

## REAL PROPERTY DONATION AND SALE AGREEMENT

This Real Property Donation And Sale Agreement (“Agreement”) is made between FARMER ENTERPRISES, INC., (“Farmer”) AND CITY OF JONESBORO, ARKANSAS (“City”).

### RECITALS

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

City:

City of Jonesboro  
ATTN: Mayor Harold Perrin  
300 South Church Street  
Jonesboro, AR 72401

Farmer:

Farmer Enterprises, Inc.  
ATTN: Alec Farmer  
2500 Alexander Drive, Suite C #116  
Jonesboro, AR 72401

- B. Farmer is the sole owner of the certain real property located on New Hope Lane, Jonesboro, AR, consisting in the aggregate of approximately 40.2 acres of land, and more particularly described in Exhibit A hereto (“the Land”) and depicted on Exhibit B hereto. 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 \$555,000.00, a portion of which, \$450,000.00, Farmer shall receive from City as consideration for the transfer of the Property, the remainder to be a donation by Farmer to City, said contribution to be utilized exclusively for public purposes as allowed by 26 U.S.C. 170 (c) (1).
- E. Farmer intends that the fair market value of the Property, less the cash consideration paid City, the sum of \$450,000.00, shall be a charitable contribution to City. Farmer understands and acknowledges that City makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Farmer 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. Farmer agrees to sell and gift to City the Property on the terms and conditions set forth in the Agreement. City shall not be obligated to accept title or condition of 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. Farmer understands that the gift being made is irrevocable.
2. Farmer's Estimated Value of the Property. Farmer estimates that the current fair market value of the Property is \$555,000.00.
3. Appraisal; Charitable Deduction. Farmer has obtained an appraisal, at Farmer'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 Farmer 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 correctly completed by Farmer and Farmer'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 Farmer. Farmer shall be solely responsible for any audits, costs, or liabilities that may arise against Farmer from the charitable deduction claimed by Farmer in this transaction and shall hold City harmless for any claims related to the same. Farmer 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. Title. Farmer shall convey title to the Property to City subject only to the following title exemptions: (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; (iii) any exception or matter arising from the existence of recreational trails on the Property which connect to Craighead Forest Park; and (iv) any other exception shown on the Title Report, other than exceptions for monetary liens, which City does not object to by written notice. City shall examine the Title Report and shall have twenty (20) days to furnish to Farmer a written statement of any objections to title. If Farmer 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 Farmer and City shall have no Further rights, obligations or duties hereunder.

5. 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 4 above.
  
6. 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 Farmer's prior written consent, which consent shall be at Farmer's sole and absolute discretion. If City finds the results of any to be unsatisfactory, City shall deliver to Farmer, on or before March 7, 2018, written notice that City desires to cancel this Agreement. If the March 7, 2018, inspection deadline expires without City delivering the above notice to Farmer the Property shall be deemed acceptable by City.
  
7. Closing. At Closing Farmer shall convey by general warranty deed fee simple title in the Property, and in exchange City shall provide:

- |  |              |
|--|--------------|
| a. Cash payment to Farmer Enterprise, Inc.                           | \$450,000.00 |
| b. Acceptance of gift for the non-cash charitable<br>Contribution of | \$105,000.00 |

Appropriate adjustments at Closing for closing costs shall be made in accordance with Section 9.

Closing shall occur on or before April 15<sup>th</sup>, 2018, at a date, place and time agreed to by the parties.

8. Real Estate Tax. Farmer shall be responsible for all real estate taxes, assessments, penalties and interest associated with the payment or nonpayment of taxes and assessments for 2017 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 2018 related to the Property shall be prorated as of Closing.

9. 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.
10. Representations, Warranties and Covenants. As an inducement to City to proceed to Closing hereunder, Farmer hereby represents, warrants and covenants, as of the effective date of this Agreement and as of the date of Closing that:
- a. Farmer has full power, authority and legal right, and has obtained all necessary consents and approvals to execute, deliver and perform Farmer's obligations under this Agreement;
  - b. The execution, delivery and performance by Farmer of Farmer'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 order by which Farmer is bound or by any of the provisions of any contract or lease to which Farmer is a party or by which Farmer is bound;
  - c. This Agreement and Farmer's obligations hereunder are valid, legal and binding obligations of Farmer, 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. Farmer hereby represents to City that, to the best of Farmer'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 Environment 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.

11. Risk of Loss. All risk of loss shall remain with Farmer 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, Farmer 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 Farmer shall maintain in full force a policy of all-risk hazard insurance, insuring against loss of or damage to said improvements.

12. 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

Farmer:

Farmer Enterprises, Inc.  
2500 Alexander Dr., Ste. C #116  
Jonesboro, AR 72401

With copy to:

Carol Duncan  
City Attorney  
410 West Washington Avenue  
Jonesboro, AR 72401

13. Brokers. The parties hereto acknowledge and agree that Farmer has retained the services of Joel King, 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.

14. 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 thereof.

a. City acknowledges the possible desire and intention of Seller to exchange the Property in an exchange qualifying as a tax free exchange under Section 1031 of the Internal Revenue Code. City shall cooperate fully to implement such exchange as hereinafter provided (at no additional expense to City). In order to permit Seller to implement a deferred (or non-simultaneous) exchange City agrees that Seller may cause this Agreement to be assigned to a Qualified Intermediary pursuant to the applicable regulations.

- b. Retention by Farmer of the right to review and approve a plaque to be placed along a walking/bike trail upon the Property by the City acknowledging the Farmer family identity and partial donation 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. Farmer 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. Provided, however, that any increase in real property transfer taxes arising by reason of any such assignment shall be the sole responsibility of the assignee.

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.

**FARMER**

Farmer Enterprises, Inc.

Date \_\_\_\_\_

By \_\_\_\_\_  
Alec Farmer, President

**CITY**

City of Jonesboro, Arkansas

By \_\_\_\_\_  
Harold Perrin, Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
Donna Jackson, City Clerk

**EXHIBIT A**  
(Legal Description)

The Southwest Quarter of the Southwest Quarter of Section 5, Township 13 North, Range 4 East, of Craighead County, Arkansas, containing 40 acres, more or less, subject to all utility easements or rights-of-way of record.



**EXHIBIT B**  
(Attached Survey)