

# **City of Scottsbluff, Nebraska**

**Monday, August 2, 2021**

**Regular Meeting**

## **Item Reports<sup>1</sup>**

**Council to discuss and consider action on approving the Donation Agreement with Smith Properties and authorize the Mayor to sign the Agreement.**

**Staff Contact: Dustin Rief, City Manager**

## **REAL ESTATE DONATION AGREEMENT**

THIS REAL ESTATE DONATION AGREEMENT ("Agreement") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between Smith Land Company, LLC, a Nebraska limited liability company, ("Donor") and City of Scottsbluff, a Nebraska municipal corporation ("City").

### **W I T N E S S E T H**

WHEREAS, Donor is the sole owner of the real estate located in Scotts Bluff County, Nebraska and described below:

Lot 2, Block 2, WEBBER MANOR FOURTH ADDITION, to the City of Scottsbluff, Scotts Bluff County, Nebraska.

WHEREAS, Donor has agreed to donate and transfer to City all of its interest in the above described real estate as a charitable contribution;

WHEREAS, City, as a political subdivision under Section 170(c)(1) of the Internal Revenue Code, will acknowledge the donation as a gift for solely public purposes;

WHEREAS, City has agreed to accept the above described donation subject to the terms and conditions set forth herein; and

NOW, THEREFORE, based on the above premises and the mutual covenants hereinafter set forth, it is agreed between Donor and City as follows:

1. Donor agrees to convey and transfer to City and City agrees to accept from Donor all of its ownership interest in the real estate described hereinabove.
2. Donor's estimate of the current fair market value of the real estate being conveyed herein is \$ 42,000.00. Donor has obtained a real estate appraisal performed by a Nebraska licensed real estate appraiser for the real estate being donated, as well as real estate Donor is retaining and is estimating the current value from that real estate appraisal. It is understood that the Donor intends to claim the value of the real estate interest being conveyed as a noncash charitable contribution for tax purposes and is made exclusively for public purposes. City makes no representation regarding the fair market value of real estate interest being conveyed or any tax related consequences of transaction contemplated by this Agreement. Donor will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code and the completion and filing of IRS Form 8283. City agrees to have its Mayor sign the acknowledgment section of IRS Form 8283 that is correctly completed.
3. Donor represents as follows as to the above described real estate:

- a. To the best of Donor's knowledge, the real estate has never been used for underground storage tanks and is in compliance with all environment statutes, ordinances and regulations.
  - b. To the best of Donor's knowledge, there are no other persons or entities (except as disclosed herein) who have or claim an interest in the real estate.
4. Closing shall occur at a time and place to be agreed upon by Donor and City. At closing, Donor shall deliver a Warranty Deed to City conveying the interest in the real estate described herein. Donor and City shall execute any and all necessary documents to accomplish the transfer described herein.
5. The interest in the real estate described herein shall be transferred to City free and clear of all mortgages, deeds of trust, liens, security interests and other encumbrances. Prior to closing, Donor shall deliver to City a title insurance commitment which will be reviewed by the City Attorney. If the title commitment shows title defects that cannot be corrected, City may withdraw from this Agreement.
6. The real estate taxes shall be prorated to the closing date. City shall pay for all expenses in subdividing the real estate, including for cost of the plat, the title insurance commitment and the cost of filing the Warranty Deed.
7. This Agreement and the agreements and instruments to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof and supersede and discharge all prior agreements (written or oral) and negotiations and all contemporaneous oral agreements concerning such subject matter and negotiations.
8. Unless expressly agreed in writing by the applicable party, neither the failure of nor any delay by any party to this Agreement to enforce any right hereunder or to demand compliance with its terms is a waiver of any right hereunder. No action taken pursuant to this Agreement on one or more occasions is a waiver of any right hereunder or constitutes a course of dealing that modifies this Agreement.
9. No waiver of any right or remedy under this Agreement shall be binding on any party unless it is in writing and is signed by the party to be affected. No such waiver of any right or remedy under any term of this Agreement shall in any event be deemed to apply to any subsequent default under the same or any other term contained herein.
10. No amendment, modification or termination of this Agreement shall be binding on any party hereto unless it is in writing and is signed by the party to be charged.
11. The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective personal representatives or corporate successors.

12. Nothing herein express or implied is intended or shall be construed to give any person other than the parties hereto any rights or remedies under this Agreement.
13. This Agreement shall be governed by the laws of the State of Nebraska.
14. It is the intent of the Donor that this Agreement and the donation contemplated hereby shall for all purposes be treated as a charitable contribution made to a political subdivision for exclusively public purposes under Section 170 (c)(1) of the Internal Revenue Code.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below their respective names.

Smith Land Company, LLC, a Nebraska  
Limited liability company, Donor

City of Scottsbluff, a Nebraska  
municipal corporation, City

BY \_\_\_\_\_  
Mark A. Smith, Authorized Member

BY \_\_\_\_\_  
Jeanne McKerrigan, Mayor

Date \_\_\_\_\_

Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

SUBSCRIBED AND SWORN to before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
2021, by Mark A. Smith, as authorized member of Smith Land Company, LLC, a Nebraska  
limited liability company, for and on behalf of the company, Donor,

\_\_\_\_\_  
Notary Public

My Commission Expires:

SUBSCRIBED AND SWORN to before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
2021, by Jeanne McKerrigan, Mayor of Scottsbluff, Nebraska, a Nebraska municipal  
corporation, for and on behalf of the City.

\_\_\_\_\_  
Notary Public

My Commission Expires: