



Project Administration Department

Memorandum

Date: December 6, 2018
To: Honorable Mayor and Board of Commissioners
Through: Mark LeCouris, City Manager
From: Bob Robertson, Project Administration Department Director
Subject: Property Donation – Vacant Commercial Site, 42503 U.S. Highway 19 North

Recommendation

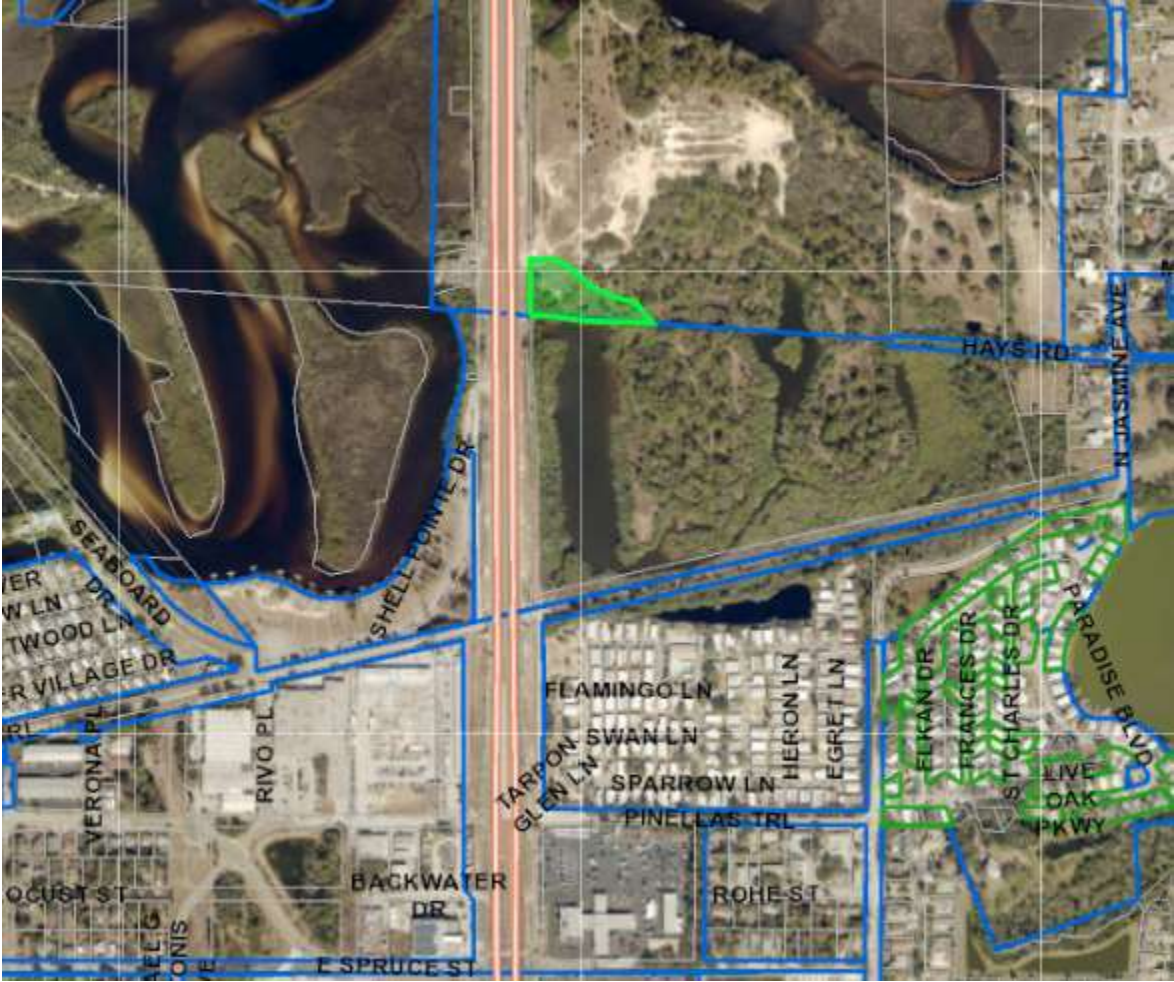
Authorize the City Manager to execute a property agreement for the donation of the subject property to the City by a private property owner.

Background

The City was approached with an offer to donate a 1.5 acre parcel of property located at 42503 U.S. Highway 19 North (see Attachment 1). It has frontage on U.S. 19. The property owner provided a geotechnical report, environmental report, and appraisal, all of which appear to indicate acceptable physical property conditions. The Pinellas County Property Appraiser lists the just market and municipal taxable property value as \$263,911.

The Property Donation Agreement document was prepared by the City Attorney (see Attachment 2).

Attachment 1 Site Location Map



Attachment 2
Property Donation Agreement

DONATION AGREEMENT
(Donation for Public Purposes)

THIS DONATION AGREEMENT (this “**Agreement**”) is made and entered into as of the _____ day of December, 2018 by and between **WILKINSON ANCLOTE LAND LIMITED PARTNERSHIP**, a Florida limited partnership (“**Grantor**”), and **THE CITY OF TARPON SPRINGS, FLORIDA**, (“**Grantee**”) (Grantor and Grantee are referred to herein sometimes as a “**Party**” or the “**Parties**”).

RECITALS

WHEREAS, the Grantor is the fee simple owner of that certain vacant land, located at 42503 U.S. Highway 19 North, Tarpon Springs, Pinellas County, Florida, containing approximately 1.50 acres, zoned General Business, and more particularly described in Exhibit “A” attached hereto and made a part hereof (the “**Property**”); and,

WHEREAS, the Property is a portion of a larger planned development and is subject to that certain Easement and Restrictive Covenant Agreement (the “**ERCA**”), between Grantor and Wal-Mart Stores East, LP, dated April 5, 2005, and recorded on April 12, 2005, in Official Records Book 15238, Pages 1048-1060 of the public records of Pinellas County, Florida, which provides that the Property shall have the rights to ingress and egress upon the proposed Mediterranean Boulevard, to be constructed by Wal-Mart; that the Property shall have an easement for stormwater retention in a pond to be constructed by Wal-Mart; and that Wal-Mart shall construct public water and wastewater lines to the edge of the Property; and

WHEREAS, the land development plan for the Wal-Mart and the Property was ultimately rejected by the City of Tarpon Springs, and therefore development of the Wal-Mart property as well as the Property has not commenced (however the Property could be developed independent of the Wal-Mart and overall planned development, or in conjunction with a future development plan); and,

WHEREAS, the Grantee has informed the Grantor of its desire to acquire the Property by donation from the Grantor, for the express purpose of constructing an extension of its nature trail system for the scenic enjoyment of the public, as well as the right to construct one or more structures to allow for public access to the water for recreational and educational purposes, and in order to protect the adjacent waterway and natural habitat of fish, wildlife, plants and ecosystem; and,

WHEREAS, the Grantor has agreed to donate and convey the Property for the restricted and specific uses set forth herein, and upon such other terms and conditions contained in this Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the premises hereof, the sums of money to be paid hereunder, the mutual covenants herein contained and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby covenant, stipulate and agree that the foregoing recitals are true and correct and are incorporated herein by this reference and further covenant, stipulate and agree as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein.

2. **Agreement to Donate.** Grantor, hereby agrees to donate and convey the Property to the Grantee, and Grantee hereby agrees to accept the donated Property, upon the express terms and subject to a use restriction set forth in a Special Warranty Deed of the Property from Grantor to Grantee that the use of the Property shall be restricted to public recreational, educational and conservation purposes thereby protecting the natural habitat and providing scenic enjoyment for the public in perpetuity and no other use of the Property shall be permitted.

3. **Valuation.** Haynes T. Hendry, MAI, of Hendry Real Estate Advisors, Inc., a real estate appraiser, prepared an appraisal report of the Property, dated [REDACTED], 2018 (the "**Appraisal**"), to establish the "fair market value" of the Property to be conveyed. Both Grantor and Grantee have read the Appraisal and found the valuation set forth therein to be reasonable, based upon the location fronting on US 19 and commercial zoning classification and agree that the valuation of the Property set forth in the Appraisal is true and correct.

4. **Signage.** In consideration of this donation of the Property by Grantor to Grantee, Grantee shall erect and maintain a monument sign on the Property, along the right-of-way of U.S. Highway 19, stating: "This Property has been donated to the City of Tarpon Springs for the use of its residents in perpetuity for outdoor recreation and protection of the habitat and ecosystem by Richard W. and Linda J. Wilkinson."

5. **Closing.** Closing hereunder shall occur on or before December 28, 2018, time is of the essence, via mail or overnight express service, or at such other place or method as the Parties agree. As of the Closing, all representations and warranties of Grantor are merged within the Special Warranty Deed and do not survive the Closing.

6. **Closing Costs.** Grantee shall pay all cost expenses associated with the conveyance and transfer of the Property by Grantor to Grantee, including recording costs and documentary stamp tax due on the recordation of the Special Warranty Deed and other documents required to convey fee simple title to the Property, the cost of any title search fees and title insurance premium of any title insurance policy required by the Grantor, and the 2018 real estate taxes for the Property. Notwithstanding the foregoing, each Party shall pay its own attorney's fees and costs associated with the transaction contemplated herein.

7. **As-Is.** Subject to Section 9 hereof, Grantor is conveying the Property to Grantee "As-Is" and makes no representation as to the condition of the Property, including, but not limited to, environmental status, soils, hazardous substances, endangered species, suitability for

any certain use or uses. Furthermore, Grantee covenants and affirms that it has had sufficient time to conduct its due diligence, including but not limited to review of those certain reports and studies prepared for Grantor prior to its acquisition of the Property, including but not limited to the Phase I ESA, Geotechnical Report, ALTA ACSM Title Survey, as well as two separate and distinct Owner's Title Policies, all of which were prepared for Grantor prior to Grantor's acquisition of the Property, and which Grantee acknowledges receipt thereof.

8. **Title Commitment.** Notwithstanding the foregoing paragraph, Grantee shall, within ten (10) days after the Effective Date hereof and at Grantee's expense, obtain from Old Republic Title Insurance Company (the "**Title Company**"), a Commitment for Title Insurance for an ALTA Owner's Policy (the "**Commitment**") covering the Property and proposing to insure Grantee in the full amount of the fair market value of the Property. The Commitment shall be delivered to Grantee within ten (10) days after the Effective Date hereof.

(a) No later than five (5) days after its receipt of the Commitment, Grantee shall deliver written notice to Grantor of any matters contained or shown on the Commitment to which Grantee objects (collectively, the "**Title Objections**"). Any matters contained and/or shown on the Commitment to which Grantee does not object shall constitute "Permitted Exceptions" to title.

(b) Grantor shall have the remaining number of days (prior to the December 28, 2018 outside Closing Date), after its receipt of Grantee's written notice of Title Objections to use reasonably good faith efforts to cure the defects specified therein. If Grantor is unable or unwilling to cure any of the specified Title Objections within the aforesaid period, Grantee may, in its sole and absolute discretion: (i) waive any one (1) or more of the specified defects and proceed to Closing under this Agreement, whereupon the same shall be deemed Permitted Exceptions; or (ii) terminate this Agreement, and neither Party shall have any further liability and/or obligation to the other, other than the indemnity obligations of Buyer in Section 9.

9. **Due Diligence Investigations/Entry upon the Property.** From the Effective Date until the date that is December 28, 2018 (the "**Inspection Period**"), Grantee and its authorized agents and representatives shall have the right to enter upon the Property to conduct its due diligence investigations including, without limitation: appraisals, soil tests/borings/investigations, groundwater percolation studies, engineering/planning studies, market feasibility studies, environmental tests/inspections, and any and all other investigations that Grantee may deem necessary and prudent (collectively, the "**Due Diligence Investigations**").

Grantee shall cause all persons or entities furnishing materials or performing services in connection with Grantee's Due Diligence Investigations hereunder to be promptly paid, and Grantee shall not allow the filing of any mechanic's or professional's liens against the Property in connection therewith. Grantee agrees to indemnify and hold Grantor harmless from and against any and all loss, liability, cost and/or expense of any nature whatsoever, including reasonable attorney's fees and costs incurred on appeal or otherwise, sustained by Grantor as a result of Grantee's Due Diligence Investigations hereunder. Furthermore, Grantee shall cause all persons or entities furnishing materials or services in connection with the Due Diligence

Investigations to restore the Property to that condition that existed immediately prior to Grantee's (or its consultants/agents) entry thereupon. The foregoing indemnity obligation and obligation of Grantee to restore to the Property shall survive the termination of this Agreement.

10. **Representations, Warranties and Covenants of Grantor.** Grantor represents and warrants to Grantee that the following is true, accurate and correct, as of the Effective Date:

(a) Authority. Grantor is a duly organized and validly existing limited partnership in good standing under the laws of the State of Florida, and Grantor is qualified to do business in the State of Florida. Grantor has the right, power and authority to enter into this Agreement and consummate the transactions contemplated herein.

(b) Litigation. There are no actions, suits or proceedings pending or, to the best of Grantor's knowledge and belief, threatened, in respect of or affecting the Property or any portion thereof, or otherwise affecting Grantor's ability to perform its obligations hereunder, in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality.

(c) Violations. As of the Effective Date hereof, Grantor has received no notice of violations of any health, safety, pollution, environmental, zoning or other laws, ordinances, rules or regulations to Grantor with respect to the Property, which have not been heretofore disclosed to Grantee, in writing, other than that certain Notice of Violation, Case No. 18-0000492, dated July 19, 2018, issued by the Tarpon Springs Police Department Code Enforcement, which is attached hereto, Grantee was fully aware of and Grantee has agreed to take the Property with all faults and violations relating to said notice not having been remedied or corrected.

(d) Bankruptcy. Grantor has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Grantor's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Grantor's assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of Grantor's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension, or composition to its creditors generally.

If on or prior to the Closing Date, any matter covered in this Section 10 ceases to be true, accurate and correct on the Closing Date, Grantee shall have either of two remedies as its sole and exclusive remedy: (i) accept title to the Property with whatever fault or condition is discovered, or (ii) give notice to Grantor from Grantee that it no longer wishes to take title to the Property by donation. Grantee fully acknowledges and agrees that no other remedy of Grantee shall be available to it.

11. **Litigation and Attorneys' Fees.** In the event that either Party finds it necessary to employ an attorney to enforce any provision of this Agreement, the predominantly prevailing party will be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in connection therewith (including costs of collection), at both trial and appellate levels;

including bankruptcy proceedings, in addition to any other remedies to which such party may be entitled. The requirement to pay the predominantly prevailing party's reasonable attorneys' fees and costs will survive any termination of this Agreement.

12. **Execution and Counterparts.** To facilitate execution, the parties hereto agree that this Agreement may be executed and telecopied to the other party and that the executed telecopy shall be binding and enforceable as an original; the parties agree to fully execute two (2) originals of this Agreement. This Agreement may be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

13. **Captions and Paragraph Headings.** Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or content of this Agreement nor the intent of any provision hereof.

14. **Notices.** Any notice or other communication permitted or required to be given hereunder by one party to the other shall be in writing and shall be hand delivered, sent by overnight courier service requiring receipt, or mailed by registered or certified United States Mail, postage prepaid, return receipt requested, or when sent by facsimile transmission addressed to the party entitled or required to receive the same at the address specified below or at such other address as may hereafter be designated in writing by any such party:

To Grantor: Wilkinson Anclote Land Limited Partnership
106 Commerce Street, Suite 110
Lake Mary, Florida 32746
Attention: Richard W. Wilkinson
Telephone: (407) 333-8006
Email: Richard@WilkinsonDevelopment.com

With a copy to: Nelson, Mullins, Broad and Cassel
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Leigh A. Williams
Telephone: (407) 839-4200
Email: leigh.williams@nelsonmullins.com

To Grantee: The City of Tarpon Springs
324 East Pine Street
Tarpon Springs, Florida 34689
Attn: Mark LeCouris, City Manager
Telephone: (727) 938-3711
Email: mlecouris@ctsfl.us

With a copy to: Trask Daigneault, LLP
1001 South Fort Harrison, Suite 201
Clearwater, Florida 33756
Attn: Thomas Trask
Telephone: (727)733-0494
Email: tom@cityattorneys.legal

Notice shall be effective upon delivery or refusal. Either party may by written notice to the other party change the address to which notices directed to such party shall be sent.

15. **Governing Law, Binding Effect and Venue.** The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The terms and provisions of this Agreement shall bind, and the benefits and advantages hereof shall inure to and be enforceable by, Grantee and Grantor as well as their respective successors and permitted assigns. Whenever used herein, the singular name shall include the plural, the singular, and the use of any gender shall be applicable to all genders. The parties hereby agree that venue for any legal action authorized hereunder shall be in Pinellas County, Florida.

16. **Integrated Contract, Waiver and Modification.** This Agreement (together with the documents specifically referred to herein) represents the complete and entire understanding and agreement between and among the parties hereto with regard to all matters involved in this Agreement and supersedes any and all prior or contemporaneous agreements, whether written or oral. This Agreement may not be modified or amended, nor may any provision contained herein be waived, except in writing signed by all parties, or if such modification, amendment or waiver is for the benefit of one or more of the parties hereto and to the detriment of the others, then the same must be in writing signed by all parties to whose detriment the modification, amendment or waiver inures.

17. **Effective Date.** The Effective Date hereof shall be the date the last of Grantor and Grantee execute this Agreement.

18. **Continuing Cooperation.** The Parties agree that they will, at any time and from time to time after the Closing Date, upon request of the other party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances and assurances as may reasonably be required for the assigning, transferring, granting, assuring and confirming of the transaction contemplated herein, or for aiding and assisting in collecting and reducing to possession, any or all of the assets or property being transferred herein pursuant to this Agreement, provided that the same do not impose any liability or additional costs on either party beyond that provided in this Agreement.

19. **Default.** In the event either Party shall breach any provision of this Agreement, the other Party may terminate this Agreement by sending written notice thereof; provided, however, the breaching Party shall have ten (10) business days to cure said breach.

20. **City Commission Approval.** Grantee's performance and closing hereunder are expressly conditioned upon approval by the Board of City Commissioners of the City of Tarpon Springs, Florida on or before December 28, 2018.

IN WITNESS WHEREOF, the parties have executed these presents on the day and year set forth below.

WITNESSES:

GRANTOR:

Wilkinson Anclote Land Limited Partnership, a Florida limited partnership

By: Wilkinson Anclote Inc., a Florida corporation, Its general partner

By: _____
Richard W. Wilkinson, President

Witness
Print Name:

Dated: _____

Witness
Print Name:

GRANTEE:

CITY OF TARPON SPRINGS, FLORIDA

Name: _____

By: _____
Name: _____
Title: _____

Name: _____

Dated: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

The land referred to herein below is situated in the County of Pinellas, State of Florida, and described as follows:

A tract of land being a portion of Tampa and Tarpon Springs Land Company as recorded in Plat Book H-1, Page 116 of the Public Records of Pinellas (formerly Hillsborough) County, Florida; lying in and being a part of the Southeast 1/4 of Section 6, Township 27 South, Range 16 East, Pinellas County, Florida and a portion of the Official Map of the Town of Tarpon Springs as recorded in Plat Book 4 Page 79 of the Public Records of Pinellas County, Florida; lying in and being a part of the Northeast 1/4 of Section 7, Township 27 South, Range 16 East, Pinellas County, Florida; being more particularly described as follows:

Commence at the Southeast corner of Section 6, Township 27 South, Range 16 East, Pinellas County, Florida; thence run North 85°40'26" West along the South line of the Southeast 1/4 of said Section 6, for a distance of 885.46 feet to the Southeast corner of Lot 42, of the Tampa and Tarpon Springs Land Company, as recorded in Plat Book H-1, Page 116, of the Public Records of Pinellas (formerly, Hillsborough) County, Florida; thence departing said South line of the Southeast 1/4, run North 00°09'16" West along the East line of the aforesaid Lot 42 and the East line of the West 1/3 of Lot 41, of the aforesaid Tampa and Tarpon Springs Land Company, as recorded in Plat Book H-1, Page 116, for a distance of 1319.40 feet to a point on the North line of said Lot 41; thence run North 85°42'06" West along the North line of said Lot 41 and Lot 45, of the aforesaid Tampa and Tarpon Springs Land Company., as recorded in Plat Book H-1, Page 116, for a distance of 1380.36 feet to a point on the East right of way line of State Road 55 (U.S. Highway 19), right of way width varies, as shown on the Florida Department of Transportation right of way map Section No. 15150-2548; thence departing said North line of Lots 41 and 45, run South 00°02'56" West along said East right of way line for a distance of 1108.82 feet for a point of beginning; Thence departing said East right of way line of State Road 55 (U.S. Highway 19), run South 89°57'04" East, a distance of 56.74 feet to a point of curvature of a curve concave Southwesterly and having a radius of 166.00 feet and a central angle of 45°49'15"; thence run Southeasterly along the arc of said curve for a distance of 132.75 feet to a point of reverse curvature of a curve concave Northeasterly having a radius of 374.00 feet and a central angle of 37°10'51"; thence run Southeasterly along the arc of said curve for a distance of 242.70 feet to a point of reverse curvature of a curve concave Southwesterly having a radius of 35.00 feet and a central angle of 41°11'38"; thence run Southeasterly along the arc of said curve for a distance of 25.16 feet to the point of tangency; thence run South 40°07'01" East, a distance of 94.70 feet; thence run North 88°14'24; West, a distance of 250.89 feet; thence run North 81°26'06" West, a distance of 161.05 feet; thence run North 89°56'38" West, a distance of 60.34 feet to a point on the aforementioned East right of way line of State Road 55 (U.S. Highway 19); thence run North 00°02'56" East along said East right of way line for a distance of 212.47 feet to the point of beginning.