

REAL PROPERTY DONATION AND SALE AGREEMENT

This Real Property Donation Sale Agreement ("Agreement") is made between WILLIAM B. LACY, JR., FAMILY TRUST and BIG CREEK CROSSING, L.L.C. (collectively, "Lacy") and CITY OF JONESBORO, ARKANSAS ("City").

RECITALS

A. The contact information of the parties to this Agreement is as follows:

<u>City</u> City of Jonesboro ATTN: Mayor Harold Perrin 300 South Church Street Jonesboro, AR 72401	<u>Lacy</u> Lacy Family Trust Big Creek Crossing, L.L.C. ATTN: Lynn Lacy 3726 Pebble Beach Drive Jonesboro, AR 72404
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B. Lacy is the sole owner of certain real property located on Highway 63B/Dan Avenue, Jonesboro, Arkansas, consisting in the aggregate of approximately 72.31 acres of land, and more particularly described in Exhibit A hereto (the "Land") and depicted on Exhibit B hereto. The acreage attributable to each owner is 13.67 acres for William B. Lacy, Jr., Family Trust and 58.64 acres for Big Creek Crossing, L.L.C. The Land, together with any and all improvements located thereon and all privileges, rights, easements appurtenant to the Land, including without limitation all minerals, oil, gas, and other hydrocarbon substances on and under the Land, and other easements and other rights-of-way included in, adjacent to, or used in connection with the beneficial use and enjoyment of the Land, shall be collectively referred to in this Agreement as the "Property."

C. City is a local government entity exempt from taxation under Title 26 United States Code Section 115.

D. The parties agree that the Property has a value of \$1,100,000.00, a portion of which, \$7,500 per acre, or \$542,325.00, Lacy shall receive from City as consideration for the transfer of the Property, the remainder to be a donation by Lacy to City, said contribution to be utilized exclusively for public purposes as allowed by 26 U.S.C. §170(c)(1).

E. Lacy intends that the fair market value of the Property, less the cash consideration paid City, the sum of \$542,325.00,

shall be a charitable contribution to City. Lacy understands and acknowledges that City makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Lacy will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code.

NOW THEREFORE, the parties agree as follows:

1. Donation of Property. Lacy agrees to sell and gift to City the Property on the terms and conditions set forth in this Agreement. City shall not be obligated to accept title to the Property if City's Council, its governing body, fails to approve this transaction or if City does not approve of the title or condition of the Property. Lacy understands that the gift being made under this Agreement is irrevocable.

2. Lacy's Estimated Value of the Property. Lacy estimates that the current fair market value of the Property is \$1,100,000.00.

3. Appraisal; Charitable Deduction. Lacy has obtained an appraisal, at Lacy's sole cost and expense, the appraisal being completed by a qualified licensed appraiser, and substantiating current fair market value of the Property. It is understood that Lacy intends to claim the value of the Property, less the consideration paid, as a non-cash charitable contribution for tax purposes. City will sign the acknowledgment section of IRS Form 8283 that is correctly completed by Lacy and Lacy's appraiser. In the event City sells the Property within three (3) years of the donation, then City shall be responsible for completing and filing IRS Form 8282 and will send a copy of that form to Lacy. Lacy shall be solely responsible for any audits, costs, or liabilities that may arise from the charitable deduction claimed by Lacy in this transaction and shall hold City harmless for any claims related to the same. Lacy has not relied on any representation from City related to the gift provided in this Agreement. City makes no representation regarding the fair market value of the Property or any tax-related consequences of the transaction contemplated in this Agreement.

4. Conditions of Agreement. The following are conditions to the obligations imposed by the parties under this Agreement, all of which are to be performed in consideration hereof.

- a. As an owner of appurtenant property, Patricia Lynn Lacy shall, at Closing, dedicate a 60-foot-wide public road right-of-way across Tracts 1 and 2, said tracts being depicted on Exhibit B, the right-of-way being shown on Exhibit C attached, and opposite Henson Road north of Dan Avenue to City, in consideration of which City shall, within a period of thirty-six (36) months, construct at

its cost all necessary street and curb improvements pursuant to city code to allow for ingress and egress to the Property from Dan Avenue.

- b. City's assistance with relocation of a power line right-of-way on the aforescribed property of Patricia Lynn Lacy to the north boundary of said property.
- c. Retention by Lacy of the right to designate a name for the municipal park to be developed on the Property which shall include the Lacy family identity.

5. Title. Lacy shall convey title to the Property to City subject only to the following title exceptions: (i) exceptions for a lien for local real estate taxes and assessments not yet due or payable; (ii) the standard preprinted exceptions and exclusions listed on a title commitment or preliminary title report ("Title Report") issued by a reputable title company acceptable to City; and (iii) any other exception shown on the Title Report, other than exceptions for monetary liens, which Buyer does not object to by written notice. City shall examine the Title Report and shall have twenty (20) days to furnish to Lacy a written statement of any objections to title. If Lacy is unable or unwilling to satisfy all of the stated title objections by the date set for Closing, City may, at its option: (a) waive the title objections and proceed to close; (b) at City's expense, cure such title defects as may be cured by the payment of money; or (c) terminate this Agreement, in which case Lacy and City shall have no further rights, obligations or duties hereunder.

6. Title Insurance. City shall receive an owner's policy of title insurance in full amount of the fair market value of the Property ensuring that title to the Property is vested in City, with exceptions accepted by City as provided in Section 5 above.

7. Right to Inspect Property. City may require and/or conduct inspections and tests with respect to the physical and environmental condition of the Property. City and its consultants, agents, engineers, inspectors, contractors, and employees must be given reasonable access to the Property for the purpose of performing such due diligence. City shall not conduct any intrusive or destructive inspections without Lacy's prior written consent, which consent shall be at Lacy's sole and absolute discretion. If City finds the results of any inspection to be unsatisfactory, City shall deliver to Lacy, on or before October 31, 2016, written notice that City desires to cancel this Agreement. If the October 31, 2016, inspection deadline expires without City delivering the above notice to Lacy, the Property shall be deemed acceptable by City.

8. Closing. At Closing Lacy shall convey by general warranty deed fee simple title in the Property, and in exchange City shall provide:

- a. Cash payment to William B. Lacy, Jr., Family Trust \$102,525.00
- b. Cash payment to Big Creek Crossing, L.L.C. \$439,800.00
- c. Acceptance of gift for the non-cash charitable contribution of \$557,675.00

Appropriate adjustments at Closing for closing costs shall be made in accordance with Section 10.

Closing shall occur on or before December 31, 2016, at a date, place and time agreed to by the parties.

9. Real Estate Tax. Lacy shall be responsible for all real estate taxes, assessments, penalties and interest associated with the payment or nonpayment of taxes and assessments for 2015 and prior years related to the Property. All real estate taxes, assessments, penalties and interest associated with the payment or nonpayment of taxes and assessments for 2016 related to the Property shall be prorated as of Closing.

10. Closing Costs. All closing costs, to include the premium of an owner's policy of title insurance; all Property transfer taxes, including documentary transfer stamps; deed preparation and recording; and any closing agent fees are to be equally divided and borne by the parties.

11. Representations, Warranties and Covenants. As an inducement to City to proceed to Closing hereunder, Lacy hereby represents, warrants and covenants, as of the effective date of this Agreement and as of the date of Closing, that:

a. Lacy has full power, authority and legal right, and has obtained all necessary consents and approvals to execute, deliver and perform Lacy's obligations under this Agreement;

b. The execution, delivery and performance by Lacy of Lacy's obligations under this Agreement will not conflict with or result in a breach of or constitute a default under any of the provisions of any law, government rule, regulation, judgment, decree or order by which Lacy is bound or by any of the provisions of any contract or lease to which Lacy is a party or by which Lacy is bound;

c. This Agreement and Lacy's obligations hereunder are valid, legal and binding obligations of Lacy, enforceable in

accordance with their terms, and there are no adverse rights or options, claims, defenses or offsets whatsoever to the enforceability or validity of this Agreement; and

d. Lacy hereby represents to City that, to the best of Lacy's knowledge:

(i) No mandatory statutory disclosure document concerning the environmental condition of the Property needs to be provided;

(ii) The Property does not appear on any state or federal CERCLA (Comprehensive Environmental Responsibility Compensation and Liability Act) or Superfund list; and

(iii) The Property is not subject to any federal, state or local "Superfund" lien, proceedings, claim, liability or action, or the threat or likelihood thereof, for the cleanup, removal or remediation of any hazardous material or substance from the Property.

12. Risk of Loss. All risk of loss shall remain with Lacy until Closing. In the event the Property is destroyed or damaged prior to close of escrow, City may rescind this Agreement. If the Property contains improvements, Lacy agrees that upon close of escrow such improvements shall be in the same order and condition as on the date of this Agreement, except for reasonable wear and tear, and Lacy shall maintain in full force a policy of all-risk hazard insurance, insuring against loss of or damage to said improvements.

13. Notices. Any notice required or permitted to be given by the parties hereto shall be given to:

City:
Office of Mayor
300 South Church Street
Jonesboro, AR 72401

Lacy:
Lacy Family Trust
Big Creek Crossing, L.L.C.
3726 Pebble Beach Drive
Jonesboro, AR 72404

With copy to:
Carol Duncan
City Attorney
410 West Washington Avenue
Jonesboro, AR 72401

With copy to:
Tom Womack
Womack Phelps Puryear
Mayfield & McNeil, P.A.
P.O. Box 3077
Jonesboro, AR 72403

14. Brokers. The parties hereto acknowledge and agree that Lacy has retained the services of Carroll Caldwell, a real estate broker, with regard to the transaction contemplated hereunder, and that City has not retained the services of a real estate broker or

agent regarding same. The parties hereby further agree to indemnify each other and hold one another harmless from and against the claims, if any, of any and all brokers, agents, finders, and other intermediaries claiming by, through, or under the parties in connection with the sale of the Property.

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

16. Binding on Successors. This Agreement shall inure to the benefit of and be binding on the parties to this Agreement and their respective successors and assigns.

17. Additional Documents. Lacy and City shall execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

18. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties.

19. Severability. If any provision of this Agreement as applied to either party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

20. No Merger. This Agreement, each provision of it, and all warranties and representations in this Agreement shall survive the Closing and shall not merge in any instrument conveying title to City. All representations, warranties, agreements, and obligations of the parties shall, despite any investigation made by any party to this Agreement, survive Closing, and the same shall inure to the benefit of and be binding on the parties' respective successors and assigns.

21. Counterparts. This Agreement may be signed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be acceptable as evidence of execution of this Agreement, without the need for sending or receiving the original, executed, document. Facsimile signatures are deemed to be original signatures.

22. Assignability. City may freely assign this Agreement but only to an organization recognized under Section 501(c)(3) of the Internal Revenue Code of 1986 as a charitable organization, or to a public agency.

23. Governing Law. This Agreement will be governed by the laws of the state of Arkansas.

24. Waiver. The failure of either party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

25. Board Approval Contingency. City's performance of its obligations under this Agreement is subject to and contingent upon City obtaining approval of the transaction by the Jonesboro City Council.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below.

LACY

William B. Lacy, Jr., Family Trust

By _____
Lynn Lacy, Trustee

Big Creek Crossing, L.L.C.

Date: _____

By _____
Lynn Lacy, Manager

CITY

City of Jonesboro, Arkansas

By _____
Harold Perrin, Mayor

Date: _____

By _____
Donna Jackson, City Clerk