

FUNDING AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
FARM SHARE, INC.

The **City of Jacksonville**, a consolidated government under the laws of the state of Florida, whose address is 117 West Duval Street, Jacksonville, Florida 32202, and **FARM SHARE, INC.**, a Florida not for profit corporation whose address is 14125 S.W. 320th Street, Homestead, FL 33033, Attention: Stephen Shelley (“**FARM SHARE**” or “**RECIPIENT**”) enter into this Funding Agreement on _____, 2019.

RECITALS

- A. **FARM SHARE** is a non-profit statewide charitable food bank and packing house with a distribution hub in Jacksonville, Florida whose mission is that no person goes hungry and no food goes to waste and Farm Share distributed more than 76 million pounds of food to Florida’s 67 counties through warehouses in Jacksonville, Florida City, Homestead, Pompano Beach and Quincy, Florida, and, specifically, distributed more than 9 million pounds of food to persons in need in Duval County last fiscal year ending June 30, 2019.

- B. The City of Jacksonville desires to provide a grant in the not to exceed amount of \$247,389.95 from the Jacksonville International Airport Community Redevelopment Agency (“**JIA/CRA**”) Trust Fund to Farm Share in order to fund up to one year of rent associated with the sublease of replacement warehouse space located within the boundaries of the **JIA/CRA** and associated, miscellaneous moving expenses, some tenant build-out and some equipment costs.

As a result of the foregoing the parties agree as follows:

- 1. The recitals above are true and incorporated into this Agreement by this reference.

- 2. The term of this agreement is from the date of this Agreement through the City’s 2020 Fiscal Year.

- 3. **FARM SHARE** is not an employee or agent of the City by virtue of this agreement or otherwise.

- 4. City has appropriated to **FARM SHARE** by Ordinance 2019-_____ the sum of \$247,389.95, to be used by **FARM SHARE** as funding for its sublease for its Jacksonville warehouse, as described in Exhibit A (“**Sublease**”) and associate moving and relocation costs, consistent with the Farm Share Budget Detail attached and incorporated herein as Exhibit B (“**Budget**”)

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so long as its Sublease is in good standing and Farm Share is not in default thereof. Said funding shall be paid to FARM SHARE in accordance with Paragraph 8 below to cover expenses incurred by FARM SHARE in accordance with the Sublease expenses in the Budget, provided that the Budget can be amended for good cause with written notice to the City and City approval of same, which approval shall not be unreasonably withheld.

5. This appropriation constitutes a JIA/CRA grant and the provisions of Parts 1 through 5, inclusive, Chapter 118, Jacksonville Ordinance Code, shall apply to this appropriation. For the application of Chapter 118, Jacksonville Ordinance Code, FARM SHARE shall be considered a Recipient and the funds granted in the appropriation are considered City funds.
6. Subject to the terms of this agreement, FARM SHARE accepts the funds appropriated for the purposes for which the funds were appropriated and for no other purposes. The appropriated funds may not be used for the following purposes:
 - (a) Losses arising from uncollectible accounts and other claims, and related costs.
 - (b) Contributions to a contingency reserve or a similar provision for unforeseen events.
 - (c) Contributions and donations to other groups or organizations.
 - (d) Costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation and gratuities.
 - (e) Costs resulting from violations of or failure to comply with federal, state and local laws and regulations.
 - (f) The salaries and costs of the office of the governor of a state or the chief executive of a political subdivision. These costs are considered a cost of general state or local government.
 - (g) The salaries and other costs of the Legislature or similar local governmental bodies such as County commissioners, City councils and school boards, whether incurred for purposes of legislation or executive direction.
 - (h) Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations and legal and professional fees paid in connection therewith.
 - (i) Non-cash Expenses as defined in Section 118.104, Jacksonville Ordinance Code.
 - (j) Costs of any audits required under Chapter 118, Jacksonville Ordinance Code.

7. As required by section 118.201, Jacksonville Ordinance Code, FARM SHARE:

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(a) Consents to abide by Ch. 119, Florida Statutes, and successors thereto, as they may be amended from time to time.

(b) Must not be in default of the Sublease while this Funding Agreement is being disbursed and shall provide reasonable evidence to the Office of Economic development of Farm Share's compliance with the Sublease with a Farm Share certification of no violations of the Sublease at each draw and, upon, request, shall provide to the City an estoppel statement from the Sublease landlord of (i) no Farm Share default under the Sublease and (ii) no default of the Sublease landlord under the primary lease upon which the Sublease is created.

(c) Agrees to return within 15 days of demand therefor the City funds appropriated to the recipient in the current or prior fiscal years upon the City Council's, Council Auditor's, or Grant Monitor's finding that the terms of this Funding Agreement or any other agreement executed by the recipient with the City, or the provisions of the appropriation, or the provisions of Chapter 118, Jacksonville Ordinance Code, have been violated.

(d) Agrees to return to the City the funds expended for disallowed expenditures as determined by the City Council, Council Auditor, or Grant Monitor in accordance with Part 4 of Chapter 118, Jacksonville Ordinance Code.

(e) Agrees:

(1) To maintain separate bank demand or time deposit accounts for each program and deposit the City funds received and no other funds in the accounts and make all disbursements of City funds from the accounts. Provided, however, that if Recipient is on a reimbursement or draw basis the Recipient does not have to maintain a separate bank account; or

(2) With the approval of the Council Auditor, to maintain a separate budgetary accounting system so that the receipt and disbursement of City funds can be accurately and adequately determined by reference to the books of accounts of the recipient and a separate bank account need not be maintained.

(f) Consents to:

(1) Such audits of the financial affairs of the recipients by the Council Auditor's Office as the Council Auditor may require.

(2) Producing the documents required by the Council Auditor.

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(3) In the case of each recipient receiving City funding less than \$100,000 from the City, furnishing an annual report of receipts and expenditures of City funds in such form as the Council Auditor shall prescribe. This report shall be certified as to its accuracy by the Financial Officer or Treasurer of the recipient's organization. This report shall be on a fiscal year of October 1 through September 30 and shall be due on November 15 of each year.

(4) In the case of each recipient receiving City funding, either from one City funding source or cumulatively from several City funding sources, an amount from \$100,000 to \$500,000, furnishing the City a copy of an audit report in accordance with Generally Accepted Auditing Standards (GAAS) issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA). This report shall be due within 120 days of the close of the recipient's fiscal year and this report shall present information based on the City's fiscal year of October 1 through September 30.

(5) In the case of each recipient receiving City funding, either from one City funding source or cumulatively from several City funding sources, an amount in excess of \$500,000, furnishing the City a copy of an audit report conducted in accordance with both GAAS and Government Auditing Standards (GAS) issued by the Comptroller General of the United States, and if applicable the provisions of Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations," of its financial affairs for its fiscal year ending within the current fiscal year of the City made by an independent certified public accountant. This report shall be due within 120 days of the close of the recipient's fiscal year and, in addition to the information described above, this report shall present information regarding its use of City funding based on the City's fiscal year of October 1 through September 30.

(6) Quarterly administrative and programmatic reviews, commencing on the date of this Funding Agreement and due Ten (10) business days before the date of the quarterly payments due to Farm Share pursuant to Section 8 below, directed by the Office of Economic Development which is responsible for the administration of the Recipient's funding. These reviews will be directed toward Recipient's service delivery of the food.

(f) Notwithstanding the reporting requirements of this agreement and the Ordinance Code, FARM SHARE shall not submit any information to City in violation of the privacy rights under the provisions of applicable federal, state, or local laws.

8. Payment will be based upon Four (4) quarterly draws of Sixty One Thousand Eight Hundred Forty Seven and 49/100 Dollars (\$61,847.49) for up to one year of rent for Farm Share's Sublease, miscellaneous moving expenses, some tenant build-out and some equipment as shown in the Budget with the First (1) draw due on the date of this Funding

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Agreement and Three (3) additional quarterly draws on the same day of the month as the initial draw every Three (3) months thereafter until the total funding of Two Hundred Forty Seven Thousand Three Hundred Eighty Nine and 95/100 Dollars (\$247,389.95) provided by this Funding Agreement is exhausted; reasonable retainages until all reports, audits or accountings are provided by the recipient and accepted by the City.

9. The Recipient agrees to perform the services for which the appropriations are made under the general coordination of the Office of Economic Development, City of Jacksonville. The City contact and address (for notices) is:

Economic Development Officer Office of Economic Development
117 West Duval Street,
Suite 275 Jacksonville, Florida 32202

The Recipient's notice information is as above-written in the preamble.

10. The Recipient shall not assign any rights or duties under this Agreement to any other party without the prior written permission of the City. If the Recipient attempts to assign any rights or duties without securing prior written permission, this Agreement shall be void and the Recipient shall remit to the City all payments made pursuant to this Agreement for the entire term of the Agreement within five days from demand.
11. Recipient including its employees, agents, shall hold harmless, indemnify, and defend the City, its directors, members, officials officers, employees, representatives, and agents against any claim, action, loss, damage, injury liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, arising out of or incidental to the Recipient's, its employees', agents performance or lack of performance under this Agreement. Should the City, as a result of the Recipient's performance or lack thereof, be required to reimburse any sums to any Recipient, federal or state, contributing funds to this project, or should the City be required to expend City Funds to complete or correct performance of the Recipient under this Agreement, the Recipient will immediately refund and reimburse the City for all sums so expended. For the purpose of this indemnification, the term "City" shall mean the City of Jacksonville as a Florida municipal corporation and shall include its elected officials, its members, officers, employees, agents, and representatives. The Recipient shall provide

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proof of insurance in a manner and to the limits of coverage prescribed by the City's Office of Risk Management and shall furnish a certificate of insurance or a letter of self-insurance to the City.

12. In case of a breach of this agreement other than one that endangers the life or health of a person or otherwise will create imminent harm, in the opinion of City, Farm Share will have 30 days' after notice from City to cure the defect. If the defect is not timely cured, City will have all of its remedies at law and in equity to enforce this agreement or collect its damages arising from the breach by Farm Share of this agreement.

13. As required by Section 126.306, Ordinance Code, the Recipient warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Recipient, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual for firm, other than a bona fide employee working solely for the Recipient, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

14. In its performance of this Agreement, the Recipient must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances (hereinafter collectively referred to as the "Laws"), with respect to the services, as such Laws exist and may be amended from time to time. Such Laws shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Sunshine Law).

15. The Recipient represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement for the Project. The Recipient agrees that, on written request, they will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Community Relations Commission, or successor agency or

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commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Agreement for the Project; *provided however*, that the Recipient shall not be required to produce, for inspection, records covering periods of time more than 1 year prior to the day and year first above written. The Recipient agrees that, if any of the Services to be provided pursuant to this Agreement for the Project are to be performed by a subcontractor, the provisions of this Section 15 shall be incorporated into and become a part of the subcontract.

16. Time is of the essence in the performance by any party of its obligations hereunder. If any date of significance hereunder falls upon a Saturday, Sunday, or legal holiday, such date shall be deemed moved forward to the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be considered business days.
17. The failure or delay by either party in asserting any of its rights or remedies as to any default hereunder shall not constitute a waiver of such default or any other default or of related rights or remedies. If any provision of this agreement is determined to be invalid, and the invalid provision is not a material part of this agreement, in the opinion of the City, the invalidity of the provision shall not impair the operation of or have any other effect on the remaining provisions of this Agreement.
18. This Agreement represents the entire agreement between the parties with respect to its subject matter. No statement, understanding, writing, course of action, or course of conduct by the parties or their authorized representatives is binding unless contained in this Agreement. This Agreement may be amended only by written amendment signed by the authorized representatives of the parties.

Agreed the day and year first above written.

FARM SHARE, INC., a Florida not for profit
corporation

By _____
As _____

Signature of City Follows

ATTEST:

CITY OF JACKSONVILLE, a
A consolidated government under the laws of
the State of Florida

By: _____

As Corporation Secretary

By: _____
_____ as Mayor

Form Approved:

Office of General Counsel

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Exhibit A

Description of Sublease

That Sublease between Heartside USA, LLC, as Sublandlord, and Farm Share, Inc., as Subtenant, to be dated around the effective date of Ordinance 2019-_____ for approximately 38,922 square feet of warehouse space located at 1460 Vantage Way, Suite 100, Jacksonville, Florida 32218

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**Exhibit B
Budget**

Farm Share Relocation Expense Budget (Major Expenses)

	One Time Expense	Monthly	Total Annual
Lease Payments		\$ 19,947.53	\$239,370.36
Cooler/Freezers	\$70,200		
Electric Installation (Estimate)	\$15,000		
IT Setup/Move (Estimate)	\$8,000		
Total Relocation Expenses			\$332,570.36

* Budget reflects major expenses presently known, but does not include miscellaneous expenses or those expenses that may be needed but have not yet been identified.