

**REAL ESTATE
DONATION AGREEMENT**

THIS DONATION AGREEMENT ("Agreement") is entered into as of this 10th day of December, 2014, by and between **THE MAYBELL H. PHILIPS LIVING TRUST** (hereinafter "Donor"), and the **CITY OF TACOMA**, a Washington Municipal Corporation ("City").

RECITALS:

A. Donor is the owner of certain real property located in Tacoma, Washington, commonly referred to as **1401 East 34th Street**, also identified as Pierce County Parcel No. 208441-0011 which real property is legally described in Attachment "A" hereto, incorporated herein by reference.

B. City desires to acquire from Donor and Donor desires to convey to City the real property described in Attachment "A," and depicted in Attachment "B" hereto, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Donor and City agree as follows:

ARTICLE I

PROPERTY

Donor hereby agrees to donate and convey to City and City hereby agrees to accept conveyance from Donor, subject to the terms and conditions set forth herein, the following:

1.1 Land: means that certain real property located in Tacoma, Washington ("Land"), more particularly described in Attachment "A."

1.2 Appurtenances: means all of Donor's interest in rights, privileges, and easements appurtenant to the land, including, without limitation, tidelands; all rights to mineral, oil, and gas; all development rights; air rights; water rights; and any and all easements, rights-of-way, and other appurtenances used in connection with the beneficial use and enjoyment of the Land (all of which are collectively referred to as the "Appurtenances").

1.3 Improvements: means all improvements, trees, shrubbery, and fixtures of every nature which are currently on the Land.

1.4 Property: means all of the items described in Sections 1.1, 1.2, and 1.3 above and are herein collectively referred to as the "Property."

ARTICLE II

CONSIDERATION

2.1 Donors' Obligations: Donor agrees to do the following:

a. Donate the Property to the City to be preserved in perpetuity as open space as part of City's Open Space Program, without receiving direct cash compensation for the donation.

b. Execute and deliver to the City a Statutory Warranty Deed, in a form provided by the City, and any other documents required to effectuate the donation.

2.2 City's Obligations: City agrees to do the following at its sole expense:

a. Prepare all documents, as required, to effectuate the transfer.

b. Conduct all necessary surveys or investigations desired;

c. Obtain a title report;

d. Pay the outstanding Pierce County property taxes for the second half of 2014 along with interest and penalties. As of December 2, 2014, the outstanding balance on account is estimated at \$181.90. \$153.02 property tax due and \$28.88 in interest and penalties. According to Pierce County Assessor's Office, penalties shall accrue at a rate of \$1.53 per month until account is satisfied.

e. Pay the outstanding surface water charges on account. As of November 21, 2014 the amount due is \$103.28.

f. File and record all documents and notify all appropriate agencies when the conveyance is complete.

ARTICLE III

CONVEYANCE OF PROPERTY

3.1 Title to Real Property. Donor shall convey to City marketable and insurable fee simple title to the Property by execution and delivery of a Statutory Warranty Deed in a form acceptable to the City.

ARTICLE IV

RIGHT OF ENTRY AND INSPECTION OF THE PROPERTY

4.1 Title Review. City shall be entitled to review title information regarding the Property, as follows:

(a) Order and review the title report issued by Chicago Title Company ("Title Company") together with complete and legible copies of all exceptions noted therein;

(b) Statement of (and, if available, copies of) any other matters of any nature of which Donor has knowledge and which affect title to any part of the Property, whether or not of record and whether or not visible or ascertainable by inspection of the Property, and whether or not otherwise known to City.

4.2 Inspection. The City, its employees, contractors, and agents shall have the right to enter upon the entire Property where necessary to conduct activities necessary for preliminary testing and development of site. The City shall defend, indemnify, and hold Donors harmless for any claims for injury or damage that arise from the work City undertakes, pursuant to this Agreement on the Property.

ARTICLE V

CONDITIONS PRECEDENT TO ACCEPTANCE

City's obligations under this Agreement are expressly conditioned on and subject to satisfaction of the following conditions precedent:

5.1 Government Approvals. The obligation of City hereunder is contingent upon the City of Tacoma's City Council approval accepting the donation. If City does not obtain City Council approval, this Agreement shall terminate and the parties shall be released from all further obligation and liability hereunder. Nothing obligates the City to obtain such approval beyond its normal course of business.

ARTICLE VI

CONDITIONS PENDING ACCEPTANCE

6.1 Condition of Title. Donor hereby agrees from and after the date hereof, until the Closing or the termination of this Agreement, that it (a) will take no action that will adversely affect title to the Property; (b) will not lease, rent, mortgage, encumber, or permit the encumbrance of all or any portion of the Property without City's prior written consent; and (c) will not enter into any written or oral contracts or agreements with respect to the operation of the Property which cannot be canceled by City on not more than thirty (30) days' notice without premium or penalty.

ARTICLE VII

REPRESENTATIONS AND COVENANTS OF DONOR

Donor makes the following representations and warranties as of the date of this Agreement and again as of the Closing Date:

7.1 Title. At the Closing Date, Donor shall have good, marketable, and clear title to the Property subject only to the Permitted Exceptions, and Donor represents and warrants that it is aware of no other matters which adversely affect title to the Property.

7.2 Leases. To the best of Donor's knowledge, after due and diligent inquiry, there are no leases, licenses, or other agreements granting any person or persons the right to use or occupy the Property or portions thereof for any period greater than two (2) years following the Closing Date.

7.3 Litigation. There is no claim, litigation, proceeding, or governmental investigation pending, or, so far as is known to Donor, threatened against or relating to Donor, the Property, or the transaction contemplated by this Agreement, or any dispute arising out of any contract or commitment entered into regarding the Property, nor is there any basis known to Donor for any such action.

7.4 No Defaults. Neither the execution of this Agreement, the consummation of the transaction contemplated hereby, nor the fulfillment of the terms hereof will conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any agreement or instrument which affects the Property or to which the Property is subject or any applicable laws or regulations of any governmental body having jurisdiction over the Property.

7.5 No Prior Sales or Assignments. Donor has not committed nor obligated itself in any manner whatsoever to sell the Property or any portion thereof to any party other than City.

7.6 Mechanics' Liens. Donor agrees to keep the Property free from liens and to indemnify, defend, protect, and hold City harmless from any and all such liens and all attorney's fees and other costs incurred by reason thereof.

7.7 Reports. All certificates, schedules, and other documents containing factual information to be delivered by Donor, or by Donor's agents in connection with this Agreement, are and shall be, to the best of Donor's knowledge, true and correct and do not and shall not contain any untrue statement of material fact, or omit to state any material fact, the disclosure of which is necessary to make the statements contained therein and herein, in light of the circumstances under which they are made, not misleading.

ARTICLE VIII

HAZARDOUS SUBSTANCES

8.1 Except for possible contamination attributed to airborne deposition of arsenic from historic Asarco Smelter operations in Ruston, Washington, Donor is not aware of contamination present on the Property, and does not make any representations or warranties regarding the environmental condition of the Property or its suitability for any particular purpose.

8.2 Donor agrees to provide the City access, from time to time, to inspect and investigate the environmental condition of the Property, subject to the following conditions. The City shall provide twenty-four (24) hours notice to Donor of its intent to access the Property and shall complete its investigations in a timely manner. The notice shall generally describe the activities that will be undertaken on the Property, which may include, but are not limited to: entering the Property with vehicles, tractors and other equipment and personnel; removing vegetation; digging and sampling test pits; gathering soil and groundwater samples, and photographing the site. Upon request, the City agrees to provide Donor with copies of any final reports generated as a result of the inspection and investigation.

8.3 In the event the City decides, based on its inspection and investigation, that it does not wish to acquire the Property, the City shall restore any site conditions which have been altered by its inspection and investigation to as near as possible the condition of the Property as it existed on the day preceding commencement of the City's inspection and investigation activities. If after completing its inspection and investigation of environmental conditions on the Property the City decides to acquire the Property, the City shall accept and acquire the Property "as is" on the date of closing.

ARTICLE IX MISCELLANEOUS

9.1 Possession. Possession of the Property shall be delivered to City on the Closing Date.

9.2 Brokers and Finders. Each party represents to the other that no broker has been involved in this transaction. In the event of a claim for broker's fee, commission, or other similar compensation in connection herewith, if such claim is based upon any agreement alleged to have been made by City, the City hereby agrees to indemnify Donor against and hold Donor harmless from any and all damages, liabilities, costs, expenses, and losses (including, without limitation, reasonable attorneys' fees and costs) which Donor may sustain or incur by reason of such claim, and if such claim is based upon any agreement alleged to have been made by Donor, Donor hereby agrees to indemnify City against and hold City harmless from any and all damages, liabilities, costs, expenses, and losses (including, without limitation, reasonable attorneys' fees and costs) which City may sustain or incur by reason of such claim. The provisions of this Section 9.2 shall survive the termination of this Agreement or the Closing.

9.3 Notices. All notices, demands, requests, consents, and approvals which may be, or are required to be, given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

City, at:

City of Tacoma
Real Property Services
747 Market Street, Room #737
Tacoma, WA 98402

Donor, at:

Maybell Philips, Trustee
PO Box 957
Morton, Washington 98356-0957

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

9.4 Amendment, Waiver. No modification, termination, or amendment of this Agreement may be made except by written agreement. No failure by Donor or City to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice and only by notice as provided in Section 9.3 hereof, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by Donor's or City's respective successors and assigns.

9.5 Survival. All provisions of this Agreement that involve obligations, duties or rights that have not been determined or ascertained as of the recording of the Deed and all representations, warranties and indemnifications made in or to be made pursuant to this Agreement shall survive the recording of the Deed.

9.6 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

9.7 Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the donation of the Property and supersede all prior and contemporaneous agreements and understandings between the parties hereto relating to the subject matter hereof.

9.8 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between City and Donor. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

9.9 Governing Law, Time. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the state of Washington. Time is of the essence of this Agreement.

9.10 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, assigns, heirs, and administrators.

9.11 Independent Representation and Interpretation. The Parties agree that each of them were independently represented by counsel during the negotiation and drafting of this Agreement, and that the language of this Agreement shall not be interpreted for or against either Party as drafter. Donor specifically agrees that it was advised of its right to be independently represented by counsel, and has either consulted independent counsel or knowingly and intentionally waived its right to do so.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF TACOMA

THE MAYBELL H. PHILIPS LIVING TRUST

Michael P. Slevin III, P.E.
Environmental Services Director

*Maybell Phillips by
Rodger Cool, attorney in fact*

Maybell H. Philips, Trustee

Andrew Cherullo
Finance Director

Saada Gegoux
Risk Manager

Approved as to form:

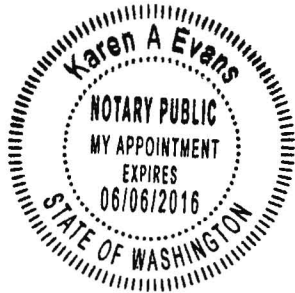
Deputy City Attorney

Leonard J. Webster, P.L.S
Chief Surveyor

STATE OF WASHINGTON)
COUNTY OF LEWIS) ss.

On this 10th day of December, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **MAYBELL H. PHILIPS**, to me known to be the **TRUSTEE** of **THE MAYBELL H. PHILIPS LIVING TRUST**, the entity that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Donor for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Karen A Evans
Printed Name: KAREN A. EVANS
NOTARY PUBLIC in and for the State of
Washington, residing at Malden
My commission expires 06/06/16

ATTACHMENT "A"

PROPERTY DESCRIPTION

That portion of the Northeast quarter of the Southwest quarter of Section 10, Township 20 North, Range 03 East, W.M. more particularly described as follows:

Lots 1,2 and 3, Block 8441, The Tacoma Land Company's First Addition to Tacoma, W.T. according to the Plat thereof as recorded July 07, 1884, in the records of Pierce County Auditor;

Together with Lots 2 and 3, Block 8441, Map of the Indian Addition to City of Tacoma, according to the Plat thereof, as recorded in Volume 7 of Plats at Pages 30 and 31, records of Pierce County Auditor;

Situate in the City of Tacoma, County of Pierce, State of Washington

ATTACHMENT "B"

MAP EXHIBIT

