

Resolution No. 17-26

A RESOLUTION APPROVING THE ACQUISITION OF PROPERTY LOCATED IN THE CITY OF SCAPPOOSE KNOWN AS THE "KELSO PROPERTY", AND AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY STEPS TO COMPLETE THE PROPERTY PURCHASE ON BEHALF OF THE CITY

WHEREAS, the Kelso's own real property located in the City of Scappoose (tax number 0101032110110100100, and alternate APN 3100) and have approached the City with an offer to donate the Kelso Property to the City; and

WHEREAS, the Kelso Property comprises approximately 1.05 acres of real property located off of NW View Terrace Road in the City of Scappoose; and

WHEREAS, the City finds that acceptance of the Kelso Property would be in the public interest, and

WHEREAS, the Council authorized staff to negotiate a donation agreement for the Kelso Property; and

WHEREAS, the City and the owners of the Kelso Property have reached an agreement regarding the donation of the property to the City; and

WHEREAS, this agreement is subject to City Council approval.

NOW THEREFORE, BE IT RESOLVED:

- Section 1:** The City Council approves the terms of the Donation Agreement in substantially the form attached and incorporated as Exhibit A.
- Section 2:** The City Council authorizes the City Manager to take all necessary action to complete the acquisition of the Kelso Property on behalf of the City.
- Section 3:** This resolution is effective immediately upon passage.

PASSED AND ADOPTED by the City Council this 5th day of September, 2017 and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON


Scott Burge, Mayor

Attest: 
Susan M Reeves, MMC, City Recorder

Exhibit A

DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Donation Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between John G. and Angela Kelso ("Donor"), and the City of Scappoose, an Oregon municipal corporation ("Scappoose") as of _____ (the "Effective Date").

RECITALS

A. Donor is the owner of approximately 1.05 acres of real property located off of NW View Terrace Road in the County of Columbia, State of Oregon, with a tax number of 0101032110110100100, and an alternate APN of 3100, and more particularly described on the attached and incorporated Exhibit A (the "Property").

B. Scappoose is an Oregon municipal corporation that owns and operates parks and greenspaces. Scappoose is a qualified recipient of deductible charitable contributions under I.R.C. § 170(b)(1)(A)(v) and § 170(c)(1).

C. Donor desires to donate the Property to Scappoose, and Scappoose desires to accept the Property from Donor.

The terms of this Donation Agreement are as follows:

TERMS

1. Donation of Property. For and in consideration of the mutual covenants and promises contained in this Donation Agreement and in acknowledgment of Scappoose's material reliance on this Donation Agreement and Scappoose's expenditure of funds and time in connection herewith, Donor agrees to grant to Scappoose the Property upon the terms and conditions set forth in this Donation Agreement.

2. Closing Date. Unless otherwise extended as set forth herein, this transaction shall close no later than sixty (60) days after the Effective Date (the "Closing Date" or "Closing"). Closing will occur at the office of Ticor Title ("Title Company"), 51669 Columbia River Hwy, Ste. 100, Scappoose, OR 97056. Telephone: 503-543-6177.

3. Scappoose's Due Diligence and Inspections. Scappoose and its agents, including but not limited to consultants, surveyors, and engineers hired by Scappoose, shall have the right to access the Property at reasonable times before Closing to conduct surveys, inspections, and any other due diligence Scappoose deems necessary. Any area disturbed by Scappoose's inspections shall be restored by Scappoose, at Scappoose's sole costs and expense, to its pre-inspection condition. Within ten (10) days after the Effective Date, Donor shall deliver to Scappoose any and all material information and documentation in Donor's possession or control pertaining to the Property including (without limitation) copies of (a) all environmental data, studies, analyses, and reports relating to the Property, (b) any survey of the Property, and (c) all topographical, geotechnical, wetlands, soils, and groundwater reports, or any other professional reports relating to the Property.

4. Scappoose's Conditions Precedent to Closing. In addition to any other conditions

contained in this Donation Agreement, the conditions set forth in this Section 4 must be satisfied prior to Scappoose's obligation to accept Donor's donation of the Property. These conditions are intended solely for Scappoose's benefit and Scappoose has the sole right and discretion to waive, by written notice, any of the conditions. In the event any condition is not satisfied or waived on or before Closing, Scappoose will have the right to terminate this Donation Agreement.

4.1 Investigation and Inspection Results. Scappoose must be satisfied, in its sole and absolute discretion, with the results of Scappoose's due diligence and inspections of the Property conducted under Section 3 above.

4.2 Representations, Warranties, and Covenants of Donor. Donor's representations, warranties, and covenants set forth in this Donation Agreement shall be true and correct as of the Closing Date.

4.3 Title. Scappoose must be satisfied that all Unacceptable Exceptions, as described in Section 6, have been removed from the Title Report, or accepted in writing, by Scappoose, prior to Closing.

4.4 Council Approval. The City Council of Scappoose must approve of the donation prior to Closing.

5. Deliveries to the Title Company.

5.1 By Donor. On or before the Closing Date, Donor shall deliver the following into escrow with the Title Company: (a) a statutory warranty deed duly executed and acknowledged in recordable form by Donor, granting the Property to Scappoose; (b) proof of Donor's authority to enter into this Donation Agreement and consummate the transaction contemplated hereunder, as may be required by the Title Company and/or Scappoose; (c) an executed Certificate of Non-Foreign Status, pursuant to Section 1445(b)(2) of the United States Internal Revenue Code or, if Seller is a Foreign Person, as defined in the United States Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), any documents required to comply with the withholding requirements set forth in the FIRPTA (d) if requested, a donation letter signed by Donor acknowledging Donor's right to and waiver of just compensation for the Property; and (e) any other documents and funds required of Donor to close the transaction in accordance with this Donation Agreement.

5.2 By Scappoose. On or before the Closing Date, Scappoose shall deliver the following into escrow with the Title Company: (a) an executed and acknowledged acceptance of the statutory warranty deed conveying the Property from the Donor to Scappoose; (b) proof of Scappoose's authority to enter into this Donation Agreement and consummate the transaction contemplated hereunder, as may be reasonably required by the Title Company and/or Donor; and (c) any other documents and funds as are required of Scappoose to close the transaction in accordance with this Donation Agreement.

6. Title. Scappoose will order, from the Title Company, a preliminary title report on the Property, along with legible copies of all plats and exceptions documents referenced in such report (the "Title Report"). Scappoose will have twenty-one (21) days from the date of receipt of the Title Report to review the Title Report and give Donor written notice of the exceptions listed in the Title Report that are unacceptable to Scappoose (the "Unacceptable Exceptions"). Mortgages, delinquent taxes, or other financial obligations secured by the Property are automatically deemed Unacceptable Exceptions. If

Scappoose notifies Donor of its objection to any Unacceptable Exceptions, Donor will thereafter have fifteen (15) days to provide Scappoose written notice stating whether Donor will cause such exceptions to be removed from the Title Report, and from any Title Policy issued to Scappoose at Closing, if Scappoose requests such a policy. If Donor refuses to remove any of the Unacceptable Exceptions and Scappoose is not then satisfied with the condition of title, Scappoose may elect to terminate this Donation Agreement. All exceptions other than those objected to by Scappoose shall be deemed acceptable to Scappoose (the "Permitted Exceptions"). Should the Title Company inform Scappoose of any new title exceptions not appearing on the initial Title Report, such new exceptions shall be deemed Unacceptable Exceptions, unless specifically accepted in writing by Scappoose. At Closing, if requested by Scappoose, the Title Company shall be prepared to issue to Scappoose an ALTA title insurance policy in an amount equal to the fair market value of the Property, insuring Scappoose, or its nominees, as the holder of the Property, subject only to the Permitted Exceptions (the "Title Policy").

7. Closing Costs. Scappoose shall pay for the Title Policy, if requested, all escrow fees, and the cost of recording the statutory warranty deed. Each party shall pay for its own legal and professional fees incurred.

8. Donor's Representations and Warranties. Donor hereby warrants and represents to Scappoose the following matters. These representations and warranties shall survive Closing.

8.1 Donor has full power and authority to enter into this Donation Agreement and convey the Property to Scappoose in accordance with this Donation Agreement.

8.2 Except for this Donation Agreement, Donor has not entered into any other contracts for the sale of any interest in the Property, nor do there exist any rights of first refusal or options to purchase the Property. Donor owns the Property in fee, free and clear of all liens, conditions, reservations, mortgages, leases, licenses, easements, prescriptive rights, permits, or other similar encumbrances.

8.3 There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Property or against Donor.

8.4 To Donor's actual knowledge, there are no hazardous substances in, upon, or buried on or beneath the Property and no hazardous substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government; Donor has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from or on the Property, any hazardous substances in violation of any environmental laws of the federal or state government; to Donor's actual knowledge, no underground storage tanks are located within the Property; to Donor's actual knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it; Donor has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property; Donor has not transferred, and to Donor's actual knowledge no other person has transferred, hazardous substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and there are no proceedings, administrative actions, or judicial proceedings pending or, to Donor's actual knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

9. Condition of the Easement Area Through Closing. Donor further represents, warrants, and covenants that until this transaction is closed or escrow is terminated, whichever occurs first, it shall maintain the Property in substantially the same condition as it was on the Effective Date.

10. Scappoose's Representations and Warranties. In addition to any express agreements of Scappoose contained herein, the following constitute representations and warranties of Scappoose to Donor:

10.1 Subject to the conditions stated in this Donation Agreement, Scappoose has the legal power, right, and authority to enter into this Donation Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.

10.2 Subject to the conditions stated in this Donation Agreement, all requisite action has been taken by Scappoose in connection with entering into this Donation Agreement and the instruments referred to herein and the consummation of the transactions contemplated herein.

10.3 Subject to the conditions stated herein, the persons executing this Donation Agreement and the instruments referred to herein on behalf of Scappoose have the legal power, right, and actual authority to bind Scappoose to the terms and conditions of this Donation Agreement.

11. Legal and Equitable Enforcement of This Donation Agreement.

11.1 Default by Donor. In the event Closing and the consummation of the transaction herein contemplated do not occur by reason of any default by Donor, Scappoose shall be entitled to seek damages to the extent permitted by law and recover from Donor all Scappoose's out-of-pocket expenses incurred in connection with the transaction. Scappoose shall not be entitled to specific performance.

11.2 Default by Scappoose. In the event Closing and the consummation of the transaction herein contemplated do not occur by reason of any default by Scappoose, Donor shall be entitled to seek damages to the extent permitted by law. Donor shall not be entitled to specific performance.

12. Risk of Loss, Condemnation. Donor bears the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, all or any part of the Property is damaged, destroyed, condemned, or threatened with condemnation, Donor shall give Scappoose written notice of such event. Scappoose may terminate this Donation Agreement by giving written notice to Donor within fifteen (15) days following receipt by Scappoose of written notice from Donor of such casualty or condemnation.

13. Notices. All notices required or permitted to be given must be in writing to the address set forth below and will be deemed given upon (a) personal service; (b) deposit in the United States Mail or Canada post, postage prepaid; (c) deposit with an internationally recognized overnight service courier, postage prepaid; or (d) e-mail to the address listed below. All such notices shall be deemed received (a) upon personal service; (b) three (3) days after deposit in the United States Mail, postage prepaid; (c) one (1) day after deposit with an internationally recognized overnight courier service; or (d) upon confirmation of receipt of e-mail:

To Donor: John and Angela Kelso
10231 Hollybank Drive
Richmond, B.C. V7E4S4 Canada

E-mail: jkelso@shaw.ca

To Scappoose: City of Scappoose
Attn: Michael Sykes
33568 E Columbia Ave
Scappoose OR 97056
E-mail: michaelisykes@ci.scappoose.or.us

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manners set forth above will be effective when received by the party for whom it is intended. Telephone, e-mail, and fax numbers are for information only.

14. Further Actions of Scappoose and Donor. Scappoose and Donor agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Donation Agreement in order to consummate the donation contemplated and both parties shall use their best efforts to accomplish Closing in accordance with the provisions hereof.

15. Charitable Contribution. Donor is responsible for establishing, for federal tax purposes, the amount of any charitable contribution associated with Donor's donation of the Property to Scappoose. Donor has been informed of and understands that Donor is entitled to just compensation as consideration for granting the Property, and to a copy of an appraisal of the Property provided and paid for by Scappoose. Donor hereby acknowledges that Donor has elected to release Scappoose from its obligation to provide Donor with an appraisal of the Property. Donor will rely solely upon the advice of Donor's own tax professionals regarding (a) the availability of a tax deduction in connection with the proposed transaction and (b) the requirements for appraisals and other documentation to substantiate the value of the contribution. Notwithstanding the foregoing, Scappoose agrees to sign Internal Revenue Service Form 8283 relating to donations of interests in land once Donor has completed and filled out the form in its entirety. Donor must provide Scappoose with no less than thirty (30) days to process and complete the form prior to any tax submittal deadline. Neither Scappoose nor its employees or agents shall be liable in the event that the intended charitable gift or any portion thereof is determined by appropriate authorities not to be deductible.

16. Miscellaneous.

16.1 This Donation Agreement will be binding on and will inure to the benefit of the successors and assigns of the parties to it.

16.2 If any term or provision of this Donation Agreement is found invalid or unenforceable, the remainder of this Donation Agreement will be valid and be enforced to the fullest extent permitted by law.

16.3 The covenants, agreements, representations, and warranties made herein shall survive Closing and will not merge into the statutory warranty deed upon its recordation in the official real property records.

16.4 This Donation Agreement was prepared by Scappoose. Donor represents that Donor had an opportunity to consult with its own legal counsel prior to executing this Donation Agreement and it waives any claim that any term or condition herein should be construed against the drafter.

16.5 This Donation Agreement is the final expression of the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Donation Agreement may not be modified or terminated except by written instrument signed by both parties.

16.6 Donor and Scappoose hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision. Unless otherwise specified herein, in computing any period of time described, whenever a date for an action required to be performed falls on a Saturday, Sunday, or a state or federal holiday, then such date shall be extended to the following business day.

16.7 The parties acknowledge that this Donation Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Donation Agreement shall be governed by and interpreted in accordance with the laws of the state of Oregon.

16.8 Statutory Disclaimer. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the parties have executed this Donation Agreement effective as of the Effective Date.

SCAPPOOSE

DONOR

By: _____
Name: _____
Title: _____

By: _____
Name: John Kelso

By: _____
Name: Angela Kelso

Exhibit A
Property Legal Description

(to be provided by Title Company)