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Memorandum

To: Brisbane Mayor & City Council

From: Michael Roush, City Attorney
Teresa L. Stricker, Deputy City Attorney

Date: January 8, 2015

Re: Incompatibility of Office for Parks and Recreation Commissioners

INTRODUCTION

At the meeting on December 18, 2014, the Council introduced on its first reading an ordinance repealing section 2.20.20 of the Brisbane Municipal Code. If adopted, that ordinance would (1) permit Parks and Recreation Commission members to hold another public office or position with the City as permitted under state law, and (2) eliminate a residency requirement that duplicates a more general provision of the Municipal Code. The council introduced the ordinance with the amendments reflected in the accompanying amended ordinance.

The Council also requested that we provide further clarity regarding the guidelines set forth in our December 15, 2014 memorandum for determining when the duty of loyalty a Parks and Recreation Commissioner owes to the City may be compromised because that Commissioner simultaneously holds a position as an elected School Board member. Below is our original analysis with the additional clarity the Council requested.

RECOMMENDATION

Consider whether to adopt an ordinance to repeal section 2.20.020 of the Brisbane Municipal Code.

SUMMARY

A member of the Parks and Recreation Commission was recently elected to the Brisbane School Board and was sworn in as a School Board member in December 2014. The Commissioner asked our office whether a Parks and Recreation Commission member may simultaneously hold an elected School Board position.



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A. State Law Requirements

State law regulates the extent to which an individual may hold two public offices simultaneously. Those provisions do not, however, limit what other public offices a member of a purely advisory body, such as the Parks and Recreation Commission, may hold.

Rather, under state law, members of all City commissions or committees owe the City a duty of loyalty. That duty of loyalty requires a member of an advisory committee to recuse himself or herself, on a case-by-case basis, from considering any matter where the member may potentially have divided loyalties as a result of holding another office or position.

B. Section 2.20.020 of the Brisbane Municipal Code

A unique feature of the City's Municipal Code goes farther than state law in restricting what offices or positions a Parks and Recreation Commission member may hold.

Specifically, Section 2.20.020 of the Municipal Code provides: "Members of the parks and recreation commission shall not hold any other public office or full-time position in the city, and shall at all times during their service be residents of the city." Under Section 2.20.020, a Parks and Recreation Commission member may not hold any other public office, including a position on the School Board.

The City has no similar requirement restricting what other offices or positions members of other City advisory committees or commissions may hold.

Based on our advice regarding the requirements of Section 2.20.020, prior to being sworn in as a School Board member, the affected Parks and Recreation Commissioner resigned from her position with the Commission.

C. Option to Repeal Section 2.20.020

At its meeting on December 11, 2014, the Council requested that we draft an ordinance to repeal section 2.20.020.

Repealing Section 2.20.020 would allow Parks and Recreation Commission members to hold another public office or full-time position with the City to the extent permitted under state law. Repealing section 2.20.020 would also eliminate a residency requirement imposed on Parks and



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Recreation Commissioners that unnecessarily duplicates the requirements of Section 2.16.010 of the Municipal Code which requires *all* City commission members to be City residents.

Should the Council choose to repeal section 2.20.020, the ordinance would take effect 30 days after the Council votes to approve the ordinance on a second reading. This item is on the agenda for the Council's January 15, 2015 meeting. Once the ordinance takes effect, the Council would have the discretion to reappoint the former Parks and Recreation Commission member to any vacant seat on the Commission.

D. Enforcement Measures

The Council requested that we outline the enforcement measures that exist for the Council to ensure that a Parks and Recreation Commission member who holds a seat on the School Board complies with his or her duty of loyalty to the City as required under state law.

Because all Parks and Recreation Commission policy determinations are purely advisory, all Parks and Recreation Commission policy actions come to the Council as recommendations for Council to approve, reject or modify in its discretion. As a result, Council is apprised of all Parks and Recreation Commission policy decisions. Should Council have a concern that a Parks and Recreation Commission member violated its duty of loyalty to the City, the Council may reject the Commission's recommendation on that matter, or choose to have the Commission reconsider the matter without the participation of that particular commissioner.

Further, the Council has adopted procedures for reprimanding or removing any Council-appointed commissioner. Those procedures are set forth in the Rules and Procedures for City of Brisbane's Commissions and Committees (adopted by the Council on May 6, 2013 by Resolution 2013-12), a copy of which is attached to this report. Under those Rules and Procedures, all members of commissions or committees appointed by the Council serve at the pleasure of the Council and may be removed from office at any time, with or without cause.

These provisions give the Council the power to reprimand or remove a commission member who fails comply with his or her duty of undivided loyalty to the City. Additionally, Council may choose to amend the Rules and Procedures to provide that any commission member who holds another public office automatically forfeits his or her commission seat should the Council determine, in its sole discretion, that the commissioner failed to comply with his or her duty of loyalty to the City.



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Finally, state law provides for judicial remedies for enforcing a commissioner's duty of loyalty to the City.

E. Guidelines

The Council also asked our office to provide general guidelines a Parks and Recreation Commissioner who is also a member of the School Board should follow to comply with his or her duty of loyalty to the City.

We have attached a copy of the 2010 Cooperative Agreement for Shared Public Use between the City and the School District (which should have been attached to our December 15 memorandum in place of the unrelated agreement between the City and the District that was actually attached to that memorandum). The 2010 agreement provides a detailed overview of the overlapping relationship between the City's Parks and Recreation Department and the School District.

While it is not possible to predetermine every possible factual scenario where a problem would exist, based on the 2010 agreement between the City and the School District and information provided by staff, a Parks and Recreation Commission member who is also a School Board member should use the guidelines below to comply with his or her duty of loyalty to the City.

1. We recommend that the commissioner not participate on the Teen Services Subcommittee of the Parks and Recreation Commission because, as we understand it, the Teen Services program is run by the School District with City funding.
2. We recommend that that the commissioner consult with the City Attorney for further guidance before considering, as a Parks and Recreation Commission member or as a School Board member, whether or how to allocate City funds, resources or facilities for any facility, program or project run by, used by or benefiting the School District. There is, however, no need to consult with the City Attorney before the commissioner considers as a Parks and Recreation Commissioner how to allocate City funds, resources or facilities to benefit members of the public generally where the sole benefit to the School District is the benefit received by members of the public who also happen to be served by the School District.



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3. We recommend that the commissioner consult with the City Attorney for further guidance before considering, as a Parks and Recreation Commission member or School Board member, whether or how to allocate School District funds, resources or facilities for any facility, program or project run by, used by or benefiting the City or the public generally.
4. We recommend that the commissioner consult with the City Attorney for further guidance before considering, as a Parks and Recreation Commission member or School Board member, a potential contract or agreement between the City and the School District (or any amendment, renewal or extension to such a contract or agreement).
5. We recommend that the commissioner consult with the City Attorney for further guidance before considering, as a Parks and Recreation Commission member or School Board member, any other matter involving potential interests of both the City and the School District.

It is important to note that these are general guideline for complying with the Parks and Recreation Commission member s duty of loyalty to the *City*. There may be additional restrictions imposed on School Board members by state law or School District regulations.

We strongly recommend that the affected former Commissioner consult with the School District's legal counsel about additional concerns the *School District* may have with her serving simultaneously as a School Board member and a Parks and Recreation Commission member.

ORDINANCE NO. 593

AN ORDINANCE OF THE CITY OF BRISBANE REPEALING SECTION 2.20.020 OF THE MUNICIPAL CODE

WHEREAS, Section 2.20.020 of the Brisbane Municipal Code prohibits members of the Parks and Recreation Commission from holding another public office or full-time City position, and requires Parks and Recreation Commission members to be City residents;

WHEREAS, the residency requirement in Section 2.20.020 duplicates a more general requirement in Section 2.16.010 of the Brisbane Municipal Code which provides that members of *all* City commissions must be City residents;

WHEREAS, the City does not prohibit members of other commissions or committees from holding another public office or full-time position with the City;

WHEREAS, the Parks and Recreation Commission is a purely advisory body that makes recommendations to the City Council on policy matters pertaining the Parks and Recreation Department;

WHEREAS, although state law regulates the circumstances under which an individual may hold two public offices simultaneously, those regulations do not limit what other public offices a member of a purely advisory body may hold;

WHEREAS, under state law, members of all City commissions or committees, including members of advisory bodies, owe a duty of loyalty to the City and must recuse themselves from considering any matter where they would potentially have divided loyalties as a result of holding another office or position;

WHEREAS, because all Parks and Recreation Commission ~~actions~~ policy determinations come to the City Council as recommendations for Council to approve, reject or modify in its discretion, should the City Council have a concern that a Parks and Recreation Commission member failed to comply with its duty of loyalty to the City, the Council may reject the Commission's recommendation on that matter, or choose to have the Commission reconsider the matter without the participation of that particular commissioner;

WHEREAS, under the Rules and Procedures for City of Brisbane's Commissions and Committees (adopted by the City Council on May 6, 2013 by Resolution 2013-12), all members of commissions or committees appointed by the City Council serve at the pleasure of the City Council and may be removed from office at any time, with or without cause;

WHEREAS, under those Rules and Procedures, the City Council may reprimand or remove any appointed-commission or committee member who fails to comply with his or her duty of loyalty to the City; ~~and~~

WHEREAS, the City Attorney has provided general guidelines for a Parks and Recreation Commission member who simultaneously holds another public office or position to comply with his or her duty of loyalty to the City, and the City Attorney is available to consult for further guidance; and

WHEREAS, the City Council finds that by prohibiting Parks and Recreation Commission members from holding another public office or a full-time position with the City, Section 2.20.020 unnecessarily restricts the pool of qualified candidates the City Council has authority to appoint to the Parks and Recreation Commission.

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 2.20.020 of the Municipal Code is repealed in its entirety.

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the ___ day of _____, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Terry O'Connell, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

Teresa L. Stricker, Deputy City Attorney

RESOLUTION NO. 2013-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BRISBANE ESTABLISHING RULES AND PROCEDURES FOR CITY
COMMISSIONS AND COMMITTEES

WHEREAS, various commissions and committees are currently operating in the City, having been established by ordinance or resolution of the City Council, including the Planning Commission, the Parks and Recreation Commission, the Open Space and Ecology Committee, and the Complete Streets Safety Committee; and

WHEREAS, some of the commissions and committees have adopted bylaws or rules of procedure to govern their proceedings or are subject to rules adopted by ordinance; and

WHEREAS, the City Council has determined that various inconsistencies exist between the separate sets of rules and procedures governing the operation of City commissions and committees, and has further determined that the existing rules and procedures fail to deal with certain subjects that the City Council believes should be addressed; and

WHEREAS, the City Council has concluded that uniform rules and procedures should be adopted to govern the operations of all City commissions and committees; and

WHEREAS, a proposed draft of Rules and Procedures For City of Brisbane Commissions and Committees has been presented to the City Council, a true copy of which is attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, the City Council has reviewed and considered the proposed Rules and Procedures and desires to adopt the same,

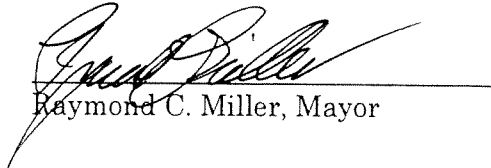
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:

1. The Rules and Procedures For City of Brisbane Commissions and Committees attached hereto as Exhibit "A" are hereby approved and adopted.

2. City Clerk shall transmit a copy of such Rules and Procedures to the chair of each City commission and committee, to be distributed to the members of each commission and committee at its next available meeting.

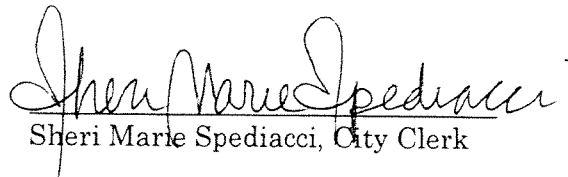
3. Each commission and committee is directed by the City Council to conduct a review of its own adopted bylaws, rules and procedures to determine whether any conflict or inconsistency exists between such bylaws, rules and procedures and the rules and procedures adopted by the City Council attached as Exhibit A to this Resolution, and if any conflict or inconsistency is found, the commission or committee is directed to make an appropriate modification to its bylaws, rules or procedures to bring them into conformity with Exhibit A.

4. This Resolution shall become effective immediately upon its adoption.


Raymond C. Miller, Mayor

I hereby certify that the foregoing Resolution No. 2013-12 was duly and regularly adopted at the regular meeting of the Brisbane City Council on May 6, 2013, by the following vote:

AYES: Councilmembers Conway, Lentz, O'Connell, and Mayor Miller
NOES: None
ABSTAIN: None
ABSENT: None


Sheri Marie Spediacci, City Clerk

**RULES AND PROCEDURES FOR
CITY OF BRISBANE COMMISSIONS AND COMMITTEES**

**Adopted on May 6, 2013 by
Brisbane City Council Resolution No. 2013-12**

The following rules and procedures are intended as guidelines for Commissions and Committees whose members are appointed by the City Council. These rules and procedures are intended to supplement any bylaws or procedural rules that have previously been adopted, or may be adopted in the future, by an individual commission or committee. However, in the event of any inconsistency or conflict between these rules and procedures and the rules and procedures adopted by any commission or committee, these rules and procedures, including any amendments that may hereafter be adopted by the City Council, shall be controlling.

A. Internal Organization of Commission or Committee.

It is the policy of the City Council that all persons appointed to serve on a City commission or committee be given an opportunity to assume a leadership position. The following rules are therefore adopted:

1. The chair and vice chair of each commission and committee shall be determined by majority vote of the members of that commission or committee.
2. The term of the chair and vice chair should be for one year. Upon the expiration of such term, the position of chair should normally be rotated to another member of the commission or committee.

B. Conduct of Meetings; Role of Chair.

1. The chair of the commission or committee may establish time limits for speakers, which may be applied generally to all items on the agenda, including oral communications, or to a specific agenda item on which numerous persons desire to speak.
2. Communications from members of the public should not generally be allowed after the public hearing or public input period has been closed. Members of the public are not entitled to interrupt the deliberations of the commission or committee, even if they disagree with statements being made.

3. Behavior by any member of the public that disrupts the orderly conduct of the meeting shall be grounds for ejecting that person from the meeting if he or she refuses to discontinue the behavior after being asked to do so by the chair. If decorum cannot be restored, the chair may suspend or adjourn the meeting.
4. The role of the commission or committee chair includes:
 - Consulting with City staff prior to the meeting for establishment of the agenda;
 - Helping the group determine whether it has all the information necessary and available to make a decision;
 - Where there are multiple points of view on what the best decision might be, encouraging decision-makers to share those views;
 - Actively listening to determine potential points of agreement and testing those points for actual agreement;
 - Managing any conflicts that may arise during the discussions;
 - Keeping the discussion on topic and moving forward toward a decision;
 - Ensuring that clear decisions are made;
 - Avoiding deviations from the agenda for the meeting;
 - Proceeding through the agenda items in an orderly and timely manner.

C. Communications to Commission or Committee Members.

It is important to establish an administrative record of proceedings conducted by a commission or committee, particularly if a recommendation is being made to the City Council or the decision is subject to appeal to the City Council or judicial review. Communications to the commission or committee by applicants or interested parties should therefore be made "on the record" to the extent possible.

1. Members who receive written communications from any person relating to an agenda item and expressly refer to such communication during the meeting should provide a copy of the communication to the City prior to the meeting so that it can be included in the packet, or if there is no opportunity to do so, the member should make copies of the communication for distribution at the meeting to other members, City staff, and the public.

2. Members should not send or receive text messages during a meeting relating to an item on the agenda for that meeting, particularly during the time when the item is being considered by the commission or the committee.

D. Absences or Failure to Perform Duties.

Acceptance of appointment to a City commission or committee involves a commitment of time to attend meetings and to be generally available to conduct the business of the commission or committee. Accordingly, the City Council intends to utilize, as a guideline, the rules of attendance and performance of duties applicable to municipal officers as set forth in Sections 36513 and 1770 of the Government Code, as follows:

1. A commission or committee member should not be absent without permission from all regular commission or committee meetings for:
 - (a) Sixty (60) consecutive days from the last regular meeting he or she attended; *provided, however*, if the commission or committee meets less than twice a month, the member should not be absent without permission for more than two (2) consecutive meetings from the last regular meeting that he or she attended (Source: Govt. Code §36513); or
 - (b) Twenty percent (20%) or more of all regular commission or committee meetings conducted during any twelve (12) month period.

Permission for a longer absence may be granted by majority vote of the member's commission or committee. A member who is absent without permission for a greater period of time is subject to reprimand or removal by the City Council.

2. A commission or committee member who ceases to discharge the duties of his or her membership on the commission or committee for a period of three consecutive months, except when prevented by illness or when absent with the permission of the commission or committee, shall be subject to reprimand or removal by the City Council. (Source: Govt. Code §1770).
3. The granting by a commission or committee of permission for an absence by one of its members shall not preclude the City Council from reviewing the reason or legitimacy of such absence and the City Council reserves the right to reprimand or remove a member who is absent, with or without permission, whenever the City Council deems such action to be appropriate under the circumstances.

E. Reprimand or Removal of Member

Members of City commissions and committees serve at the pleasure of the City Council and may be removed at any time, with or without cause. The City Council may also issue a reprimand to a member who has committed an act or omission that the City Council determines is inconsistent with the duties or responsibilities of the office that he or she holds. In the event the City Council decides to consider a reprimand or removal for cause, the following procedure will generally be followed, unless the circumstances are such that an immediate removal is deemed appropriate:

1. The City Council may direct the Mayor to send the member a notice of the Council's intent to consider disciplinary action against the member, stating in reasonable detail the reasons why such action is being considered. The notice shall also indicate the time and place of a Council meeting at which the subject shall be on the agenda. Such meeting may be a regular meeting of the City Council or a special meeting called only for the purpose of considering whether any disciplinary action should be taken and if so, the nature of such action.
2. If the member desires to continue his or her service on the commission or committee, the member may submit a response to the notice, either before or during the meeting, stating the reasons why the member believes that no disciplinary action should be taken. If the member resigns prior to the Council meeting, the item shall be removed from the agenda, or the special meeting, if called, shall be cancelled.
3. After consideration of any response to the notice submitted by the member, the City Council, in its sole discretion, may take any disciplinary action it deems appropriate, including issuance of a warning or reprimand, issuance of a directive for certain corrective action to be taken by the member, or removal of the member from his or her commission or committee.
4. A notice of intent to consider removal of a commission or committee member shall not be required if the removal is being made by the City Council without cause.

**AMENDED AND RESTATED
COOPERATIVE AGREEMENT FOR THE SHARED
USE OF PUBLIC FACILITIES AND PROGRAMS**

THIS AGREEMENT, effective as of April 19, 2010 ("Effective Date"), by and between THE CITY OF BRISBANE ("City"), and THE BRISBANE ELEMENTARY SCHOOL DISTRICT ("District") is made with reference to the following facts:

A. City and District entered into a certain Cooperative Agreement for the Shared Use of Public Facilities, effective as of July 1, 2000 (the "Cooperative Agreement") providing for the shared use of various public facilities owned and operated by City and District, for the allocation between the parties of responsibility for maintenance and repair of such facilities and payment of various expenses pertaining thereto, and for the shared cost of operating certain programs jointly sponsored by City and District.

B. The Cooperative Agreement was amended by a First Amendment dated November 13, 2001 (the "First Amendment").

C. The parties desire to further modify the terms and provisions of the Cooperative Agreement by the execution of this agreement. This Amended and Restated Agreement, referred to herein as "this Agreement," is intended as a complete amendment and restatement of all terms and provisions of the Cooperative Agreement and the First Amendment thereto, and the provisions of this Agreement shall supersede and cancel the Cooperative Agreement and the First Amendment in all respects.

NOW, THEREFORE, it is agreed as follows:

**ARTICLE I
DESCRIPTON OF FACILITIES AND PROGRAMS**

1.01. Facilities and Programs to be Shared.

City and District each own various public facilities which they desire to make available for shared use by students attending the District schools, persons participating in recreation programs sponsored by City or District, City's recreation department staff, and members of the general public. City and District also jointly sponsor certain programs conducted for the benefit of District's students. These facilities and programs include the following:

(a) *Outdoor Facilities:*

- (1) The City-owned swimming pool and related facilities located adjacent to Lipman School.

- (2) The tennis courts at Lipman School.
 - (3) The playing field at Lipman School (the "Lipman Field")
 - (4) The upper playing field at Brisbane Elementary School (the "BES Upper Field") and the lower playing field at Brisbane Elementary School (the "BES Lower Field").
 - (5) Restroom facility to be constructed and operated by City on a portion of the BES Lower Field, pursuant to a license agreement between District and City.
- (b) *Indoor Facilities:*
- (1) The multi-purpose room at Lipman School (the "Lipman Multi-Purpose Room").
 - (2) Restroom and other facilities at Lipman and BES.
 - (3) Office space at BES for City's recreation department staff.
- (c) *Programs:*
- (1) The after-school homework center at Brisbane Elementary School (the "BES Homework Center").
 - (2) The after-school homework center at Lipman School (the "Lipman Homework Center").
- (d) *Heavy Equipment* either party may borrow from the other for temporary use, such as maintenance equipment, specified vehicles and assorted tools.

1.02. Definitions.

For the purposes of this Agreement, the following terms shall have the meanings respectively ascribed to them by this Section:

(a) *Regular school hours.* The term "regular school hours" means the period of time during a weekday when school classes are in normal session during the regular school year and does not include extracurricular activities that may occur either before or after the conduct of regularly scheduled classes.

(b) *CPI.* The term "CPI" means the Consumer Price Index for the San Francisco-Oakland Metropolitan Area, all items, as published by the United States Department of Labor, Bureau of Labor Statistics.

ARTICLE II
SHARED USE, OPERATION AND MAINTENANCE

2.01. Swimming Pool.

(a) **Ownership and Maintenance of Swimming Pool.** The swimming pool is, and shall remain a City-owned facility, and City shall be responsible for the performance of all maintenance and repairs on the pool and related facilities at City's own expense.

(b) **Access Easement Granted to City.** District has granted to City a non-exclusive access easement over a strip of land as shown on Exhibit "A" attached hereto, on which City has constructed a paved roadway. City shall be responsible for all maintenance and repair of such roadway. The easement shall be used by City solely for the purpose of access to the maintenance building for the pool facility. City shall make reasonable efforts to limit vehicular traffic on this roadway while students are arriving or leaving Lipman School and when students are using Lipman Field.

(c) **Use of Pool Facilities by District Students.** City will encourage District's use of the pool by making the facility, including lockers and other pool-related amenities, available for use by District, at no cost to District or its students, during regular school hours for at least six (6) weeks in the Spring between April 1st and June 1st, and at least six (6) weeks in the Fall, beginning September 10th, unless the parties mutually agree in writing to modify this schedule. District shall be solely responsible for providing, at its own expense, supervision, instruction, and water safety personnel during the periods of pool use by the District's students; provided, however, that nothing herein shall prevent the City and District from entering into a separate contract for City to provide aquatic staff, lifeguard services, swim instruction, and supervision for District's aquatic program. District acknowledges that use of the pool by District will not be exclusive and other persons may be using the pool at the same time.

2.02. Tennis Courts.

(a) **Ownership.** The tennis courts at Lipman School are and shall remain a District-owned facility.

(b) **Use by City and General Public.** District shall have preferential use of the tennis courts during regular school hours. Members of the general public shall also be allowed to use the tennis courts during regular school hours if the courts are not then being used by District. During times of the day which do not constitute regular school hours, District will allow the tennis courts to be used by City for park and recreation activities and for general use by the public if the courts are not otherwise needed for scheduled after-school programs. City and District will meet and confer prior to the start of each school semester to review their schedule of activities and assess their respective needs for the tennis courts. During non-regular school hours, scheduling of the tennis courts shall be coordinated and supervised by the City; provided, however, it is understood that the City shall not schedule any instruction or other activity on the tennis courts that conflicts with District's scheduled use.

(c) **Maintenance.** The tennis courts shall be maintained by City, at its sole expense. City shall use its best efforts to schedule its maintenance work to minimize interference with use of the tennis courts by District. By executing this Agreement, District grants to City a right of entry upon the tennis courts and the surrounding area to the extent required for the proper performance of its maintenance responsibilities hereunder.

2.03. Athletic Fields.

(a) **Use by District, City and General Public.** District shall have exclusive use of the Lipman Field (including use of the parking area), the BES Upper Field, and the BES Lower Field (collectively, the "Athletic Fields") during regular school hours. During times of the day which do not constitute regular school hours, District shall have preferential, non-exclusive use of the Athletic Fields but District shall use its best efforts to accommodate City's use of these facilities. City will coordinate with District City's scheduled use of the Athletic Fields during non-regular school hours, consistent with City's Facility Use Guidelines. Good faith efforts will be made by City to schedule all uses of the athletic fields at the beginning of the school year, and at least one month prior to any activity. A field scheduling meeting between City and District will be held in September of each year for this purpose. A calendar of the scheduled use will be maintained by the City Parks & Recreation Department office and made available to District and members of the public via a computerized schedule accessible on City's web site.

(b) **Maintenance of Athletic Fields.** City will be responsible for maintenance of the Lipman Field (including the bleachers), the BES Upper Field, and the BES Lower Field. Maintenance work will be performed to the same standard established by City for maintenance of playing fields at public parks and will be scheduled to minimize interference with regular use of the Athletic Fields by District. District and City shall hold a meeting in May of each year to review the quality and level of maintenance performed by City in the previous year and shall agree upon a maintenance plan and schedule for the following year that will ensure that the City performs to the same standard of maintenance as established for fields at public parks. District shall make an annual cash contribution to City toward the cost of maintenance work for the Athletic Fields, as set forth in the Cost Contribution Schedule attached hereto. District shall have responsibility for maintenance of the hillside above Lipman Field, at its own expense.

(c) **Alterations.** City shall not make any changes to the design features of the Athletic Fields, or construct any capital improvements thereon, without the prior written consent of District.

2.04. Restroom at BES Lower Field.

(a) Concurrently herewith, District has granted to City a license covering a portion of land located within the BES Lower Field, a copy of which is attached hereto as Exhibit "B" and made a part hereof. City intends to construct a permanent restroom facility upon the license area. Such improvements shall be constructed entirely at City's expense, in accordance with plans and specifications approved by District, which approval shall not be unreasonably withheld or delayed. Following completion of construction, the restroom facility shall be owned, maintained and repaired by City at its own expense.

(b) The restroom facility may be used by District during regular school hours and during after-school activities conducted by District.

(c) In the event the restroom facility located upon the license area is removed by City, the license shall automatically terminate.

2.05. Lipman Multi-Purpose Room.

(a) **Shared Use.** During times of the day which do not constitute regular school hours, the Lipman Multi-Purpose Room shall be used for volleyball, basketball and other team sports that are jointly sponsored by District and City. It is expressly understood by City that District may continue to sponsor such team sports on its own if City should suspend its sponsorship of such team sports for whatever reason. District will also allow the Lipman Multi-Purpose Room to be used by City's Recreation Department during non-regular school hours for compatible activities if the room is not otherwise needed for District activities; provided, however, that City shall reimburse District within forty-five (45) days after receipt of an invoice for repairs of any damage to the multi-purpose room that occurs during City's non-jointly sponsored activities or for excessive cleaning required after a City activity.

(b) **Cost Contribution.** City shall make an annual cash contribution to District toward the cost of maintaining the Lipman Multi-Purpose Room, as set forth in the Cost Contribution Schedule attached hereto.

2.06. Indoor Restroom and Other Facilities at Lipman and BES.

In the event City desires to open either Brisbane Elementary School or Lipman School to allow use of the restrooms during activities which are not co-sponsored by District, or City desires to use any room(s) within the school building for the conduct of a public meeting or other public purpose, District agrees to make the facilities available to City for such use pursuant to the District's Civic Center Act policy, *provided* the activity does not conflict with District's own use of the same facilities, and *provided* further that City shall perform all of the following responsibilities:

(a) City shall notify the school principal in advance, indicating the nature of the activity and the time when availability of the restrooms or other area is desired;

(b) City shall provide supervision for the area used;

(c) If the use involves a public meeting, City shall set up chairs and otherwise arrange and equip the room as may be needed for conduct of the meeting and shall replace all items at the end of the meeting in their proper place;

(d) City shall make an annual cash payment to District, as set forth in the Cost Contribution Schedule attached hereto, as a contribution to offset any additional routine cleaning costs District may incur as a result of City's use; provided, however, that City shall be responsible for any damage to said premises or the extra costs of cleaning up unusual

messes. City shall not serve food or drink at events unless prior arrangements have been made with District to address cleaning issues; and

(e) City shall secure the building and reset the alarm when finished. In the event District is charged for false alarms or emergency calls resulting from City's failure to properly secure the building, City shall reimburse District for such charges within forty-five (45) days receipt of an invoice showing such charges.

2.07. Office Space and Modular Space at BES.

(a) **Office Space at BES.** City will continue to have shared use of the existing office area at Brisbane Elementary School occupied by City's Recreation Department staff, at no charge to City.

(b) **Modular Space.** City and District have agreed and hereby reaffirm that each paid one-half of the purchase price and the cost of installation of the modular unit which is located at Brisbane Elementary School. District is the owner of the modular unit. In recognition of City's contribution towards the purchase price and cost of installation of the modular building, City shall not be charged rent for City's use and occupancy of the modular building. However, City shall make an annual cash payment to District, as set forth in the Cost Contribution Schedule attached hereto, as a contribution toward the cost of maintenance and utilities for the modular building. The City will be responsible for repairing damage to the unit caused by its use.

(c) **Changes in Space Needs.** The parties understand that their space needs may change over time. If City no longer needs the use of office or modular space as set forth herein, City shall provide written notice to District by April 1st that it will vacate the premises during the subsequent school year. If the District requires space to meet students needs, District shall provide prior written notice to City as soon as possible after such determination is made and will use its best efforts to provide alternate space, or at least shared space, to the City.

2.08. BES Homework Center.

(a) **Operation of Program.** City and District shall conduct a jointly-sponsored program for operation of the BES Homework Center. The Center will be staffed by certificated teachers selected by District and will operate on Mondays through Fridays between the hours of 2:30 p.m. and 5:00 p.m. District and City shall hold a meeting in May of each year to review and establish hours of operation for the following year. The City's Parks and Recreation Department will assign no more than thirty (30) students to the Center in any day. Furthermore, it is expressly understood by the parties that teachers may assign some students to the Center directly.

(b) **Cost Sharing.** City shall make an annual cash contribution to District toward the cost of the BES Homework Center, as set forth in the Cash Contribution Schedule attached hereto. District shall contribute the balance of costs required for payment of teachers' salaries, and any costs pertaining to the facility, such as custodial, utilities and room maintenance.

2.09. Lipman Homework Center.

(a) **Operation of Program.** City and District shall conduct a jointly-sponsored program for operation of the Lipman Homework Center. The Center will be staffed by one staff member to be selected by District. The Center will operate as may be agreed upon by the parties from time to time; provided, however, that District and City shall hold a meeting at least once each year in May to review and establish hours of operation for the following school year.

(b) **Cost Sharing.** City shall reimburse District for one-half (½) of the actual direct cost of providing one staff member for the Lipman Homework Center, not to exceed a maximum annual cost as set forth in the Cost Contribution Schedule attached hereto. District shall furnish a statement to City showing the cost incurred by District for providing one staff member for the Lipman Homework Center during the preceding fiscal year and City shall pay either the amount shown on such statement or the maximum annual cost, whichever is less. All other costs pertaining to the operation of the Lipman Homework Center, including equipment maintenance and upgrade, custodial, utilities, and room maintenance, shall be paid by District. If the District receives third-party funding by grant to support the Lipman Homework Center, it will meet with the City to review the terms, conditions and amount(s) of said grant(s) with the intent that the District and City share the remaining costs of operating the Lipman Homework Center equally.

2.10. Heavy Equipment.

From time to time, either party may loan heavy mechanical equipment, vehicles or tools ("Equipment") to the other party for such other party's temporary use. It is agreed that any borrowing of Equipment by one party from the other shall be subject to the following conditions:

(a) Requests to borrow Equipment shall be made at least 24 hours in advance of needing the Equipment, except in the case of emergency. The Equipment owner shall have no obligation to loan any item.

(b) The Equipment shall only be used by the authorized representatives of the borrowing party and shall not be given to any other person or agency except for the purpose of making necessary repairs, in which event, such repair work shall be performed by a person who is qualified to do so.

(c) It shall be the responsibility of the borrowing party to inspect the Equipment prior to any use to determine whether it is in proper working condition. All Equipment shall be loaned in "as is" condition and the lending party shall not be deemed to have made any representations or warranties to the borrowing party concerning the nature or condition of the Equipment or its suitability for the borrower's intended use. The borrower expressly assumes all risk of loss, damage, or injury resulting from the borrower's use of the Equipment.

(d) The borrowing party shall indemnify, defend and hold harmless the lending party, and its officers, officials, employees and volunteers, from all claims, demands, costs,

expenses, or liabilities, arising during and from the use of the Equipment by the borrowing party or any of its officers, officials, employees, or volunteers.

(e) The borrowing party shall promptly repair any damage to the Equipment resulting from such party's use. Ordinary maintenance shall be the responsibility of the Equipment owner, subject to 2.09(c) above.

ARTICLE III GENERAL PROVISIONS

3.01. General Priority for Children's Programs.

The parties agree that in making and coordinating their respective schedules, the activities for children on District property will be given priority over programs for adults.

3.02. Prohibited Activities on District Property.

(a) **Prohibitions.** No alcohol, smoking, or dogs shall be permitted upon or within any of the District facilities covered by this Agreement while the same are being used by City, or during the course of any activities or programs sponsored by City. City shall also make reasonable efforts, including the posting of signs, to have these prohibitions observed by members of the general public and will, at the request of District, adopt suitable ordinances if such action is deemed necessary and appropriate for enforcement purposes. All District property shall remain drug free zones during periods of City use and will be posted as such in the manner provided by law.

(b) **Excessive Use.** City will limit or restrict the activities under its own control in order to avoid undue stress or damage to the Athletic Fields (e.g., golf) or other facilities owned by District and maintained by City (e.g., golf balls hitting windows).

3.03. Consultation and Dispute Resolution.

(a) **Semi-Annual Coordination Meetings.** Staff representatives of District and City shall meet at least twice a year to coordinate the scheduled activities planned by each of parties, to review the status of current programs and maintenance issues, and to resolve any conflicts or problems that may have arisen in connection with the implementation of this Agreement. In adopting schedules for shared use of facilities, the parties acknowledge that the activities of organized team sports need to be planned in advance and require both consistency and reliability with regard to the use of playing fields for games and practices. The parties will make every reasonable effort to accommodate both school programs conducted by District and team sports sponsored by City's Recreation Department. In addition, the City will not schedule any events on any of the facilities that conflict with major evening activities at the school. District shall provide a list of such major evening activities for the ensuing semester to City at each semi-annual coordination meeting.

(b) **Dispute Resolution.** In the event of any disagreement between the parties, the matter will be referred to the City Manger of City and the Superintendent of District, who shall meet and attempt to resolve the dispute. If they are unable to agree, the City Council shall appoint two of its members and the District Board of Trustees shall appoint two of its members and these representatives shall meet as a 2x2 Committee for the purpose of considering the matter(s) in controversy. The decision by the 2x2 Committee shall be final and binding on both parties. If, and only if, the 2x2 Committee is unable to arrive at a final decision, they shall retain the services of an independent mediator who shall thereafter preside over the Committee meetings and attempt to facilitate a settlement of the disputed matter. The cost of the mediator shall be divided equally between the parties. It is agreed that neither party shall initiate any claim or lawsuit for breach or default under this Agreement alleged to have been committed by the other party without the matter having first been submitted to mediation and all efforts toward arriving at a negotiated settlement as described hereunder have been exhausted.

3.04. Mutual Indemnification.

(a) **Indemnification of City.** In accordance with Government Code Section 895.4, District shall fully indemnify, defend, and hold City, and its officers, officials, agents, employees and volunteers harmless from all claims, suits or actions of every name, kind and description, including but not limited to reasonable attorney's fees and other costs of defense, resulting from the negligent acts or omissions of District, its officers, agents, employees or invitees in the performance of this Agreement, or any breach by District of its obligations under this Agreement.

(b) **Indemnification of District.** In accordance with Government Code Section 895.4, City shall fully indemnify, defend, and hold District, and its officers, officials, agents, employees and volunteers harmless from all claims, suits or actions of every name, kind and description, including but not limited to reasonable attorney's fees and other costs of defense, resulting from the negligent acts or omissions of City, its officers, agents, employees or invitees in the performance of this Agreement, or any breach by City of its obligations under this Agreement.

(c) **Concurrent Negligence.** In the event of concurrent negligence of District, its officers, officials, agents or employees, and City, its officers, officials, agents or employees, then the liability for any and all claims, suits or actions of every name, kind and description arising out of this Agreement shall be apportioned between the parties under the established California rules of comparative negligence with each party bearing its own attorney's fees and costs.

3.05. Insurance.

City and District shall each maintain comprehensive general liability insurance or self insurance, generally at levels currently in effect for each agency, insuring against all liability of City and District and their authorized representatives arising out of and in connection with City's and District's use of the facilities under this Agreement.

3.06. Notices.

Any notices required or permitted to be given to the other party under this Agreement shall be in writing and shall be either personally delivered to the other party or sent by certified mail, return receipt requested, addressed to the other party as follows:

TO CITY: City of Brisbane
 Attention: City Manager
 50 Park Place
 Brisbane, CA 94005

TO DISTRICT: Brisbane Elementary School District
 Attention: Superintendent
 1 Solano Street
 Brisbane, CA 94005

Either party may change its address by providing notice to the other party as set forth above.

3.07. Excuse of Performance.

Notwithstanding any other provision of this Agreement to the contrary, any failure by City or District to perform any duty or obligation set forth in this Agreement shall not be deemed a breach of or default in the performance of this Agreement if such failure to perform is caused by fire, earthquake, flood, hurricane, the elements, acts of God or the public enemy; actions, restrictions, limitations or interference of other governmental authorities or their agents; enforcement of applicable provisions of federal, state or local law; war; invasion; insurrection; rebellion; riots; strikes or lockouts; or inability to perform which is beyond the reasonable control of City or District.

3.08. Renegotiation of Cost Contributions.

In the event any tax increment funds being paid to City's Redevelopment Agency are reallocated and instead made payable to District, City shall be entitled to renegotiate the amount of cost contributions being paid to District under Sections 2.03(b), 2.04(b), 2.05(d), 2.06(b), 2.07(b) and 2.08(b) of this Agreement to reflect the increased tax revenues received by District.

3.09. Periodic Review; Termination of Agreement.

(a) This Agreement shall be subject to review at each five (5) year anniversary of the initial Effective Date (the "Anniversary Date"). The parties shall meet and confer at least 120 days prior to each Anniversary Date to review the status and implementation of this Agreement and determine whether any amendments are appropriate. The review shall be deemed completed upon either: (i) a determination by the parties that no amendments are required and the then existing agreement should be continued without change; or (ii) the adoption by both parties of such amendments to the agreement as mutually agreed upon.

(b) This Agreement may be terminated, in whole or in part, at any time by mutual agreement of the parties, and may be terminated, in whole or in part, by either party upon giving written notice of termination to the other party. In the event of a termination by either party, the following prior written notice shall be required, depending upon the nature of such termination:

- (1) Entire Agreement: 360 days.
- (2) Swimming Pool: 180 days.
- (3) Tennis Courts: 180 days
- (4) Athletic Fields: 180 days.
- (5) Lipman Multi-Purpose Room: 180 days.
- (6) Indoor Restroom and Other Facilities at Lipman and BES: 180 days.
- (7) Office Space: See Subsection 2.08(c).
- (8) BES Homework Center: Notice by February 15 of any year; termination to be effective as of June 30 of that year.
- (9) Lipman Homework Center: Notice by February 15 of any year; termination to be effective as of June 30 of that year.
- (10) Heavy Equipment: 30 days.

In the event of termination relating to a facility for which City or District has made an annual contribution toward the cost of operating such facility, the contribution shall be prorated as of the effective date of termination and any unearned portion shall be refunded to the contributing party.

3.10. Miscellaneous Provisions.

(a) **Authorization and Amendment.** Each party represents and warrants to the other that the persons signing this Agreement have been duly authorized to do so by the party's governing body. This Agreement can only be amended by a written amendment duly executed by each of the parties pursuant to further authorization conferred by the governing body of each party; provided, however, that any amendment that requires an expenditure of less than \$5,000 may be entered into by the City Manager and the Superintendent and is so authorized by each party's governing body by entering into this Agreement.

(b) **Entire Agreement.** This Agreement represents the entire agreement between the parties concerning the subject matter hereof and supersedes and cancels all prior agreements and understandings, whether written or verbal, including the original Cooperative Agreement and the First and Second Amendments thereto.

(c) **Effective Date.** This Agreement shall become effective as of the date when the governing body of each party has approved the form and content of this Agreement and authorized its representatives to execute this document on its behalf. Such date shall thereupon be inserted at the beginning of this Agreement.

(d) **Waiver.** The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of that provision, section, or any portion thereof unless such party acknowledges in writing that it is waiving that provision, section, or any portion thereof under this Agreement.

(e) **Severability.** In the event any provision of this Agreement is deemed unenforceable, it may be severed from the Agreement and the remainder of the Agreement shall be deemed fully enforceable and binding upon the parties.

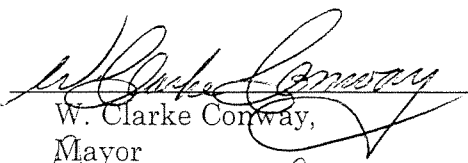
(f) **Additional Actions.** The parties acknowledge that it is impractical in a transaction of the nature of this Agreement to provide for, or anticipate, every action by City or District that may be required to fully implement the Agreement. Therefore, City and District agree to cooperate in good faith, and to take any such additional actions that may be necessary to fully implement the Agreement.

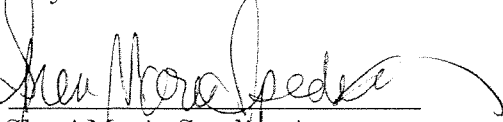
(g) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

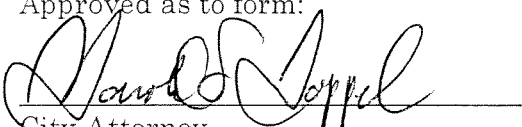
(h) **Time of the Essence.** Time is of the essence in the performance of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first above written.


THE CITY OF BRISBANE

By: 
W. Clarke Conway,
Mayor

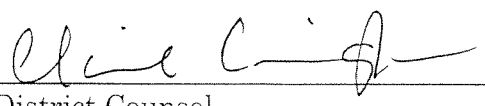
Attest: 
Sheri Marie Spediacci,
City Clerk

Approved as to form:

City Attorney

**THE BRISBANE ELEMENTARY
SCHOOL DISTRICT**

By: 
Joseph Blank
Board President

Attest: 
Toni Presta,
Superintendent

Approved as to form:

District Counsel

COST CONTRIBUTION SCHEDULE

District shall make annual cash contributions to City and City shall make annual cash contributions to District for the cost of maintaining facilities used by one party which are owned by the other. For the fiscal year of July 1, 2008 through June 30, 2009, such contributions shall be as follows:

<u>Contributions by District:</u>	<u>Amount:</u>
Athletic Fields - Section 2.03(b):	\$5,334.00
<u>Contributions by City:</u>	<u>Amount:</u>
Lipman Multi-Purpose Room – Section 2.05(b):	\$3,372.00
Indoor facilities at Lipman & BES – Section 2.06(d):	\$799.00
Office and Modular Space at BES – Section 2.07(b):	\$9,249.00
BES Homework Center – Section 2.08(b):	\$17,280.00
Lipman Homework Center – Section 2.09(b):	\$3,999.00, or actual cost, whichever is less

The respective cost contributions to be made by each of the parties, as set forth above, shall be adjusted annually based upon the percentage increase, if any, in the CPI published on the nearest date prior to July 1st, as compared with the CPI for the same date of the preceding year.

On or before April 1st of each year, District shall furnish to City an Invoice showing the respective contributions to be made by each of the parties for the next fiscal year, as adjusted for any CPI increase. City shall pay the net amount owed to District, as shown by such Invoice, not later than June 30th.

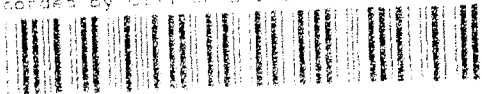
EXHIBIT "A"
Access Easement
Granted by District to City

APN

WHEN RECORDED MAIL TO

Name City of Brisbane
Street ATTN: CITY MANAGER
Address 50 Park Lane
City Brisbane, CA 94005
State
Zip

DOC # 2002
07/17 00 02 30P E5 Fee NC
Page 1 of 5
Recorded in Official Records
County of San Mateo
Warren Bloom
Assessor-County Clerk-Recorder
Recorded By CITY OF BRISBANE



SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT Grant Deed

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ -0-

- () computed on full value of property conveyed, or
- () computed on full value less value of liens and encumbrances remaining at time of sale.
- () Unincorporated area: () City of _____
- () Realty not sold.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

BRISBANE ELEMENTARY DISTRICT, a public school district and political subdivision of the State of California

hereby GRANT(S) to

CITY OF BRISBANE, a municipal corporation

that property in the City of Brisbane, County of San Mateo, State of California described as that certain non-exclusive public access and utility easement over the strip of land, approximately twelve (12) feet in width, as shown and described in Exhibit A attached hereto and incorporated herein by reference

Mail Tax Statements to Brisbane Elementary District, ATTN: Superintendent,

Date _____ 1 Solano Street, Brisbane, CA 94005.

Alex Reisman

ALEX REISMAN
President, Board of Trustees
Brisbane Elementary District

STATE OF CALIFORNIA

COUNTY OF San Mateo

On July 12, 2002 before me, the undersigned, a Notary Public in and for said State, personally appeared Alex Reisman & Thomas R. Alley

Thomas R. Alley

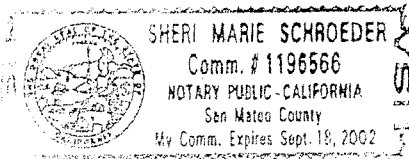
ATTEST:
THOMAS R. ALLEY
Clerk, Board of Trustees
Brisbane Elementary District

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *[Signature]*

Name _____
(typed or printed)



(This area for official notarial seal)

EXHIBIT "A"

PROPOSED PUBLIC ACCESS AND UTILITY EASEMENT LYING OVER A
PORTION OF THE LANDS OF THE BRISBANE ELEMENTARY SCHOOL
DISTRICT AS DESCRIBED WITHIN THAT CERTAIN GRANT DEED RECORDED
IN VOLUME 2077 AT PAGE 431, SAN MATEO COUNTY RECORDS

A non-exclusive easement for public access and utility purposes situate in the City of Brisbane, County of San Mateo, State of California lying in , on, over and along a portion of the Lands of the Brisbane Elementary School District as said lands are described within that certain Grant Deed recorded in Volume 2077 at page 431, San Mateo County Records; said easement being more particularly described as follows :

BEGINNING at the most westerly corner of the Lands of the City of Brisbane. as said lands are described within that certain Grant Deed recorded in Reel 7713 at pages 825 and 826, San Mateo County Records ;

THENCE along the southerly line of said lands of the Brisbane Elementary School District North $89^{\circ} 09' 12''$ West a distance of 94.48 feet (said grant deed to the Brisbane Elementary School District indicates North $89^{\circ} 35' 50''$ East) ;

THENCE leaving said southerly line of said land of the Brisbane Elementary School District in a northeasterly direction North $51^{\circ} 52' 58''$ East a distance of 100.91 feet to the True Point of Beginning ;

THENCE North $38^{\circ} 07' 02''$ West a distance of 14.00 feet ;

THENCE North $51^{\circ} 52' 58''$ East a distance of 256.46 feet ;

THENCE North $28^{\circ} 59' 58''$ East a distance of 55.06 feet ;

THENCE South $61^{\circ} 00' 02''$ East a distance of 20.00 feet ;

THENCE South $28^{\circ} 59' 58''$ West a distance of 59.11 feet;



2000-086867
07/17/2000 02:30P
SS Page 2 of 6

PLAT
 PROPOSED PUBLIC ACCESS AND UTILITY EASEMENT OVER A PORTION
 OF THE LANDS OF BRISBANE ELEMENTARY SCHOOL DISTRICT
 TO BE GRANTED TO THE CITY OF BRISBANE
 COUNTY OF SAN MATEO STATE OF CALIFORNIA

SCALE 1" = 100'

CITY OF BRISBANE
 (CITY OF VISITATION)
 [S MAPS 35]

LANDS OF THE BRISBANE ELEMENTARY
 SCHOOL DISTRICT (2077 O.R. 43')

P.O.B.

T.P.O.B.

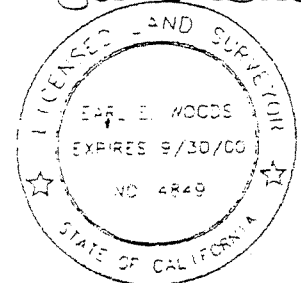
PROPOSED PUBLIC ACCESS
 AND UTILITY EASEMENT
 TO BE GRANTED TO
 THE CITY OF BRISBANE
 [S MAPS 35]

LINE TABLE	
BEARING	DISTANCE
N 11° 22' 56" E	100.00'
S 81° 00' 00" E	55.05'
S 81° 00' 00" E	50.00'
S 02° 59' 56" W	55.11'

LANDS OF THE CITY
 OF BRISBANE
 [7773 US 325]

PANEL 1
 [42 PM 35]

Earl E. Woods



SOLANO STREET

SAN FRANCISCO
 AVENUE

PANEL 1
 [42 PM 35]

PREPARED BY

E.E. WOODS LAND SURVEYORS, INC.
 1755 BROADWAY, SUITE 218
 REDWOOD CITY, CA 94063
 (650) 363-7113 FAX 366-8903

AUGUST 26, 1999

EEWLSI JUN 1414B

SHEET 1 OF 1

2000-086867

2000 02:30P
 ES Page 4 of 6

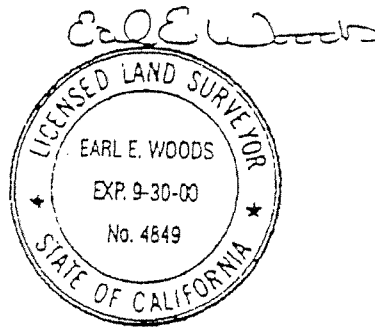


PROPOS. PUBLIC ACCESS & UTILITY EASEM.
 TO BE GRANTED TO THE CITY
 OF BRISBANE

1	N38-07-02W	20.00	1	8000.000000	5000.000000	0.000	POB
2	N51-52-58E	256.46	2	8015.734990	4987.654552	0.000	
3	N28-59-58E	55.06	3	8174.040667	5189.424333	0.000	
4	S61-00-02E	20.00	4	8222.197487	5216.117484	0.000	
5	S28-59-58W	59.11	5	8212.501464	5233.609972	0.000	
6	S51-52-58W	260.50	6	8150.802415	5204.953375	0.000	
			7	8000.002958	5000.005129	0.000	

AREA = 5312 SQUARE FEET OR 0.14429 ACRES

1. 113389 PRECISION
 360-01-09W 0.01 CLOSING LINE



2000-086867
 07/17/2000 02 30P
 EE Page 5 of 5

PREPARED BY :

E. E. WOODS LAND SURVEYORS, INC.
 1155 BROADWAY, SUITE 218
 REDWOOD CITY, CA 94063

AUGUST 28, 1999

EEWLSI JN 1414-B

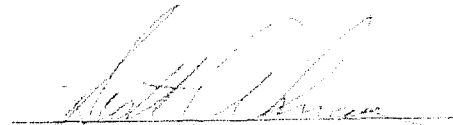
CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated July 13, 2000 from Brisbane Elementary District, a public school district and political subdivision of the State of California, to the City of Brisbane, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of Brisbane pursuant to the authority conferred by Resolution No. 77-56 adopted on June 27, 1977, and the grantee consents to recordation thereof by its duly authorized officer.



2000-086867
07:17/2000 02:30P
ES Page 6 of 6

Dated this 13th day of July, 2000.



Scott Alman
Director of Public Works

EXHIBIT "B"

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, effective as of _____, 2010, by and between THE CITY OF BRISBANE ("City"), and THE BRISBANE ELEMENTARY SCHOOL DISTRICT ("District") is made with reference to the following facts:

A. City and District have entered into an Amended And Restated Cooperative Agreement For The Shared Use of Public Facilities and Programs, of even date herewith (the "Cooperative Agreement").

B. Section 2.04 of the Cooperative Agreement provides for the granting of a License by District to City covering a portion of land located with the Brisbane Elementary School lower field for the construction thereon by City of a restroom facility.

NOW, THEREFORE, the parties agree as follows:

1. District hereby grants a License to City to occupy and use that portion of the District's Brisbane Elementary School lower field, as shown on the drawing attached hereto as Exhibit "A" and made a part hereof (the "License Area"). No rent or other compensation shall be payable by City to District for use of the License Area.

2. City shall be entitled to improve the License Area by the construction thereon of a permanent restroom facility (the "Restroom Facility"), in accordance with plans and specifications approved by District. The Restroom Facility shall be constructed, owned, maintained, and operated by City at its own expense, and jointly used by City and District pursuant to the terms of the Cooperative Agreement.

3. The rights of granted by this License are intended solely for the benefit of City and such rights may not be assigned or transferred by City, or its successors and assigns, for the benefit of any other party without the prior written approval of District.

4. The License granted herein shall be used by City for the purposes described in the Cooperative Agreement and shall not be used for any other purpose without the prior written consent of District.

5. City shall repair any damage to the License Area arising from use of the License by City or any of its employees, agents, or invitees. City shall not be liable for repair of damage to the License Area or the Restroom Facility constructed thereon, which is caused by District or any of its employees, agents, students, or invitees.

6. City shall indemnify, defend, and hold District harmless from and against any claims, demands, causes of action, liabilities, costs or expenses, including attorneys' fees, for loss or damage arising from or in any manner related to any negligent act or omission or willful misconduct committed by City or any of its employees, agents, or invitees in connection with their use of the License Area or the Restroom Facility constructed thereon.

7. District shall indemnify, defend, and hold City harmless from and against any claims, demands, causes of action, liabilities, costs or expenses, including attorneys' fees, for loss or damage arising from or in any manner related to any negligent act or omission or willful misconduct committed by District or any of its employees, agents, or invitees in connection with their use of the License Area or the Restroom Facility constructed thereon.

8. This License shall automatically terminate upon removal by City of the Restroom Facility constructed by City within the License Area.

IN WITNESS WHEREOF, the parties have executed this License Agreement to be effective as of the day and year first above written.

THE CITY OF BRISBANE

Approved as to form:

By: _____
W. Clarke Conway, Mayor

Harold S. Toppel,
City Attorney

Attest: _____
Sheri Marie Spediacci,
City Clerk

**THE BRISBANE ELEMENTARY
SCHOOL DISTRICT**

Approved as to form:

By: _____

Board President

District Counsel

Attest: _____
Toni Presta,
Superintendent

PLAT
 PROPOSED PUBLIC ACCESS AND UTILITY EASEMENT OVER A PORTION
 OF THE LANDS OF BRISBANE ELEMENTARY SCHOOL DISTRICT
 TO BE GRANTED TO THE CITY OF BRISBANE
 COUNTY OF SAN MATEO STATE OF CALIFORNIA

SCALE 1" = 100'

CITY OF BRISBANE
 [CITY OF VISITATION]
 [3 MAPS 35]

LANDS OF THE BRISBANE ELEMENTARY
 SCHOOL DISTRICT (2077 O.R. 431)

P.O.B.

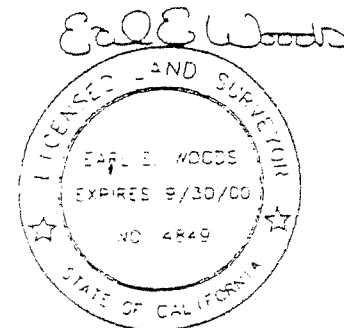
T.P.O.B.

PROPOSED PUBLIC ACCESS
 AND UTILITY EASEMENT
 TO BE GRANTED TO
 THE CITY OF BRISBANE
 BY THIS PLAT

LINE TABLE	
BEARING	DISTANCE
S89°09'12"W	94.48'
N11°32'38"E	100.00'
S51°21'28"W	50.00'
S89°09'12"W	50.00'
S89°09'12"W	50.00'
S89°09'12"W	50.00'

LANDS OF THE CITY
 OF BRISBANE
 [7773 02 025]

PANEL 1
 [42 PM 45]



SOLANO STREET

SAN FRANCISCO
 AVENUE

PANEL 1
 [42 PM 45]

PREPARED BY

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