



Meeting Date:
Agenda Item No:

<u>Kitsap County Board of Commissioners</u>			
Office/Department:		Commissioners	
Staff Contact:		Eric Baker	
Agenda Item Title:		KC-269-19 - KHS REPSA	
Recommended Action: approve KC-269-19 - KHS REPSA			
Summary:	This agreement will sell 6.7 acres of land to the Kitsap Humane Society (KHS) located at 9167 Dickey Road NW for \$22,000. This property is the current site of the KHS animal shelter which they have maintained since 1988. KHS owns all of the buildings and improvements on the property. The transaction includes a reversionary clause, so if for any reason KHS ceases to provide animal control and animal welfare services, the property will return to County ownership.		
Attachments:	1. Contract Review Sheet 2. REPSA		
Fiscal Impact for this Specific Action			
Expenditure required for this specific action:	\$0		
Related Revenue for this specific action:	\$22,000		
Cost Savings for this specific action:	\$0		
Net Fiscal Impact:	\$22,000		
Source of Funds:	Road Fund		
Fiscal Impact for Total Project			
Project Costs:	\$0		
Project Costs Savings:	\$0		
Project Related Revenue:	\$22,000		
Project Net Total:	\$22,000		
Fiscal Impact (DAS) Review			
Office/Departmental Review & Coordination			
Office/Department	Elected Official/Department Director		
Commissioners			
Contract Information			
Contract Number	Date Original Contract or Amendment Approved	Amount of Original Contract Amendment	Total Amount of Amended Contract
KC-269-19	pending		



Kitsap County CONTRACT REVIEW SHEET (Chapter 3.56 KCC)

A. CONTRACT INFORMATION	
1. Contractor	<u>Kitsap Humane Society</u>
2. Purpose	<u>Real Estate Purchase and Sale Agreement with the Kitsap Humane Society for 6.7 acres of land located at 9167 Dickey Road NW</u>
3. Contract Amount	<u>0</u> Disburse <input type="checkbox"/> Receive <input checked="" type="checkbox"/>
4. Contract Term	_____
5. Contract Administrator	<u>Eric Baker</u> Phone <u>360-337-4495</u>
Approved: _____ Date _____ Department Director	
B. AUDITOR – ACCOUNTING INFORMATION	
1. Contract Control Number	<u>KC-269-19</u>
2. Fund Name	<u>Road Fund</u>
3. Payment from-Revenue to CC/Account Nbr	_____
4. Encumbered By	<u>Dave Schureman</u> Date <u>4/23/2019</u>
C. AUDITOR'S ACCOUNTING – GRANTS REVIEW <i>Signature required only if contract is grant funded</i>	
1. <input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	
Reviewer <u>NA</u> Date <u>NA</u>	
2. Comments: _____	
D. ADMINISTRATIVE SERVICES DEPARTMENT – RISK MANAGER REVIEW	
1. <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Not Approved	
Reviewer <u>Timothy M. Perez</u> Date <u>4/24/2019</u>	
2. Comments: _____	
E. ADMINISTRATIVE SERVICES DEPARTMENT – BUDGET MANAGER REVIEW <i>Signature required only if contract is for \$50,000 or more, OR it will be signed by board of commissioners (regardless of dollar amount)</i>	
1. <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Not Approved	
Reviewer <u>Aimée Campbell</u> Date <u>04/23/2019</u>	
2. Comments: _____	
F. PERSONNEL DEPARTMENT – PERSONNEL DIRECTOR REVIEW <i>Signature required only if union or employment contract</i>	
1. <input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	
Reviewer _____ Date _____	
2. Comments: _____	
G. PROSECUTING ATTORNEY	
1. <input checked="" type="checkbox"/> Approved as to Form <input type="checkbox"/> Not Approved as to Form	
Reviewer <u>Elizabeth Doran</u> Date <u>04-23-2019</u>	
2. Comments: _____	
H. CERTIFICATION BY CONTRACT ADMINISTRATOR: THIS CONTRACT IS READY FOR CONSIDERATION BY THE AUTHORIZED CONTRACT SIGNER. <i>(For contract signing authority, see KCC 3.56.075)</i>	

Date Approved by Authorized Contract Signer: _____

Date _____

RETURN SIGNED ORIGINALS TO:

Alex Jarrett @ MS-4

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “**Purchase Agreement**”), dated for reference purposes only as of May____, 2019, is made and entered into by and between KITSAP COUNTY a municipal corporation and political subdivision of the State of Washington (“**Seller**”), and KITSAP HUMANE SOCIETY, a non-profit corporation existing under the laws of the State of Washington (“**Buyer**”) (individually, a “**Party**”; collectively, the “**Parties**”), and shall take effect on the Effective Date as provided in Section 13.13.

I. RECITALS

- A. Seller is the owner of certain real property commonly known as the Dickey Road Property in unincorporated Kitsap County, Washington, which was subdivided with a portion allocated for use by the Kitsap Humane Society shown generally on Exhibit A and more particularly described below (the “**Property**”).
- B. The Property includes approximately 6.7 acres located at 9167 Dickey Road NW, Silverdale, Washington 98383 (LOT B, SHORT PLAT NO. 7436, AS RECORDED UNDER AUDITOR'S FILE NO. 201805180199, IN VOLUME 23 OF SHORT PLATS, PAGES 113 through 115). The property currently includes The property currently includes an existing 8,300 sf animal shelter that has been in operation since 1989; an office building of approximately 1,800 sf; a number of outbuildings of various sizes, parking facilities for staff, volunteers and customers, walking trails for dogs/dog-walkers, a new 9,500 sf "Pet Adoption Center" currently under construction.
- C. The Property was surplus and authorized for direct sale to the Kitsap Humane Society by the Kitsap County Board of County Commissioners under Resolution ____-2018.
- D. Buyer is a non-profit organization having among its purposes the property currently includes an existing 8,300 sf animal shelter that has been in operation since 1989; an office building of approximately 1,800 sf; a number of outbuildings of various sizes, parking facilities for staff, volunteers and customers, walking trails for dogs/dog-walkers, a new 9,500 sf "Pet Adoption Center" currently under construction. Buyer is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended from time to time, the “**Code**”) and is included in the “Cumulative List of Organizations” described in Section 170(c) of the Code.
- E. Seller leased the Property to Buyer pursuant to a Lease Agreement, executed on October 26, 1987 To Provide For Animal Shelter Facility and amended by KC-226-88A. Buyer constructed and operated the existing animal shelter and related facilities in 1988 on the property. Buyer also operated an animal impounding control program under a separate annual contract with Seller.

- F. Buyer proposes to renovate the existing Kitsap Humane Society animal shelter and facilities to provide animal welfare support spaces and to construct a new single-story addition to the existing facilities for use as a public adoption wing.
- G. A significant number of public officials, Kitsap Humane Society personnel and community volunteers are working with Buyer, and others to support funding for Buyer's plan for the Property, which will preserve humane treatment of animals, provide animal control services, and other beneficial and noncommercial purposes consistent with Buyers mission.
- H. The parties intend that the Property shall revert back to Seller should Buyer cease to operate the Kitsap Humane Society facilities, animal shelter and animal control services on or from the Property.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants, conditions, and promises contained in this Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

II. AGREEMENT

1. Transaction; Closing Agent.

1.1 Transaction. Buyer hereby agrees to purchase from Seller, and Seller hereby agrees to sell to Buyer, the Property on the terms and conditions set forth in this Purchase Agreement.

1.2 Closing Agent. The purchase and sale contemplated by this Purchase Agreement shall be closed through an escrow to be conducted by Pacific Northwest Title Insurance Company ("**Escrow Company**"), at its offices in Silverdale, Washington.

2. Property.

The "**Property**" is legally described on **Exhibit B** and attached hereto and currently comprises improved tract of real property, subject to the Permitted Exceptions (as defined below). The Property includes all rights of ingress and egress, easements, licenses, minerals, permits, timber, utilities, water, and water rights appurtenant to the real property legally described on **Exhibit B**, to the extent that Seller has any interest therein, except to the extent that such rights are expressly reserved to Seller in the Deed described more particularly below.

3. Purchase Price.

3.1 Purchase Price. The purchase price (the "**Purchase Price**") to be paid for the Property shall be Twenty-Two Thousand Dollars (US \$22,000), as determined per Kitsap County Property Management Code. Buyer shall pay Purchase Price in five annual installments of forty-

four hundred dollars (\$4,400.00) paid to Seller on or before January 15th of each year commencing in 2020 and ending in 2024.

4. Closing.

4.1 Closing Date. “**Closing**” is the delivery and acceptance of all monies and executed documents and the filing and recording of all executed documents that are required to be filed and recorded in government offices, sufficient to complete the transaction described in this Purchase Agreement. The “**Closing Date**” or “**Date of Closing**” shall mean the date upon which Closing occurs. The Parties shall use commercially reasonable efforts to complete Closing by May 15, 2019 provided, however, that the Closing Date shall be not later than May 31, 2019, which shall be the termination date of this Purchase Agreement unless extended by the mutual written agreement of the Parties. The failure of either Seller or Buyer to be in a position to close by the Closing Date, after the satisfaction or waiver of the conditions precedent to the Party’s obligation to close, shall constitute a default by such Party.

4.2 Escrow. This transaction shall be closed in escrow at Escrow Company. Buyer opened escrow for closing of the transaction contemplated under this Purchase Agreement at the offices of the Pacific Northwest Title & Escrow Company located at Silverdale, Washington. Buyer shall deposit a copy of this Purchase Agreement with the Escrow Company upon mutual execution of the Parties. The Parties shall deposit the necessary funds and executed documents in escrow sufficiently in advance of the Closing Date to facilitate an orderly closing.

4.3 Closing Costs. The costs associated with the Closing of this Purchase Agreement shall be allocated as follows: (a) Seller shall pay (i) one-half of the escrow fee of the Escrow Company (plus sales tax thereon), (ii) the real estate excise tax payable in connection with the Deeds, (iii) the premium for the Title Policy without endorsements or extended coverage (plus sales tax thereon), and (iv) Seller’s attorneys’ fees, and (b) Buyer shall pay (i) one-half of the escrow fee of the Escrow Company (plus sales tax thereon), (ii) the premiums for any desired endorsements to the Title Policy (plus sales tax thereon), (iii) recording fees and (iv) Buyer’s attorneys’ fees.

4.4 Prorations. All items of income and expense shall be prorated between Seller and Buyer as of the Closing Date and readjusted by the Parties after Closing if the proration used at Closing is not accurate. As Seller is a municipal corporation there shall be no real property taxes assessed to Seller.

5. Conveyance and Title Insurance.

5.1 Forms of Deed. On the Closing Date, Seller shall convey the Property to Buyer by statutory bargain and sale deed (the “**Deed**”) in the form attached hereto as **Exhibit D**, subject only to the Permitted Exceptions as defined below.

5.2 Preliminary Commitment.

(a) Buyer has obtained (i) a preliminary commitment for an ALTA Owner's Standard Coverage Policy of title insurance issued by Pacific Northwest Title Insurance Company, Silverdale, Washington (“**Title Company**”), dated February 25, 2019, Order No. 32168435 pertaining to the Property (“**Title Commitment**”) committing to insure Buyer’s interest in the Property, together with legible copies of all exception documents described therein (collectively, as supplemented, the “**Title Commitments**”).

(b) In this Purchase Agreement, the term “**Permitted Exceptions**” means (i) the lien for real property taxes and assessments due after Closing, (ii) Exceptions [1-11] inclusive disclosed in the Title Commitment and any Intervening Exceptions approved by Buyer, (iii) matters that a thorough physical inspection and accurate ALTA/NSPS land title survey would disclose, (v) unrecorded leases and other agreements disclosed to Buyer as part of the Seller’s Documents as described in Section 6.1 (vi) the agreements of Buyer under Section 6.7 (liability for claims based on access to the Property), Section 11 (real estate commission), Section 13.16 (attorneys’ fees and costs), and Section 13.21 (Seller’s disclaimer) of this Purchase Agreement, which shall bind Buyer’s successors and assigns.

(c) If any matter affecting title to the Property that is not disclosed in the Title Commitment is disclosed to Buyer after the Effective Date (an “**Intervening Exception**”), then Buyer shall have ten (10) business days after notice in writing of the Intervening Exception, together with a copy of the instrument creating or evidencing the Intervening Exception, if any, to either accept it (whereupon the Intervening Exception shall become a Permitted Exception) or submit written objection to Seller. If Seller does not remove or commit in writing to remove any Intervening Exception to which Buyer has timely objected in writing within ten (10) business days after receipt of Buyer’s notice, then Buyer shall have the option, exercisable by written notice to Seller in Buyer’s sole and absolute discretion, to terminate this Purchase Agreement upon written notice to Seller.

5.3 Policy Condition of Closing. At Closing, Seller shall cause the Title Company to deliver to Buyer a standard coverage owner’s policy of title insurance (2006 ALTA) with respect to the Property, with a coverage amount equal to the Purchase Price of the Property being purchased, insuring marketable title in Buyer or other grantee under the Deed, subject only to: (a) the standard preprinted general exceptions (unless endorsed over), (b) the Permitted Exceptions, and (c) any liens or encumbrances suffered or created by Buyer, and containing such endorsements as Buyer may reasonably require and Title Company may agree to give (the “**Title Policy**”).

6. Buyer's Due Diligence Investigation.

6.1 Seller’s Documents. Seller shall, within three (3) business days after the Effective Date of this Purchase Agreement, make available to Buyer for inspection at the offices of Seller in Port Orchard, Washington, the following documents relating to the Property: (a) all land surveys, environmental reports, engineering reports, and environmental assessments that are material and relevant to the development or use of the Property that are in Seller’s possession or control, and (d) well logs, well inspection reports, and soils tests that are in Seller’s possession or control (“**Seller’s Documents**”), and a list of all pending and threatened lawsuits affecting the Property of

which Seller has received written notice, if any (“**Lawsuits**”). Seller shall make and deliver to Buyer, at Buyer’s expense, copies of some or portions of Seller’s Documents, as requested by Buyer before Closing. Buyer shall keep all such copies in confidence and in Buyer’s possession and shall not disclose or distribute them to any person except its accountants, attorneys, consultants, and other advisors, whom Buyer shall subject to the same restrictions regarding disclosure and distribution as Buyer is subject to under this Section 6.1. Buyer shall return to Seller all copies of Seller’s Documents made by or for Buyer and its advisors within ten (10) days after the expiration or termination of this Purchase Agreement. Buyer’s obligations under this section shall survive the expiration or termination of this Purchase Agreement.

6.2 Access to Property. Buyer and Buyer’s agents, consultants and employees have occupied and shall continue to occupy the Property in its current use prior to closing as a tenant of Seller. During this period, Buyer shall also have the right to perform surveys, appraisals and conduct non-invasive and non-destructive soils, engineering, and other industry standard tests and studies at the Property, at Buyer’s sole expense, including without limitation a Phase 1 environmental site assessment. Seller agrees to cooperate with any such investigations, inspections, or studies made by or at Buyer’s discretion. Before conducting physical testing of the Property as a part of Buyer’s investigation, Buyer shall give Seller notice of the proposed testing and receive Seller’s permission to undertake the same. Prior to closing, Buyer may also continue with construction on the Property as already approved by Seller, provided that no liens or encumbrances shall attach to the Property; and the activities shall not violate any law, regulation, ordinance, or permit. Buyer waives all claims against Seller for injury to any person and damage to any property on or about the Property arising at any time from its exercise of this right of entry, except to the extent such claims arise from Seller’s own gross negligence or willful acts. Buyer’s obligations under this section shall survive Closing and the expiration or termination of this Purchase Agreement.

6.3 Restoration. Buyer shall repair any damage done to the Property by the Buyer or the Buyer’s agents in testing or inspecting the Property. Buyer shall not allow any mechanic’s, laborer’s, materialmen’s or any other lien of any type or nature whatsoever to be placed against the Property or any part thereof prior to Closing. If any liens are placed against the Property as a result of Buyer’s acts prior to Closing, then Buyer shall cause the same to be released and discharged of record within ten (10) days after notice thereof, either by payment, deposit, or bond. Buyer’s obligations under this section shall survive Closing and the expiration or termination of this Purchase Agreement.

6.4 No Waste; No Violations of Laws. Between the Effective Date of this Purchase Agreement and the Closing Date, Seller shall not commit any material waste, impairment, or deterioration of any portion of the Property (other than ordinary wear and tear) or commit any act upon or use of any portion of the Property in violation of any applicable law, order, permit, or license of any governmental authority, subject to damage and loss by casualty, eminent domain, force majeure, other matters outside Seller’s reasonable control, and third party exercises of rights authorized by matters of record and unrecorded agreements made prior to the Effective Date of this Purchase Agreement. Buyer’s obligations under this section shall survive Closing and the expiration or termination of this Purchase Agreement.

6.6 Buyer's Waiver of Disclosure Statement. Buyer and Seller acknowledge that the Property may or may not be considered "commercial real estate" as defined in Chapter 64.06 RCW, and hereby waive all rights, obligations and remedies (including, without limitation, the right of rescission) which would be applicable or available to the Parties if the Property were so qualified. Buyer acknowledges that Buyer has been advised of Buyer's right (to the extent applicable to the subject transaction) to receive a completed Seller Disclosure Statement pursuant to Chapter 64.06 RCW and that Buyer hereby waives that right, whether or not applicable, provided, however, that within three (3) business days after the Effective Date of this Purchase Agreement, Seller shall complete and deliver to Buyer Section 6 (Environmental) of the Seller Disclosure Statement relating to the Property.

6.7 Liability for Claims Based on Access to the Property. Buyer shall indemnify, defend, and hold Seller harmless from and against any and all liabilities, obligations, claims, damages, demands, penalties, environmental cleanup and remediation costs, causes of action, costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, whether arising out of injury or death to persons or damage to the Property or adjoining property or loss of any personal property or otherwise (collectively, "**Damages**"), arising from or related to the activities of Buyer or its consultants, agents, employees, contractors, subcontractors or invitees (collectively, "**Buyer's Responsible Parties**") on, about, or with respect to the Property. The indemnification required under this paragraph is limited to claims arising from Buyer's access to the Property prior to Closing pursuant to Section 6.2.

6.8 Buyer's Insurance. During the term of this Purchase Agreement, Buyer at all times shall provide insurance against liability for bodily injury and property damage caused by entry within the Property by Buyer, its agents, consultants and employees. If Buyer is not a government agency, then Buyer shall maintain at all times a policy of commercial general liability insurance with minimum limits of \$2,000,000 each occurrence and \$2,000,000 general aggregate, and automobile liability insurance (including owned, hired, and non-owned autos) with minimum limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate, or such lesser or greater limits as Seller may require in its discretion, and Buyer shall deliver to Seller such written proof of insurance as Seller may reasonably require from time to time, including without limitation copies of certificates of insurance, endorsements, and policies of insurance. Buyer's policies of general liability, and automobile liability insurance (a) shall name Seller as an additional insured, (b) shall be written by insurance companies licensed to do business in the State of Washington, with an A. M. Best Company financial and performance rating of "A-VIII" (or substantial equivalent if no longer published), or with insurance companies otherwise reasonably acceptable to Seller, and (c) shall contain endorsements providing that such insurance may not be materially amended with respect to Seller or canceled except after ten (10) days' prior written notice from the insurer to Seller.

7. Conditions Precedent to Closing.

7.1 Buyer's Conditions. Buyer's obligations to proceed with and close this Purchase Agreement shall be subject to and contingent upon the satisfaction or waiver of each of the conditions precedent set forth in this Section 7.1. Buyer's conditions precedent is solely for the

benefit of Buyer and may be waived only in writing by Buyer. If any of Buyer's conditions precedent to Closing of this Purchase Agreement are not timely fulfilled and are not waived by Buyer, Buyer may terminate this Purchase Agreement by written notice to Seller:

(a) Approval of Seller's Documents. Within ten (10) days after the Effective Date, Buyer shall have approved Seller's Documents ("**Seller's Documents Condition Precedent**").

(b) Performance of Acts of Seller. Seller shall have performed on or prior to Closing all acts required of Seller under this Purchase Agreement.

(c) Performance of Acts of Buyer. Buyer shall have performed on or prior to Closing all acts required of Buyer under this Purchase Agreement.

7.2 Mutual Conditions. The obligations of both Buyer and Seller to complete the purchase and sale of the Property under this Purchase Agreement are subject to their mutual satisfaction or written waiver of the following conditions precedent to Closing. If any of the following conditions precedent are not satisfied or waived in writing by Buyer and Seller within the applicable time period, then this Purchase Agreement shall terminate automatically, and neither Party shall have any further obligations or rights hereunder except such obligations that expressly survive the expiration or termination of this Purchase Agreement:

(a) Seller's Board Approval. The Kitsap County Board of Commissioners (the "**Board**") in its sole and absolute discretion, shall have approved before Closing the making of this Purchase Agreement (as it may be amended), the performance by Seller of its obligations described herein, and the amount of the Purchase Price.

8. Representations and Warranties.

8.1 Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows as of the date of this Purchase Agreement and as of Closing:

(a) Due Formation and Existence. Buyer is a Washington nonprofit corporation duly organized, validly existing and in good standing in the State of Washington.

(b) Power and Authority. Buyer has all requisite power and authority to execute and deliver this Purchase Agreement and to carry out its obligations under this Purchase Agreement and the transaction contemplated by this Purchase Agreement.

(c) Due Execution and Delivery. This Purchase Agreement has been, and the documents contemplated by this Purchase Agreement will be, duly executed and delivered by Buyer and constitute Buyer's legal, valid and binding obligation enforceable against Buyer in accordance with its terms.

(d) No Conflicts; No Defaults. The consummation by Buyer of the purchase of the Property, including the reversionary clause, is not in violation of or in conflict with nor does it constitute a default under any term or provision of the Bylaws of Buyer, or any of the terms of any

agreement or instrument to which Buyer is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

8.2 Seller's Representations and Warranties. Seller represents and warrants to Buyer as follows, subject to such exceptions and qualifications as Seller may disclose to Buyer in writing no later than thirty (30) days after the Effective Date:

(a) Due Formation and Authority. Subject to obtaining Seller's Board approval pursuant to Section 7.2(a), has the power and authority to execute, deliver and perform this Purchase Agreement and the transaction(s) contemplated herein. This Purchase Agreement constitutes a valid and legally binding agreement of Seller once Seller's Board approval is obtained pursuant to Section 7.2(a).

(b) No Conflicts; No Defaults. Neither execution of this Purchase Agreement nor the sale of the Property, or any portion thereof, to Buyer as contemplated herein constitutes: (i) requires the consent or authorization of any other person having legal rights against Seller other than that which has been or will be obtained by the Closing Date(s).

(c) Title. Title to the Property is vested in Seller, subject to the Permitted Exceptions.

(d) Litigation and Proceedings. Except as disclosed on Schedule 8.2, there is neither pending nor, to Seller's knowledge, threatened against Seller, the Property, or any portion thereof, any condemnation proceeding, civil or criminal action, arbitration (or other binding alternative dispute resolution), administrative proceeding before any governmental authority, or investigation that could: (i) have a material adverse effect on Buyer or upon the use, enjoyment, value of operation of the Property, or any portion thereof, following the Closing(s), or (ii) enjoin or restrict the right or ability of Seller to perform its obligations under this Purchase Agreement. Except as disclosed on Schedule 8.2, there are no (a) civil or criminal actions, suits, claims, investigations or legal or administrative or arbitration (or other binding alternative dispute resolution) proceedings pending or, to the knowledge of Seller, threatened against the Seller, or (b) orders, writs, judgments, injunctions, decrees, awards or similar commands of any court, any governmental agency or other governmental body, or any arbitration tribunal or panel, applicable to Seller and affecting the Property, or any portion thereof, at law or in equity. Notwithstanding the foregoing, Seller makes no representation or warranty regarding adverse possession and prescriptive easement claims relating to the Property unless such claims are asserted in currently pending judicial proceedings in which Seller is a party.

(e) Compliance With Laws. Except as disclosed on Schedule 8.2, Seller has received no written notice of any actions against the Property, or any portion thereof, based upon a violation by Seller of any local, state or federal laws and Seller has not entered into any commitments or agreements with any governmental authorities or agencies affecting the Property, or any portion thereof, that will not be included as special exceptions in the Title Commitment or have not already expired or terminated.

(f) No Condemnation or LID Proceedings. Seller has no knowledge of any pending or threatened condemnation, eminent domain or LID proceedings affecting the Property or any portion thereof.

(g) No Support of Terrorism. Seller will not transact business with, or provide material support or resources directly or indirectly to, or permit any of Buyer payments under this Purchase Agreement to be transferred directly or indirectly to any individual, corporation or entity that Seller knows, or has reason to know, supports, advocates, facilitates, or participates in any terrorist activity (including without limitation to any individual or organization identified by the United States as a Foreign Terrorist Organization, a Specially Designated Terrorist, or a Specially Designated Global Terrorist).

(h) Condition of Property. Seller makes no representation or warranty to Buyer regarding hazardous substances within the Property, past or present refuse dump sites, chemical storage sites, or sites of known hazardous substance releases, except that Seller has not failed to disclose to Buyer and Ecology all information regarding the environmental condition of the Property that Seller is obligated by law to disclose. The term "**hazardous substances**" in this Purchase Agreement includes any substance, waste, or material defined or designated as hazardous, toxic, or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now in effect, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., and the Model Toxics Control Act, RCW Chapter 70.105D ("**Environmental Laws**").

(i) FIRPTA Certification. Seller represents and warrants to Buyer that Seller is not a foreign person, as that term is defined in 26 U.S. Code Section 1445(f)(3). Seller agrees to execute a certificate to such effect in a form reasonably acceptable to Buyer as part of the Closing.

9. Destruction or Condemnation.

If, on or before the Closing Date, either the Property is materially damaged, or condemnation proceedings are commenced with respect to a material portion of the Property, Buyer shall have the right, at its sole election, by giving notice to Seller, either to terminate this Purchase Agreement or to purchase the Property in accordance with this Purchase Agreement. If Buyer elects to terminate this Purchase Agreement, all rights and obligations of Seller and Buyer shall terminate except obligations of Seller and Buyer that expressly survive the expiration or termination of this Purchase Agreement. Buyer shall immediately give notice to Seller upon the occurrence of any damage to the improvements on the Property. The term "material damage" as used in this section shall mean any damage or destruction of five percent (5%) or more of the area of the Property, and the term "material portion" shall mean five percent (5%) or more of the area of the Property.

10. Closing Instructions.

This Purchase Agreement shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Company for the consummation of this

Purchase Agreement through escrow. Notwithstanding the foregoing, the Closing shall be subject to such additional escrow instructions as each Party, acting in its discretion, may give Escrow Company, provided that such instructions shall not be inconsistent with this Purchase Agreement. Prior to or on the Closing Date, Seller and Buyer shall deposit the following documents and funds in escrow, and the Escrow Company shall close the escrow in accordance with the instructions of Buyer and Seller consistent with this Purchase Agreement:

10.1 Seller Obligations. Seller shall deposit the following prior to Closing, duly executed and acknowledged by Seller to the extent required to make the same effective and binding:

- (a) The Deed, in recordable form, conveying the Property, or portions thereof, to Buyer or other party as directed by Buyer, subject to the Permitted Exceptions;
- (b) Real Estate Excise Tax Affidavit(s) signed by or on behalf of Seller;
- (c) One-half of the escrow fee of the Escrow Company (plus sales tax thereon), and the premium for the Title Policy without endorsements or extended coverage (plus sales tax thereon);
- (d) Any supplemental escrow instructions to close this transaction in accordance with this Purchase Agreement;
- (e) An owner's affidavit in the customary form provided by the Title Company, if required by Title Company prior to issuance of the Title Policy;
- (f) A resolution authorizing the execution and delivery of all documents delivered by Seller at Closing;
- (g) A FIRPTA certification as required by Section 8.2(i) of this Purchase Agreement;
- (h) Such other instruments or funds as may be required pursuant to the provisions hereof or as mutually agreed by Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

10.2 Buyer Obligations. Buyer shall deposit the following prior to Closing, duly executed and acknowledged by Buyer to the extent required to make the same effective and binding:

- (a) The Purchase Price and such additional sums as are required of Buyer under this Purchase Agreement for pro-rations, expenses, and adjustments;
- (b) Real Estate Excise Tax Affidavit(s) signed by or on behalf of Buyer;

(c) One-half of the escrow fee of the Escrow Company (plus sales tax thereon), the premiums for any desired endorsements to the Title Policy (plus sales tax thereon), and any recording fees;

(d) Any supplemental escrow instructions to close this transaction in accordance with this Purchase Agreement; and

(e) Such other documents as are required of Buyer, or desired by Buyer, to close the purchase in accordance with this Purchase Agreement, including without limitation additional restrictive covenants to ensure the property reverts back to Seller should Buyer cease to provide animal shelter and animal control services.

10.3 Title Policy and Loan Policy. Within thirty (30) days after Closing, Seller shall cause Title Company to issue the Title Policy to Buyer or other party as directed by Buyer, consistent with the Commitment, dated as of the Closing Date and insuring Buyer or to such other party in the amount of the Purchase Price against loss or damage by reason of any defect in Buyer's title to the Property, or the title to the Property of such other party, subject only to the printed exclusions and general exceptions appearing in the policy form; any Permitted Exceptions except those that Title Company has agreed to insure against; the exceptions specified in the Commitment that Buyer has not disapproved of as provided herein; encumbrances granted by Buyer to secure any portion of the Purchase Price; and real property taxes and assessments that are not delinquent. In addition, within thirty (30) days after Closing Buyer shall cause Title Company to issue the Loan Policy to Seller, dated as of the Closing Date.

11. Real Estate Commission.

Seller warrants to Buyer and Buyer warrants to Seller that each Party's sole contact with the other Party and with the Property that is the subject of this Purchase Agreement and the transaction contemplated herein has been directly with the other Party and has not involved any broker or finder. Seller and Buyer further warrant to each other that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and that Party with respect to the other Party or the Property.

12. Notices.

All notices under this Purchase Agreement shall be in writing and signed by a Party or its counsel. Notices may be (i) delivered personally, (ii) transmitted by facsimile, (iii) transmitted by email delivery (iv) delivered by a recognized national overnight delivery service, or (v) mailed by certified United States mail, postage prepaid and return receipt requested to the address below. Notices to any Party shall be directed to the address set forth below, or such other or additional address as any Party may specify by notice to the other Party. Any notice delivered in accordance with this Section 12 shall be deemed given (a) in the case of any notice transmitted by facsimile or email delivery, on the date on which the transmitting Party receives confirmation of receipt by facsimile transmission, telephone, computer or otherwise, (b) in the case of any notice delivered

by a recognized national overnight delivery service, on the date of delivery to the service, or (c) in the case of any notice mailed by certified U.S. mail, three (3) business days after deposit therein.

If to Seller: Kitsap County Department of Public Works
Attn: Andrew Nelson
614 Division Street, MS-27
Port Orchard, Washington 98366
Phone No.: 360-
Email: anelson@co.kitsap.wa.us

With a copy to: Eric Baker
614 Division Street, MS-4
Port Orchard, Washington 98366
Phone No.: 360-337-4495
Email: ebaker@co.kitsap.wa.us

With a copy to: Elizabeth Doran
Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office
614 Division Street, MS-35A
Port Orchard, Washington 98366
Phone No.: 360-337-4981
Email: edoran@co.Kitsap.wa.us

If to Buyer: Kitsap County Humane Society
Attn: Eric Stevens, Executive Director
Phone: 360-692-6977, ext. 1115
Email: executivedirector@kitsap-humane.org

With a copy to: Melissa Fenswick, Director of Finance
Phone: 360-692-6977, ext. 1114
Fax: 360-698-9668
Email: mfenswick@kitsap-humane.org

13. Miscellaneous.

13.1 Survival. All covenants, agreements, representations and warranties made in this Purchase Agreement shall survive Closing of this Purchase Agreement unimpaired and shall not merge into the Deed and recordation thereof, for a period of one (1) year after the Closing Date. All indemnities shall survive Closing of this Purchase Agreement.

13.2 Recitals and Schedules. The Recitals to this Purchase Agreement and any exhibits or schedules attached to this Purchase Agreement are incorporated herein by this reference.

13.3 Binding Effect. The provisions of this Purchase Agreement shall be binding upon and inure to the benefit of the Parties and, subject to the restrictions on assignment set forth herein, their respective successors and assigns.

13.4 Entire Agreement. This Purchase Agreement constitutes the entire integrated agreement of the Parties, including all of the covenants and conditions between the Parties with respect to the subject matter of this Purchase Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Purchase Agreement shall be effective unless set forth in writing and signed by Seller and Buyer.

13.5 Conflict of Terms. Any conflict of terms and conditions between this Purchase Agreement and the Option Agreement shall be resolved in favor of the terms or conditions provided in this Purchase Agreement.

13.6 Partial Invalidity. If any term or provision of this Purchase Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Purchase Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Purchase Agreement shall be valid and be enforced to the fullest extent permitted by law.

13.7 Waiver. Any Party's failure to exercise any right or remedy under this Purchase Agreement, delay in exercising any right or remedy, or partial exercise of any right or remedy, shall not constitute a waiver of that or any other right or remedy hereunder. A waiver of any breach of any provision of this Purchase Agreement shall not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. No waiver of any provision of this Purchase Agreement shall be binding on a Party unless it is set forth in writing and signed by such Party.

13.8 Construction and Interpretation. The headings or titles of the sections of this Purchase Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Purchase Agreement; references herein to sections are to sections of this Purchase Agreement unless otherwise specified. Meanings of defined terms used in this Purchase Agreement are equally applicable to singular and plural forms of the defined terms. As used herein, (a) the terms "hereof", "herein", "hereunder", and similar terms refer to this Purchase Agreement as a whole and not to any particular provision of this Purchase Agreement, (b) the term "this transaction" refers to the transaction(s) contemplated by this Purchase Agreement, and (c) the term "including" is not limiting and means "including without limitation." All provisions of this Purchase Agreement have been negotiated at arm's length, and this Purchase Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision hereof. For purposes of this Purchase Agreement, the term "Business Day" shall mean any day other than a Saturday, a Sunday, or a legal holiday in the State of Washington.

13.9 Time of the Essence; No Right to Untimely Performance. Time is of the essence with respect to all terms, provisions, covenants and conditions contained in this Purchase Agreement. Neither Seller nor Buyer shall have a right to untimely performance on account of force majeure, financial inability to perform, or other causes.

13.10 Time. If any date upon which some action, notice or response is required of any Party hereunder occurs on a weekend or state or national holiday, such action, notice or response shall not be required until the next succeeding Business Day.

13.11 Governing Law. This Purchase Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington. Venue for the resolution of any dispute shall be Kitsap County, Washington. The terms of this Purchase Agreement shall be given their ordinary meaning and shall not be presumed to be construed in favor of or against either Party hereto.

13.12 Captions. The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

13.13 Effective Date of Agreement. The “**Effective Date**” of this Purchase Agreement shall be the date on which it is mutually executed and delivered by both Parties.

13.14 Cooperation and Good Faith. The Parties agree to cooperate and work together in good faith to carry out this Purchase Agreement and the transaction(s) contemplated by this Purchase Agreement. The Parties agree to execute additional documents and instruments and take such other actions as may be reasonably necessary to carry out this Purchase Agreement, and the transaction(s) contemplated by this Purchase Agreement, so long as the terms thereof are consistent with the terms of this Purchase Agreement. The Parties understand that the conditions and timing of grant funding that is made available to Buyer for the purchase of the Property may require amendments to this Purchase Agreement, which the Parties agree to consider and negotiate in good faith.

13.15 Default. If there is a breach of this Purchase Agreement by either Seller or Buyer, the non-breaching Party shall give prompt written notice of the claimed breach to the alleged breaching Party and request that the breaching Party cure the claimed breach. If the breach is not cured within seven (7) days after the receipt of such notice, the non-breaching Party will be entitled either to seek specific performance of this Purchase Agreement, or to seek money damages for breach of a representation and warranty, or to terminate this Purchase Agreement by written notice to the breaching Party. In an action for specific performance, neither Party shall claim that the remedy of specific performance of this Purchase Agreement is an improper remedy for any reason, including without limitation the nature of the obligation or breach and the availability of an alternative damages remedy, except the absence of an obligation, the absence of a breach, or the impracticality of specific performance to remedy the alleged breach. If the breaching Party is Seller and the alleged breach is of a representation and warranty contained in this Purchase Agreement, then Buyer shall be entitled to money damages to the extent allowed under this Purchase Agreement as Buyer’s sole and exclusive remedy for the breach.

13.16 Attorneys' Fees and Costs. If either Party is required to retain an attorney to bring suit or seek arbitration to interpret or enforce any provision of this Purchase Agreement, the prevailing Party shall be entitled to a judgment in the amount of its reasonable attorneys' fees, paralegal fees, accountant, and other expert witness fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law.

13.17 Press Releases and Other Public Announcements. Each Party shall consult with the other Party prior to making any press release or other public announcements intended for general circulation regarding this Purchase Agreement or the transaction contemplated under this Purchase Agreement. The provisions of this Section 13.17 shall survive the Closing or termination of this Purchase Agreement.

13.18 Assignability. This Purchase Agreement shall not be assigned by Buyer without the prior written consent of Seller; provided, however, that Buyer may assign its rights and obligations under this Purchase Agreement, under such terms and conditions as may be negotiated between assignor and assignee, to Kitsap County, with prior written notice to Seller.

13.19 Possession. Buyer shall be entitled to possession of the Property immediately upon Closing, subject to the Permitted Exceptions.

13.20 Execution. This Purchase Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same agreement. Each Party may rely upon the signature of each Party on this Purchase Agreement that is transmitted by facsimile or other electronic transmission as constituting a duly authorized, irrevocable, actual, current delivery of this Purchase Agreement with the original ink signature of the transmitting Party.

13.21 Seller's Disclaimer and Buyer's Release. Before Closing, Buyer will have inspected, reviewed, and approved the physical and environmental condition, the condition of title, and other matters affecting the Property. Except as to Seller's express representations and warranties in this Purchase Agreement and implied or express warranties in the Deed, and except as provided in Section 8 above, Buyer acknowledges that Buyer is relying entirely on Buyer's due diligence investigation of the Property, including any investigation performed in accordance with Section 6 above, and on any consultant Buyer has retained, and Seller makes no covenant, representation, or warranty as to the condition of title to the Property, or as to the suitability of the Property for any purpose, or as to the physical or environmental condition of the Property, or as to the accuracy or completeness of any report, study, survey, or other document provided by Seller to Buyer regarding the Property. Buyer hereby agrees that it is purchasing the Property in its present condition, AS IS. Except as to claims arising under Seller's express representations and warranties in this Purchase Agreement, claims arising under the Deed, and claims arising under or reserved in Section 8 above, (a) Buyer waives all claims, including environmental claims, against Seller, known and unknown, with respect to the Property, including without limitation claims for cleanup costs, contribution costs, and other liabilities relating to the cleanup, presence, removal, or remediation of hazardous substances and other environmental defects in the Property, (b) Buyer assumes the risk of all defects and conditions, including such defects and conditions, if any, that

cannot be observed by casual inspection, and (c) Buyer releases, forever discharges, and covenants not to sue Seller and Seller's accountants, affiliates, agents, attorneys, consultants, contractors, directors, employees, managers, members, officers, officials, subcontractors, subsidiaries, unit holders, successors, and assigns based upon any cause of action, claim, damage, expense, demand, liability, and loss arising from or relating to the condition of the Property.

13.22 Indemnification for Breach of Seller's Representations and Warranties; Limitations. From and after the Closing, Seller shall pay, indemnify, defend and hold harmless Buyer from and against any and all claims, causes of action, losses, liabilities, expenses, damages, lawsuits, interest, penalties, and all reasonable amounts paid in investigation, defense, or settlement of the foregoing (including reasonable attorneys' fees, expenses of litigation and costs of appeal) (collectively, "**Claims**") incurred by Buyer and arising out of any breach of any representation and warranty of Seller contained in Section 8.2 (as modified by disclosures to Buyer in writing within thirty (30) days after the Effective Date, as described in Section 8.2); provided a notice of a breach of a representation or warranty is given by Buyer to Seller in writing not later than 5:00 p.m. Pacific Time on the first (1st) anniversary of the Closing and Buyer commences litigation against Seller relating to the breach within ninety (90) days after the second (2nd) anniversary of the Closing. Notwithstanding anything in this Purchase Agreement to the contrary, in no event shall (a) Seller be required to indemnify Buyer for any Claim asserted except to the extent that actual damages to Buyer proximately caused by all Claims asserted under this Purchase Agreement exceed Fifty Thousand Dollars (US\$50,000) (the "**Basket**"), or (b) Seller be required to indemnify Buyer (i) for any Claims to the extent that such Claims are greater than Two Hundred Fifty Thousand Dollars (US\$250,000) per incident or Five Hundred Thousand Dollars (US\$500,000) in the aggregate for the Property, or (ii) for Claims that arise out of or result from a breach of any representation and warranty contained in Section 8.2 hereof if, as of the Closing Date, Buyer had knowledge of the facts giving rise to Seller's breach and elected to close the transaction notwithstanding. In no event shall the Basket apply to any Claims arising from any pro-rations to be made at Closing. The foregoing limitations pertaining to Claims shall not pertain to the warranties contained in any Deed unless Buyer had knowledge as of the Closing Date of the facts giving rise to Seller's breach under the Deed and elected to close the transaction notwithstanding. In addition, the foregoing limitations pertaining to Claims shall not limit Buyer's ability to make claims against Seller pursuant to Section 8 of this Purchase Agreement, on the basis of other applicable laws, including, without limitation Environmental Laws, subject to the limitations set forth in Section 8 of this Purchase Agreement.

{ Signature Page to Follow }

IN WITNESS WHEREOF, the Parties have executed this Purchase Agreement in duplicate originals as of the date(s) written below.

SELLER:

BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

EDWARD E. WOLFE, Chair

ROBERT GELDER, Commissioner

CHARLOTTE GARRIDO, Commissioner

BUYER:

Kitsap Humane Society, a non-profit corporation
existing under the laws of the State of Washington

Dated: _____

By: _____
Board President

By: _____
Executive Director

EXHIBITS:

- A – Map of the Property
- B – Legal Description of the Property
- C – Form of Deed of Trust
- D – Special Exceptions

EXHIBIT A

Map of the Property

Kitsap Humane Society



Comments: "This map is not a substitute for field survey" Map Scale: 1 inch = 400 feet
Parcel No: 192501-1-022-0007 Tax Payer: KCPNW SILVERDALE R&G Site Address: MULTIPLE ADDRESSES ON FILE
Kitsap Co. Parcel Search Application
Filed August 17, 2018

EXHIBIT B

Legal Description

*****EXCEPT FOR BUILDINGS ONLY TO 192501-1-008-2104 AND 9000-010-193-0007***** LOT B, SHORT PLAT NO. 7436, AS RECORDED UNDER AUDITOR'S FILE NO. 201805180199, IN VOLUME 23 OF SHORT PLATS, PAGES 113 through 115, BEING A PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, SECTION 19, TOWNSHIP 25 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; TOGETHER WITH AND SUBJECT TO EASEMENTS AS DEPICTED ON SAID SHORT PLAT.

EXHIBIT C

Form of Deed

After Filing Return To:

BARGAIN AND SALE DEED

Grantor: Kitsap County

Grantee: Kitsap Humane Society

Abbreviated Legal Description:

Complete legal description is on Exhibit A (pages _____ to _____) attached hereto.

Assessor's Property Tax Parcel Account Numbers:

Reference Numbers of Related Documents: None

BARGAIN AND SALE DEED

Kitsap County, a municipal corporation, as grantor ("Grantor"), for good and valuable consideration in hand paid, bargains, sells, and conveys to Kitsap Humane Society, as grantee ("Grantee"), the real property legally described on Exhibit A attached hereto (the "Property"), situated in Kitsap County, Washington, subject to the covenants, easements, reservations, and other matters described on Exhibit B attached hereto. The Property includes all rights of ingress and egress, easements, licenses, minerals, permits, timber, utilities, water, and water rights that are appurtenant to the Property, to the extent that Grantor has any interest therein. Grantor conveys to Grantee the Property for so long as Grantee operates and maintains an animal shelter or animal control services and facilities on the Property. If and when neither animal shelter nor animal control services and facilities are so operated and maintained, the Property shall revert to Grantor.

Dated this _____ day of _____, 2019.

GRANTOR:

EDWARD E. WOLFE, Chair
Kitsap County

EXHIBITS:

- A - Legal Description of the Property
- B - Exceptions to Title

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

On this _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Edward E. Wolfe to me known to be the Chair of the Board of Commissioners.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____
Print Name: _____

Exhibit D

Exceptions to Title

[INSERT LIST OF PERMITTED EXCEPTIONS, WHICH ARE DEFINED IN THE PURCHASE AGREEMENT TO COMPRISE THE FOLLOWING:

(i) the lien for real property taxes and assessments due after Closing, (ii) Special Exceptions 1-11 inclusive disclosed in the Title Commitment and any Intervening Exceptions approved by Buyer, (iii) reversionary clause to Deed (iv) matters that a thorough physical inspection and accurate ALTA/NSPS land title survey would disclose, (v) unrecorded leases and other agreements disclosed to Buyer as part of the Seller's Documents as described in Section 6.1 and that Seller has not agreed in writing to terminate prior to Closing and that Buyer has agreed to accept (of which there are none as of the Effective Date), (vi) the agreements of Buyer under Section 6.7 (liability for claims based on access to the Property), Section 11 (real estate commission), Section 13.16 (attorneys' fees and costs), Section 13.21 (Seller's disclaimer) of this Purchase Agreement, which shall bind Buyer's successors and assigns.