

**RESOLUTION No. 18/19-7
CITY OF DAYTON, OREGON**

Title: *A Resolution Approving the Donation of Real Property Agreement with Dayton School District and authorizing Mayor Wytoski to sign the agreement on behalf of the City of Dayton.*

WHEREAS, the City of Dayton is interested in acquiring Brookside Cemetery; and

WHEREAS, the Dayton School District wishes to donate Brookside Cemetery to the City of Dayton and contribute \$2,500 to cover maintenance and closing costs; and

The City of Dayton resolves as follows:

- 1) **THAT** Mayor Wytoski is hereby authorized to execute the Donation of Real Property Agreement (attached hereto as Exhibit A and by this reference incorporated herein) on behalf of the City, which will be bound by its terms;
- 2) **THAT** this resolution shall become effective immediately upon adoption.


ADOPTED this 5th day of November, 2018.

In Favor: Bixler, Collins, Mackin, Marquez, McGraw, Price and Wytoski

Opposed: None

Absent: None

Abstained: None


Elizabeth Wytoski, Mayor


Date of Signing

ATTESTED BY:


Rochelle Roder
City Recorder


Date of Enactment

Attachment - Exhibit A

Agreement for Donation of Real Property

This Agreement for Donation of Real Property is made this 9th day of October, 2018 BY AND between the City of Dayton an Oregon municipal corporation (“Grantee”), and Dayton School District #8 (“Grantor”).

RECITALS

A. The addresses of the parties are as follows:

GRANTEE: City of Dayton
416 Ferry Street
Dayton, OR 97114
Attn: City Manager

GRANTOR: Dayton School District #8 (formerly known in deed as #28)
PO Box 219
Dayton, OR 97114
Attn: School Superintendent

B. Grantor owns real property commonly known as the Brookside Cemetery located in the City of Dayton, Yamhill County, Oregon, and described as Tax Lot R4317DD002700 and more particularly described on Exhibit A attached hereto and incorporated herein by reference. Said real property (together with all improvements, timber, water and minerals located thereon) and any and all rights appurtenant thereto owned by Grantor shall be referred to in this Agreement as the “Subject Property.”

C. Grantor desires to donate Subject Property to Grantee to be used for its current cemetery purposes.

In light of the foregoing, Grantor and Grantee agree as follows:

TERMS

- 1. Donation and Consideration.** Grantor agrees to and hereby does donate to Grantee and Grantee hereby agrees to and does accept from Grantor the Subject Property on the terms and conditions set forth herein. The consideration for this donation consists solely of the mutual promises and covenants contained in this Agreement and includes benefits Grantor may obtain for donating property to an Oregon municipal corporation. Grantor agrees to contribute TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) towards

maintenance and closing costs and will pay this amount into escrow on or before Closing which amount should be released to Grantee upon Closing.

2. **Closing Date.** This transaction shall close no later than October 31, 2018, unless otherwise extended as set forth herein (the "Closing Date" or "Closing"). Closing will occur at the office of First American Title, 775 NE Evans St, McMinnville, Oregon (Title Company). In the event that Closing has not occurred by October 31, 2018, Grantee shall obtain written consent from Grantor extending the Closing Date for an additional length of time not exceeding one hundred (120) days from October 31, 2018 or this Agreement will automatically terminate.
3. **Donation of Property.** Grantor agrees that it is solely responsible for any tax deductions as determined by the Internal Revenue Service and any tax consequences that may result from the charitable gift set forth in Section 1 above. Grantor is advised to consult with a tax advisor concerning this Agreement.
4. **Condition of the Subject Property.** Grantee acknowledges it has had the opportunity to conduct an investigation and inspection of the Subject Property. Grantee also has obtained a Title Report from the Title Company. Within fifteen (15) days of receipt of the Title Report, Grantee shall provide Grantor written notice of any unacceptable exceptions. Within fifteen (15) days of receipt of notice of any unacceptable exceptions, Grantor will provide written notice to Grantee whether it will remove the unacceptable exceptions before Closing. Taxes, mortgages, or other monetary liens or encumbrances are automatically deemed unacceptable exceptions and must be removed by Closing. Grantee in its sole discretion may determine if it wished to terminate this Agreement in the event some or all of the unacceptable exceptions are not removed at or by Closing. Grantor makes no representation or warranty as to the condition or suitability of the Subject Property for Grantee's intended purposes.
5. **Title.** Grantor shall convey through a statutory warranty deed to Grantee free and clear of all unacceptable title defects, liens, deeds of trust, mortgages and encumbrances known by the Seller or disclosed through the Title Report.
6. **Title Insurance.** Grantee shall be responsible for obtaining a standard ALTA owner's policy or other policy of title insurance of its choosing within 60 days of conveyance.
7. **Possession.** Possession shall be delivered to Grantee upon Closing.
8. **Grantor's Representations.** Grantor makes the following representations which representations and warranties survive Grantor's signatures on this agreement and on the deed:
 - a. Grantor has all requisite authority and power to enter into this agreement and has followed all necessary procedures to transfer the Subject Property pursuant to its bylaws and any applicable declarations of covenants, conditions, and restrictions.
 - b. Grantor will donate, transfer and deliver, or cause the donation, delivery and transfer of all of its right, title and interest in and to the Subject Property.

- c. Grantor represents and warrants that they are not "foreign persons" as defined in Section 1445 of the Internal Revenue Code.
 - d. Grantor represents that there has been no material adverse change in the physical condition of the Subject Property from the date of this Agreement to closing except those changes initiated by the Grantee.
 - e. Grantor has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule or regulation with respect to the Subject Property.
9. **Grantee's Representations.** Grantee makes the following representations which representations and warranties survive the transfer of the Subject Property to Grantee.
- a. Grantee has all requisite authority and power to enter into this Agreement.
 - b. Neither Grantee's execution of this Agreement nor its taking any of the actions contemplated hereunder will violate any code or other applicable governmental regulations.
 - c. Grantee will not sell the Subject Property for the purposes of residential home redevelopment or commercial redevelopment.
 - d. Grantee maintains that it is a political subdivision of the state of Oregon for federal income tax purposes.
10. **Escrow, Title Transfer and Fees.** The parties agree that this transaction will close in escrow at the Title Company. The title transfer costs and other associated fees shall be the responsibility of the Grantee. Taxes will be prorated as of the date of closing. Grantee will be responsible for cost of escrow and the cost of the title insurance policy which amount should be deducted from the amount contributed by Grantor under Section 1 above through Closing. .
11. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.
12. **Agreement Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.
13. **Additional Documents.** Grantor and Grantee agree to execute such additional documents, including escrow instructions consistent with this Agreement as may be reasonable and necessary to carry out the provisions of this Agreement.
14. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Grantor and Grantee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and

understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.


15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.
16. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

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, AND 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855 OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.


Signatures on following page

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

GRANTEE: CITY OF DAYTON

By: 
Title: Mayor
Date: October 10, 2018

**GRANTOR: Dayton School
District # 8**

By: 
Title: Chair
Dayton Board of Education
Date: October 9, 2018



Jason Hay, Superintendent
Dayton School District
10/9/18

Exhibit A
Legal Description

Situate in the County of Yamhill and State of Oregon and in Township 4 South, Range 3 West, and being a portion of the original Donation Land Claim of Joel Palmer and wife, Notification 1086 and Claim No. 80 and further described as follows:

Commencing at the Southeast corner of the Lippincott Purchase, now the property of Noah P. Robinson, thence South 50° West 3.00 chains; thence South $38\frac{1}{2}^{\circ}$ East 1.00 chains; thence North $73\frac{1}{2}^{\circ}$ East 5.50 chains; thence North 10° West 3.66 chains; thence South 50° West 3.31 chains to the place of beginning.