As part of my job duties I have been charged with the responsibility of overseeing the sale of the statue of Robert E. Lee that had been located at what used to be known as Lee Park. The City retained the services of an auctioning services to solicit bids for the sale of the statue. Bids closed during the week of June 3, 2019 and the highest bid was more than \$1.4 million. The winning bidder is expected to tender payment by June 6, 2019. The sale will be presented to Dallas City Council and once approved and any contract executed, the sale will be complete. I am also generally familiar with the costs incurred by the City for removing the Lee statue and the Council-approved amount for the removal of the Confederate Monument. The winning bid amount for the Lee statue is more than the total of those costs.


JOHN INGRAM, Affiant

SWORN TO AND SUBSCRIBED before me on the 6th day of June, 2019.


Notary Public, State of Texas



AFFIDAVIT

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a notary public in and for the State of Texas, on this day appeared Charles S. Estee who is personally known to me, and who, after being duly sworn according to law, upon oath deposed and said:

“My name is Charles S. Estee. I am an attorney licensed to practice law in the State of Texas and before this Court. I have been employed as an attorney by the Dallas City Attorney’s Office since 2000. I am competent to testify, I have personal knowledge of the matters stated herein, and they are true and correct. I am one of the attorneys representing the City of Dallas and the City Plan Commission (collectively “Defendants”) in this lawsuit. I have also served as one of the attorneys representing the City and in its officials in *Patterson v. Rawlings*, No. 3:17-cv-2361-D (N.D. Tex.); *Return Lee to Lee Park, et al. v. Rawlings, et al.*, No. DC-18-05460 (14th Judicial District Court of Dallas County) (“*Return Lee to Lee Park case*”); and *Johnson v. Rawlings*, No. 3:19-CV-0180-C (N.D. Tex.). I also represented the Landmark Commission in the appeal by the Plaintiffs in this case to the City Plan Commission. The City Plan Commission affirmed the Landmark Commission’s decision. Chris Carter appeared in person and Ms. Pieroni was represented by a representative at the City Plan Commission hearing.

Attached as Exhibit 24 is a true and correct copy of records obtained from the Texas Attorney General’s website. I confirmed that the record of the information concerning Opinion H-620 had not changed on June 5, 2019.

Attached as Exhibit 25 is a true and correct copy of the court order from *Brewer v. Nirenberg*, No. SA:17-CV-837-DAE (W.D. Tex. Sept. 17, 2017). I obtained the copy from the Fifth Circuit’s PACER website, the federal courts docket/filing platform.

Attached as Exhibit 26 is a true and correct copy of the final judgment and prior orders entered in the *Return Lee to Lee Park case*. All of the Plaintiffs’ claims in the *Return Lee to Lee Park case* have been dismissed for lack of jurisdiction or in the alternative disposed of by summary judgment. Attached as Exhibit 27 is the reported opinion in *Patterson v. Rawlings case*. Attached as Exhibit 28 are the order and final judgment in *Johnson v. Rawlings*, No. 3:19-CV-0180-C (N.D. Tex.). Exhibit 29 is an affidavit from Greg Smith and was also filed in the *Return Lee to Lee Park case*.

Exhibits 1 to 23 are true and correct copies of excerpts of documents maintained on the City’s public website. All are public records. Exhibits 22 and 23 are also excerpts from the record from the Landmark Commission which has been separately filed with the Court.



Further, Affiant sayeth not.”



CHARLES S. ESTEE

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 6th day of June 2019.



NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a notary public in and for the State of Texas, on this day appeared Lynn Rushton, who is personally known to me, and who, after being duly sworn according to law, upon oath deposed and said:

“My name is Lynn Rushton. I am the collection and conservation manager of the Office of Cultural Affairs (“OCA”) for the City of Dallas and have been employed by the City during the relevant times stated below. I am competent to testify, I have personal knowledge of the matters stated herein, and they are true and correct.

As part of my duties and responsibilities, I am aware that the City of Dallas owns and has on its properties various statutes, monuments, of memorials of Confederate symbols and leaders. The City formerly owned the statue of Robert E. Lee located at Oak Lawn Park (“the Lee statue”). The City currently owns the Confederate Monument located in Pioneer Cemetery Park.

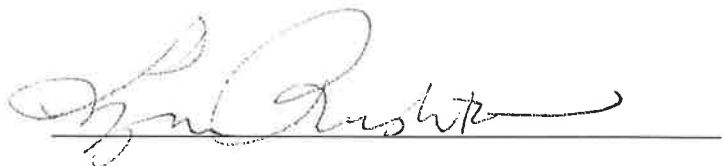
I am aware that the Dallas City Council directed that the Lee statue of Robert E. Lee be removed and was placed in storage. Subsequently, the Dallas City Council directed that the Lee statue be sold. An auction was held and the winning bid was \$1,435,000. A purchase agreement was entered with the purchaser and a true and correct copy is attached as Tab 2. On or before June 30, 2019, the purchaser removed the Lee statue from the City’s storage facility. I was present when the statue was placed on a trailer for removal. I was not advised of where the statue was going. The terms of the purchase agreement have been completed and the City no longer owns or possesses the Lee statue.

The Confederate Monument is located in Pioneer Cemetery Park which is a City historical district. It was originally constructed in the Old City Park in 1897. In 1961, it was disassembled,

moved, and reassembled in Pioneer Cemetery Park. Attached is a true and correct copy of a newspaper article about its 1961 move. The Dallas City Council directed that all steps be taken for the Confederate Monument's removal and that it be placed in storage. Since it is in a historical district, its removal required a certificate of removal from the Landmark Commission which was granted on March 4, 2018. The City solicited proposals for contracts for the removal. A contractor was selected and attached as Tab 3 is a true and correct copy of the contract for the removal.

The Lee statue and the Confederate Monument have been subject to vandalism. Prior to its removal the base on which the Lee statue was placed had been vandalized. In February 2019, the Confederate Monument was vandalized. The City retained a conservator to remove the graffiti and covered the Confederate Monument statues with tarps to prevent any further vandalism. On July 7, 2019, someone broke the fences around the monument and pulled portions of the tarps off of the Confederate Monument. Fortunately, no vandalism occurred and security has been increased.

Further, Affiant sayeth not."



Lynn Rushton

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 15th day of July 2019.



Notary Public In And For The State Of Texas



Monument Due Move From Park

Dallas' 68-foot Confederate monument will leave its 64-year-old home in City Park soon and move south into the Odd Fellows Cemetery near Dallas Memorial Auditorium.

Construction of R. L. Thornton Freeway through the old park evicted the big stone obelisk—and the City Council Monday will be asked to advertise for bids for the big job of moving the monument, Park Director L. B. Houston said.

The new location in Odd Fellows Cemetery at DeSoto and Masonic "will provide ample space in which to place Confederate monument without molesting in any way any of the graves within the cemetery," said Houston.

"With the additional traffic brought into this area by the Dallas Memorial Auditorium and the recent opening of DeSoto, the monument will be seen now by many visitors," said the park official.

Eventually, the city hopes to have a suitable and attractive city park in the block adjacent to the auditorium and bounded by DeSoto, Marilla and Akard. Dallas owns all of the needed 7.2 acres except 2.5 acres now under negotiation.

Both the Odd Fellows and Masonic cemeteries were turned over to the city but permission was sought, successfully, from the IOOF to install the monument in the proposed location.

The Thomas J. Ruak (Dallas) chapter, Sons of the Republic of Texas, first suggested moving the Confederate monument into Pioneer Cemetery (the old Mascric and Odd Fellows burial grounds).

If the city can acquire five remaining privately owned tracts, it can adorn the block on the downtown side of the auditorium with attractive greenery, other historic monuments, retain the pioneers' graves, and simultaneously provide an appropriate setting for the \$3,500,000 auditorium, Houston added.

The Historical Dallas Morning News

http://infoweb.newsbank.com/iz-search/we/HistArchive/?p_product=

To print, select from the options below. First choose what to print: image only, image and citation, or citation only. Next choose a paper size and page layout, making sure your printer settings match. Then click your browser's Print function.

Headline: Monument due Move from Park; Article Type: News/Opinion
Paper: Dallas Morning News; Date: 04-16-1961; Page: 8; Location: Dallas, Texas

Dallas Morning News Article, 1961

CD189-007(LC)

D1-20