



CITY COUNCIL AGENDA REPORT

Meeting Date: 11/18/2021

From: Stuart Schillinger Assistant City Manager

Subject: Adopt Resolution 2021-74 Accepting the Donation of 650 Harold Drive APN 007-570-220 Located within the Brisbane Acres

Community Goal/Result Ecological Sustainability

Purpose

Preserve valuable habitat within Brisbane Acres.

Recommendation

Adopt Resolution 2021-74 Approving a Donation Agreement for Real Property, Accepting the Real Property as a donation to the City, Authorizing the Mayor and or City Manager to sign all Documents Necessary to Transfer the Property to the City and Accept the Property as a Donation, and Authoring the City Clerk to Record a Deed with the County Recorder to Transfer the Property

Background

The City has an adopted Open Space Plan. Part of the plan calls for the City to acquire property within what is called the Priority Preservation Area of the Brisbane Acres, also known as the Upper Acres, to preserve it for habitat for several rare and endangered butterflies and other fauna and flora. The City over the past 20 years has acquired a number of properties for this purpose through a combination of purchases and donations. The majority of our purchases have been done in combination with grants for the purpose of maintaining open space. The City has also accepted donation of land from individuals.

Staff periodically sends out letters to property owners to see if there is any interest in selling or donating land to the City. Staff mailed letters out at the beginning of September. The owner of parcel number 007-570-220 (650 Harold Drive) offered to donate the parcel to the City of Brisbane.

Discussion

Jeff Cooper has reached out to the City to donate his parcel to the City. His stipulation is that he would like the transaction closed by the end of December. If the Council would like to accept the donation, staff believes this will be a reasonable timeframe. The property owner would like the City to pay for 50% of the appraisal and 50% of the Title Report. It is anticipated that this will be \$5,750 for both to be completed. The owner would have it appraised at the current zoning which is housing. He would give it to us unencumbered. The appraised value of the parcel is anticipated to be \$70,000 based on the preliminary report from the appraiser.

Fiscal Impact

The City can use the South Hill Project Fund to purchase Open Space. When the City sold this property it directed staff to put it in a separate fund for the purposes of recreational activities or open space uses. The City used this fund to pay for the Crocker Trail Master Plan.

Measure of Success

Open space is available for the fauna and flora of San Bruno Mountain to thrive.

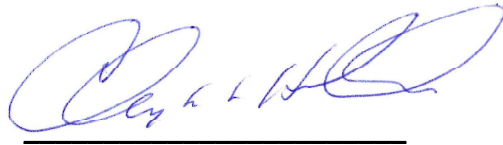
Attachments:

Resolution 2021-74

Donation Agreement

Stuart Schillinger

Stuart Schillinger, Assistant City Manager



Clay Holstine, City Manager

RESOLUTION NO. 2021-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING A DONATION AGREEMENT FOR REAL PROPERTY, ACCEPTING THE REAL PROPERTY AS A DONATION TO THE CITY, AUTHORIZING THE MAYOR AND/OR CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO TRANSFER THE PROPERTY TO THE CITY AND ACCEPT THE PROPERTY AS A DONATION, AND AUTHORIZING THE CITY CLERK TO RECORD A DEED WITH THE COUNTY RECORDER TO TRANSFER THE PROPERTY TO THE CITY

Whereas, Cooper Pudega Management, Inc., a California Corporation (“Donor”) is the owner in fee simple of that certain real property located in the City of Brisbane, San Mateo County, California (the “Property”); and

Whereas, the Property is in an area known as “Brisbane Acres,” which is within the boundaries of the San Bruno Mountain Habitat Conservation Plan (the “HCP”) and the HCP provides for the protection of federally listed endangered species that live on San Bruno Mountain and for the maintenance of their critical habitat; and

Whereas, Donor desires to enter into this Agreement with the City to convey Donor’s fee interest in the Property to City at no cost, subject to the terms and conditions of the Agreement; and

Whereas, City desires to accept the Property from Donor; and

Whereas, City is a governmental entity described in Section 170(b)(1)(A)(v) of the Internal Revenue Code and is authorized to accept charitable donations of real property.

NOW, THEREFORE, the City Council of the City of Brisbane resolves as follows:

Section 1. The City Council approves the Donation Agreement concerning the Property.

Section 2. The City Council accepts the Property as a donation to the City of Brisbane.

Section 3. The City Council authorizes the Mayor and/or City Manager/City staff to sign all documents necessary to transfer the Property to the City and to accept the Property as a donation to the City.

Section 4. The City Clerk is authorized and directed to record in the San Mateo County’s Recorder’s Office a deed from the Donor to the City, in a form approved by the City Attorney.

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Brisbane at a regular meeting on _____, 2021.

Mayor of the City of Brisbane

I hereby certify that the foregoing Resolution was adopted by the City Council of the City of Brisbane at a regular meeting held on _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

Approved as to form:

Thomas R. McMorrow, City Attorney

DONATION AGREEMENT FOR REAL PROPERTY

This Donation Agreement for Real Property (this “**Agreement**”) is made and entered into as of the later of the dates set forth under the Parties’ signatures below (the “**Effective Date**”), by and between **Cooper Pugeda Management, Inc.**, a California corporation (“**Donor**”), and **City of Brisbane**, a California municipal corporation (the “**City**”). Donor and City are sometimes collectively referred to in this Agreement, individually, as a “**Party**” and, together, as the “**Parties.**”

R E C I T A L S:

A. Donor is the owner in fee simple of that certain real property located in the City of Brisbane, San Mateo County, California (the “**Property**”) as described in the attached Exhibit 1.

B. The Property is in an area known as “Brisbane Acres,” which is within the boundaries of the San Bruno Mountain Habitat Conservation Plan (the “HCP”). The HCP provides for the protection of federally listed endangered species that live on San Bruno Mountain and for the maintenance of their critical habitat.

C. Donor desires to enter into this Agreement to convey Donor’s fee interest in the Property to City at no cost, subject to the terms and conditions of this Agreement.

D. City desires to accept the Property from Donor.

E. City is a governmental entity described in Section 170(b)(1)(A)(v) of the Internal Revenue Code and is authorized to accept charitable donations of real property.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency as consideration which are hereby acknowledged, City and Donor agree as follows:

1. Donation of Land and Donative Intent. Donor shall grant to City the Property by donation, and City shall accept the Property from Donor in its as-is condition, upon the terms and conditions set forth in this Agreement. Donor and City hereby confirm that Donor’s transfer of the Property to City will be a gift to City, without consideration of any sort.

2. Escrow.

2.1 Opening of Escrow. Concurrently with or soon after execution of this Agreement, Donor will open escrow (“**Escrow**”) with Chicago Title Company, Attn: Tyson Mickelbost, email: tyson.mickelbost@ctt.com, phone: (415) 397-5738.

2.2 Close of Escrow. For purposes of this Agreement, the “**Close of Escrow**” or and the “**Closing Date**” will be defined as the date that the Deed (defined in Section 5.2(a) below) is recorded in the Official Records of San Mateo County, California. The Escrow will close on or before December 21, 2021, but by written notice to Escrow Holder and to the other Party, either Party may extend the Closing Date until December 28, 2021 (“**Outside Closing Date**”). The period commencing on the Effective Date and ending on the Closing Date, unless terminated or extended as otherwise provided in this Agreement, will be referred to as the “**Agreement Term**.” Possession of the Property will be delivered to City on the Closing Date.

2.3 Taxes; Closing Costs.

(a) General real estate taxes payable for the tax year before the Close of Escrow and all prior years will be paid by Donor at or before the Close of Escrow. General real estate taxes payable for the tax year of the Close of Escrow will be prorated through Escrow as of the Closing Date.

(b) City will pay the costs of the Owner’s Title Policy (defined in Section 6.1(a)), including the costs of any endorsements, other title costs, escrow fees, recording fees (if any), transfer taxes (if any), and all other closing costs.

2.4 Failure to Close. If Close of Escrow has not occurred on or before the Outside Closing Date, the provisions of Section 6.3(c) below will apply.

3. City’s Diligence Contingencies. City’s obligation to accept conveyance of the Property will be subject to the satisfaction (or waiver by City) of City’s approval of the condition of the Property, the condition of title to the Property, and the draft appraised value (collectively, the “**Diligence Contingencies**”) on or before the earlier of (a) the date for approval of the draft appraised value in Section 3.3 below and (b) December 1, 2021 (the “**Diligence Expiration Date**”). City will disapprove or waive the Diligence Contingencies by written notice to Donor on or before the Diligence Expiration Date. If City elects to waive the Diligence Contingencies, then the Parties will proceed to Close of Escrow. If City disapproves or fails to give Donor written notice that City elects to waive the Diligence Contingencies on or before the Diligence Expiration Date, then City will be deemed to have elected to terminate this Agreement and neither Party will have any further rights or obligations hereunder, subject to Section 6.3.

3.1 Property Investigation.

(a) Limited Non-Exclusive License. Donor grants to City a non-exclusive license to City and its representatives, agents, and contractors to enter on the Property at reasonable times and at City’s own cost, expense, and risk, to inspect, investigate, test, and study the Property (collectively, “**Inspections**”) to learn the physical condition of the Property, including but not limited to whether there are any hazardous materials (as defined under California and federal law) on the Property. The cost of any reports, inspections, tests, and studies will be borne by City. City may not conduct any invasive tests of soil, environmental, or groundwater conditions without Donor’s prior

written consent. This limited license will be automatically revoked on the earlier of the Diligence Expiration Date or termination of this Agreement.

(b) City Covenants and Indemnity. City agrees for itself and the other City Parties and each of their representatives, agents, contractors, and invitees (collectively with City, "**City Parties**") that, in connection with all work permitted under this section, they will: (1) perform all work in a diligent, expeditious, and safe manner; (2) not allow any hazardous materials to be released onto the Property nor allow any dangerous or hazardous condition to continue beyond the completion of the work permitted under this section; (3) comply with all applicable laws and governmental regulations; and (4) keep the Property free and clear of all mechanics' and materialmen's liens and other liens arising out of the entry or work performed under this section by City Parties. After any entry, City Parties will immediately restore the Property to substantially the same condition as it was in before City Parties entered the Property. City will indemnify, defend with counsel reasonably acceptable to Donor, and hold harmless Donor and its partners and their respective officers, directors, shareholders, partners, members, agents, contractors, successors and assigns (collectively with Donor, "**Donor Parties**") from and against all claims, liabilities, damages, losses, costs, or expenses (including reasonable attorneys' fees) (collectively, "**Claims**") arising from or relating to the entry on the Property by any City Parties. City will notify Donor before any City Parties enter the Property and will deliver, or cause to be delivered, to Donor evidence satisfactory to Donor that City and any other City Parties conducting any Inspections or entering onto the Property maintain liability insurance with a liability limit of at least \$2,000,000.

3.2 Title Review. City has received and reviewed a preliminary title report ("**Title Report**") issued by the Title Company for the Property. Within ten (10) days after the Effective Date of this Agreement, City will notify Donor in writing of any objections to the legal description and any exceptions listed in the Title Report ("**City's Title Notice**"). Within ten (10) days after Donor's receipt of City's Title Notice, Donor will have the right, but not the obligation, to notify City that Donor will elect to attempt to cure one or more of City's objections in City's Title Notice ("**Donor's Response**"). If Donor does not give any Donor's Response, or elects not to cure some but not all of City's objections, then Donor will be deemed to have elected not to cure any such matters. If, within ten (10) days after Donor's receipt of City's Title Notice, Donor has not elected to remove the disapproved matters or if provision has not been made for their removal as of the Diligence Expiration Date, then City will have the right to terminate this Agreement, and neither Party will have any further rights or obligations hereunder, subject to Section 6.3 below. From time to time until Close of Escrow, City may request updates to the initial Title Report. If there are any new exceptions to title on an update to the Title Report, City will have five (5) days to notify Donor of any objections, and Donor will have five (5) days to respond. If Donor does not elect to cure the objectionable new exception, then City will have the right to terminate this Agreement, and neither Party will have any further rights or obligations hereunder, subject to Section 6.3 below. The cost of the Title Report will be borne by City.

3.3 Appraised Value. Donor has engaged Kidder Matthews to prepare qualified appraisal (as that term is defined in Treasury Regulation Section 1.170A-16) (the

“**Appraisal**”) to establish the market value of the Property. Donor will have the right to approve or reject the valuation set forth in the draft appraisal report within five (5) business days after receiving the draft report. Donor’s failure to approve or reject the valuation in the draft report by 5 p.m. on the fifth (5th) business day after receiving the draft report will be deemed a rejection. If Donor rejects or is deemed to reject the valuation set forth in the draft appraisal report, then this Agreement will automatically terminate, and neither Party will have any further rights or obligations hereunder, subject to Section 6.3 below. The cost of the Appraisal will be borne by City.

4. Title Policy. At the Close of Escrow, City will cause the Title Company to issue an Owner’s title insurance policy, together with endorsements reasonably requested by City (the “**Title Policy**”), in the amount of the fair market value of the Property to be established by the Appraisal. The Title Policy will be subject only to the following permitted exceptions (“**Permitted Exceptions**”): (a) a lien to secure payment of non-delinquent real estate taxes; (b) matters created by or with the written consent of City; and (c) exceptions that are disclosed by the Title Report and that are approved or deemed approved by City in accordance with Section 3.2 of this Agreement. If City desires an ALTA extended owner’s policy or any endorsements, City will satisfy itself before the Diligence Expiration Date that the Title Company will be willing to issue such ALTA extended policy and/or endorsements in connection with the Title Policy at the Closing. However, the issuance of the ALTA extended policy or such endorsements will not be a condition to Closing, the additional cost of any extended ALTA Policy will be borne solely by City, and in no event will Donor be obligated to provide any indemnity, affidavit, or other document in order to issue the Title Policy.

5. Deliveries to Escrow.

5.1 City’s Deliveries. Before the anticipated Closing Date, City will deliver the following documents and Funds to Escrow:

- (a) A certificate of acceptance of the Property in the form attached as Attachment 2.
- (b) Closing statement in form and content satisfactory to City and Donor.
- (c) Such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the conveyance of the Property in accordance with the terms of this Agreement.
- (d) Funds in the amount of \$5,750 to reimburse Donor for Donor’s payment of (i) \$750 for the Title Report and (ii) \$5,000 for the Appraisal.
- (e) All funds necessary to pay any other amounts payable by City through Escrow as shown on the approved closing statement.

5.2 Donor's Deliveries. Before the anticipated Closing Date, Donor will deliver the following documents and funds into to Escrow:

(a) A fully executed and acknowledged grant deed (the "Deed") in the form attached as Attachment 2.

(b) Such resolutions or other corporate documents relating to Donor as the Title Company may reasonably require to demonstrate the authority of Donor to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Donor to act for and bind Donor.

(c) Closing statement in form and content satisfactory to City and Donor.

(d) Such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the conveyance of the Property in accordance with the terms of this Agreement.

(e) All funds necessary to pay for Donor's share of any pro-rated property taxes that are payable by Donor through Escrow pursuant to Section 2.3(a), as shown on the approved closing statement.

6. Conditions to the Close of Escrow.

6.1 City's Conditions. The Close of Escrow and City's obligation to accept the Property are subject to the satisfaction of the following conditions for City's benefit on or before the Closing Date, or such earlier date as is designated below for the satisfaction of such conditions:

(a) Title. The Title Company will be irrevocably committed to issue the Title Policy, subject only to the Permitted Exceptions.

(b) No Material Changes. There will have been no material adverse changes with respect to the physical or environmental condition of the Property, except any material adverse change to the physical or environmental condition of the Property caused by any act or omission to act of any of the City Parties in exercising City's rights under this Agreement (excluding mere discovery of an existing condition).

(c) Donor's Obligations. Donor has timely performed all of the obligations required by the terms of this Agreement to be performed by Donor on or before the Closing.

6.2 Donor's Conditions. The Close of Escrow and Donor's obligations to convey the Property are subject to the satisfaction of the following conditions for Donor's benefit on or prior to the Closing Date, or such earlier date as is designated below for the satisfaction of such conditions:

(a) Appraisal. Donor has approved the Appraisal.

(b) City's Obligations. City has timely performed all of the obligations required by the terms of this Agreement to be performed by City on or before the Closing.

6.3 Termination of the Agreement.

(a) Failure of City's Conditions. If any one or more of the conditions to City's obligations, as set forth in Section 6.1 or elsewhere in this Agreement, is not either fully performed, satisfied, or waived in writing on or before the Closing Date, then City may elect, by written notice to Donor, to terminate this Agreement and the Escrow, in which event this Agreement, the Escrow, and the rights and obligations of the Parties will terminate and the provisions of Section 6.3(c) will apply.

(b) Failure of Donor's Conditions. If any one or more of the conditions to Donor's obligations, as set forth in Section 6.2 or elsewhere in this Agreement, is not either fully performed, satisfied, or waived in writing on or before the Closing Date, then Donor may elect, by written notice to City, to terminate this Agreement and the Escrow, in which event this Agreement, the Escrow, and the rights and obligations of the Parties will terminate and the provisions of Section 6.3(c) will apply.

(c) Effect of Termination. If this Agreement is terminated pursuant to any provision of this Agreement, then Escrow Holder will return any and all documents and instruments to the Parties who deposited them, City will reimburse Donor for the cost of the title report (\$750) and the Appraisal (\$5,000) within 30 days following termination, and the rights and obligations of the Parties will terminate as of the date of the notice of termination, except for the surviving provisions set forth in Section 6.3(d) below.

(d) Surviving Provisions. For purposes of this Agreement, the following provisions will survive the Closing or the earlier termination of this Agreement: Section 3.1(b) (City Covenants and Indemnity); this Section 6.3 (Termination of the Agreement); Section 7 (Default); Section 8.3 (Post-Closing Covenant by City); Section 10 (As-Is; Release of Donor); Section 12 (Brokers); and Section 13 (General Provisions). The foregoing provisions will survive the Closing, or earlier termination of this Agreement, for a period of two (2) years.

7. Default.

7.1 City's Default. In the event that the conveyance of the Property is not consummated because of a default by City, Donor will have, at its option and as its sole remedy, to terminate this Agreement. Upon such termination, all title and escrow cancellation charges will be charged to and paid by City, if any, and Donor will be entitled to reimbursement from City of its actual, out-of-pocket costs and expenses incurred by Donor in connection with this Agreement up to a maximum amount of \$10,000 in the aggregate (the "**Recovery Cap**"). Nothing contained in this Section 7 will serve to waive or otherwise limit City's liability under Section 3.1.

7.2 Donor's Default. In the event that the conveyance of the Property is not consummated because of a default by Donor, City will have, at its option and as its sole remedy, to terminate this Agreement. Upon such termination, all title and escrow cancellation charges will be charged to and paid by Donor, if any, and City will be entitled to reimbursement from Donor of its actual, out-of-pocket costs and expenses incurred by City in connection with this Agreement up to the Recovery Cap. City's maximum aggregate recovery from Donor may not exceed the Recovery Cap.

7.3 Limitation on Donor's Liability. In no event will Donor be liable for any special, indirect, punitive, or consequential damages on account of any default by Donor. No member of Donor or any partner, member, officer, director, shareholder or employee of Donor or its constituent members (individually and collectively, a "**Donor Constituent**"), will have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under the provisions of this Agreement (or any amendments to any of the foregoing), and City will look solely to the Property (including any sales, insurance, or condemnation proceeds derived therefrom) for the payment of any Claims or for any performance, and City, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

8. Covenants.

8.1 Operations Covenant by Donor. Throughout the Agreement Term, Donor will continue to maintain the Property (ordinary wear and tear, casualty, and condemnation excepted, in Donor's ordinary course of business). Notwithstanding the foregoing, nothing in this Agreement will require Donor to make any capital expenditures or repairs, or to improve or modify any portion of the Property and Donor.

8.2 Approvals by City. City will diligently pursue all necessary City Council and other approvals in order to close the donation contemplated by this Agreement not later than the Outside Closing Date.

8.3 Post-Closing Covenant by City. City will reasonably cooperate with Donor in Donor's efforts to have the donation of the Property treated as a tax deductible, charitable contribution to City. City will file and/or provide to Donor, as and when required, all documents and instruments necessary to enable Donor to claim a charitable contribution deduction as a "qualified conservation contribution," for purposes of the federal and state income tax laws. Such documents and instruments will include, but not be limited to, IRS Form 8283, provided however, that City is not obligated to sign a Form 8283 if City has significant concerns about the appraiser, appraisal, and/or claimed tax deduction. Further, within five (5) business days following the Close of Escrow, City will provide a contemporaneous written letter in the form required by Internal Revenue Code Sections 170(f)(8) and 170(f)(11) acknowledging receipt of Donor's donation of the Property and acknowledging that no goods or services were exchanged in consideration for such donation.

9. Risk of Loss/Condemnation. All risk of loss shall remain with Donor until Close of Escrow. In the event the Property is destroyed or damaged before Close of Escrow, City or Donor may elect to terminate this Agreement in which case the terms of Section 6.3 will apply. If any condemnation proceedings are threatened or commenced respecting the Property on or before the Closing Date, City or Donor may elect to terminate this Agreement in which case the terms of Section 6.3 will apply.

10. As-Is; Release of Donor.

10.1 As provided in this Agreement, it is the intent of Donor and City that, by the Closing Date, City will have had the opportunity to perform a diligent and thorough inspection and investigation of the Property, either independently or through its agents. CITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT DONOR IS CONVEYING AND CITY IS ACQUIRING OWNER'S INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. CITY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM DONOR OR ITS AGENTS, REPRESENTATIVES, OFFICERS, OR EMPLOYEES AS TO ANY MATTERS CONCERNING THE PROPERTY, THE SUITABILITY FOR CITY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS THEREOF. DONOR DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE PROPERTY, OR THE SUITABILITY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS CITY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

10.2 As part of its agreement to accept the Property and in its "as is and with all faults" condition, City as of the Closing Date, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, Donor and its agents, representatives, employees, officers, and shareholders and their respective heirs, successors, legal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, or foreseen or unforeseen, that may arise on account of or in any way be connected with (a) the use of the Property by City and its successors and assigns or (b) the physical, geological, or environmental condition of the Property. In connection with the foregoing release, City, as of the Closing Date, expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING PROVISIONS OF THIS SECTION 10 SHALL NOT SERVE TO RELEASE DONOR FROM, AND NO RELEASE IN

THIS SECTION 10 APPLIES TO, AND CITY EXPRESSLY DOES NOT WAIVE (A) OWNER'S FRAUD, OR (B) WITH RESPECT TO ANY CLAIM MADE BY ANY THIRD PARTY AGAINST CITY WITH RESPECT TO THE PROPERTY ARISING DURING DONOR'S OWNERSHIP OF THE PROPERTY, EXCEPT AS AND TO THE EXTENT SUCH CLAIM IS ATTRIBUTABLE TO BY CITY.

By placing its initials below, City specifically acknowledges and confirms the validity of the releases made above and the fact that City was represented by counsel who explained, at the time of this Agreement was made, the consequences of the above releases. The provisions of this Section 10 shall survive the Closing.

INITIALS: City: _____

11. Notices. All notices, demands, requests, exercises and other communications under this Option Agreement by either Party must be in writing and will be effective upon the earliest of the following to occur: (a) when delivered to the recipient; (b) one (1) day after deposit with a nationally recognized overnight-guaranteed delivery service; (c) three (3) days after deposit in a sealed envelope into the United States mail, postage prepaid by certified mail, return receipt requested, addressed to the recipient Party as set forth below; or (d) on the date of delivery by email (so long as the email is properly addressed and the sender does not receive a transmittal error message), unless the email transmission is completed on a non-business day or after 5:00 p.m. in the recipient Party's time zone, in either of which cases it will be deemed to have been given on the next following business day. Notices must be sent to the respective addressee at its address or email address set forth below:

To Donor:

Cooper Pugged Management, Inc.
Attn: Jeff Cooper
65 McCoppin St
San Francisco, CA 94103

Phone: (323) 634-2400
Email: jeffc@cpmservices.com

Copies of any notice to Donor should also be emailed to:

Conservation Partners LLP
Attn: Misti M. Schmidt
Email: mschmidt@conservationpartners.com

To City:

City of Brisbane
Attn: Stuart Schillinger
50 Park Place
Brisbane, CA 94005-1310
Phone: (415) 508-2151
Email: schillinger@ci.brisbane.ca.us

Copies of any notice to City should also be emailed to:

To Escrow Holder:

Chicago Title Company
Attn: Tyson Mickelbost
One Embarcadero Center, Suite 250
San Francisco, CA 94111
Phone: (415) 397-5738
Email: tyson.mickelbost@ctt.com

The foregoing addresses may be changed only by written notice given in accordance with this Section 11.

12. Brokers. Each Party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. If any person asserts a Claim relating to a broker's commission or finder's fee against one of the Parties, the Party on account of whose actions the Claim is asserted shall indemnify and hold the other Party harmless from and against the Claim.

13. Miscellaneous.

13.1 Time of the Essence. Time is of the essence in this Agreement.

13.2 Modifications, Amendments, and Waivers. The waiver or failure to enforce any provision of this Agreement will not operate as a waiver of any future breach of any such provision or any other provision hereof. At any time prior to the termination of this Agreement, the Parties may, but only by written agreement duly executed by each, in each Party's sole and absolute discretion: (a) extend the time for performance of any of the obligations or other acts of the Parties under this Agreement; (b) waive compliance with any of the covenants or agreements contained in this Agreement; or (c) amend or supplement any of the provisions of this Agreement.

13.3 Successors and Restrictions on Transfer. City may not assign or transfer this Agreement without Donor's prior written consent, which consent may be withheld in Donor's sole and absolute discretion. This Agreement will bind and inure to the benefit of

the respective heirs, personal heirs, personal representatives, successors, and assigns and assignees of the Parties, except as otherwise provided in this Section.

13.4 Applicable Law. This Agreement will be governed by and construed in accordance with California law. Further, the venue of any claim, action, proceeding, or counterclaim arising out of or in any way connected with this Agreement, including any Claim of injury or damage, will be in the County of San Mateo, State of California.

13.5 No Obligations to Third Parties; Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement will not be deemed to confer any rights upon, nor obligate any of the Parties, to any person or entity other than the Parties.

13.6 Enforcement Rights of Others. Nothing in this Agreement is intended to create any rights to enforce this Agreement for any third party where no such right otherwise exists under this Agreement or applicable law. Nothing in this Agreement creates any right, title, or interest in favor of any person or entity except for Donor and City.

13.7 Attorneys' Fees. Should either Party institute any action or proceeding in court or other dispute resolution mechanism (collectively with court actions or proceedings, "DRM") to enforce any provision hereof or for damages by reason of a breach of any provision of this Agreement, the prevailing party will be entitled to receive from the losing party all DRM costs or expenses incurred by the prevailing party including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the DRM adjudicator may determine to be reasonable attorneys' fees for services rendered to the prevailing party in the DRM action or proceeding. Attorneys' fees under this Section include attorneys' fees on any appeal, and, in addition, a Party entitled to attorneys' fees will be entitled to such other reasonable costs and expenses incurred in connection with the DRM action or proceeding.

13.8 Construction. This Agreement will be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement. Unless the context clearly requires otherwise: (a) the plural and singular will each be deemed to include the other; (b) the masculine, feminine, and neuter genders will each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "include," "includes," and "including" are not intended to be restrictive, and lists following such words will not be interpreted to be exhaustive or limited to items of the same type as those enumerated; and (f) "days" means calendar days, except if the last day for performance occurs on a Saturday, Sunday, or any legal holiday, then the next succeeding business day will be the last day for performance.

13.9 Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and will not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

13.10 Severability. If any provision of this Agreement will be held to be unenforceable or invalid for any reason, it will be adjusted rather than voided, if possible, in order to achieve the intent of the Parties. In any event, all other provisions of this Agreement will be deemed valid and enforceable to the fullest extent.

13.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which, together, will constitute one and the same instrument. The Parties hereby acknowledge and agree that electronic signatures or scanned signatures transmitted by electronic mail shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. Donor and City (i) intend to be bound by the signatures on any document sent by electronic mail, (ii) are aware that the other Party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signatures.

13.12 Recitals; Exhibits. The Recitals to this Agreement are integral and operative provisions of this Agreement and are incorporated in and made a part of this Agreement. The following Exhibits are attached hereto and incorporated by reference into this Agreement:

Exhibit 1 — Property Description

Exhibit 2 — Form of Grant Deed and Certificate of Acceptance

13.13 Entire Agreement. This Agreement and the Exhibits attached hereto supersede any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between City and Donor as to the subject matter hereof. The terms of this Agreement may not be modified or amended, except by a writing executed by both City and Donor.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement on the dates set forth under their respective signatures below.

DONOR:

CITY:

Cooper Pugeda Management, Inc., a
California corporation

City of Brisbane, a California municipal
corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

JOINDER BY TITLE COMPANY

Chicago Title Company, referred to in this Donation Agreement for Real Property as the "Title Company" and/or "Escrow Holder" hereby acknowledges that it received this Agreement, and accepts the obligations of the Title Company and Escrow Holder as set forth herein. Chicago Title Company hereby agrees to hold and distribute the Close of Escrow proceeds in accordance with the terms and provisions of this Agreement and any other mutual instructions submitted by the Parties. Chicago Title Company further acknowledges that it hereby assumes all responsibilities for information reporting required under Section 6045(e) of the Internal Revenue Code.

Chicago Title Company

By: _____
Name: _____
Title: _____

Exhibit 1
Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BRISBANE, IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One, as shown on that certain Map entitled, "PARCEL MAP OF LANDS DESCRIBED IN BOOK 7282 PAGE 412, SAN MATE COUNTY RECORDS, BRISBANE, SAN MATEO COUNTY, CALIFORNIA", filed in the office of the Recorder of the County of San Mateo, State of California on February 26, 1979 in Volume 46 of Parcel Maps at Page 2.

JPN: 007-057-570-09.01a

APN: 007-570-220

**Exhibit 2
Form of Grant Deed**

<p>Recording requested by, and when recorded please return to, and mail tax statements to:</p> <p>City of Brisbane</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
APN: 007-570-220	<p>(Space above this line reserved for Recorder's use)</p> <p>The undersigned declares this instrument to be exempt from recording fees (CA Gov't Code § 27383) and Documentary Transfer Tax (San Mateo County Code of Ordinances § 2.93.040(b))</p>

GRANT DEED

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FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Cooper Pugeda Management, Inc., a California corporation (“**Grantor**”)

hereby GRANTS to

City of Brisbane, a California municipal corporation (“**Grantee**”)

the following described real property in the County of San Mateo, State of California:

As shown on Exhibit A attached hereto and made a part of.

The conveyance by Grantor to Grantee pursuant to this Grant Deed is subject to: (i) a lien securing payment of real estate taxes and assessments; (ii) applicable zoning and use laws, ordinances, rules, and regulations of any municipality, township, county, state, or other governmental agency or authority; (iii) all matters that would be disclosed by a physical inspection or survey of the Property or that are actually known to Grantee; and (iv) all covenants, conditions, easements, restrictions, liens, encumbrances, and other exceptions of record.

Grantor:

**Cooper Pugeda Management, Inc., a
California corporation**

By: _____

Name: _____

Title: _____

[insert Exhibit A and Notary Acknowledgment]

[Attach City Certificate of Acceptance]