

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

This Funding Agreement (this "Agreement") is made this ___ day of _____, 2019 (the "Effective Date"), between 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").

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 (the "Funds") 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 and some tenant build-out.
- C. This Agreement is authorized by City Ordinance 2019-558-E (the "Ordinance").

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

- 1. The recitals above are true and correct and incorporated into this Agreement by this reference.
- 2. The term of this Agreement is from the Effective Date through September 30, 2020.
- 3. FARM SHARE is not an employee or agent of the City by virtue of this Agreement or otherwise.
- 4. The Ordinance appropriated Two Hundred Forty-Seven Thousand Three Hundred Eighty-Nine and 95/100 Dollars (\$247,389.95) to this Agreement, which amount is the maximum indebtedness of the City pursuant to this Agreement. The Funds are 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") 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 subject to the provisions of Parts 1 through 5, inclusive, Chapter 118, Jacksonville Ordinance Code, for the provisions of which 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:
 - (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 Farm Share 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 Agreement or any other agreement executed by the recipient with the City, 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 Farm Share by the Council Auditor's Office as the Council Auditor may require.

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

(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 Farm Share. 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 Farm Share'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 Farm Share'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 City's 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.

(g) 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 and some tenant build-out as shown in the Budget with the First (1) draw due on the date of this Funding 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
City of Jacksonville
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. Farm Share shall indemnify the City as provided for in Exhibit C attached hereto and incorporated herein by this reference.
11. Farm Share shall at all times during the term of this Agreement procure and maintain at its sole expense during the life of this Agreement, insurance of the types and limits not less than amounts required by Exhibit D attached hereto and incorporated herein by this reference.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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).
17. 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 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 17 shall be incorporated into and become a part of the subcontract.
18. 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.
19. 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.
20. 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

**CITY OF JACKSONVILLE, a consolidated political
subdivision and municipal corporation existing under
the laws of the State of Florida**

ATTEST:

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, 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 2019-558-E for approximately 38,922 square feet of warehouse space located at 1460 Vantage Way, Suite 100, Jacksonville, Florida 32218

**Exhibit B
Budget**

**Exhibit B
Budget**

Farm Share Relocation Expense Budget (Major Expenses)

	One Time Expense	Monthly	Total Annual
Lease Payments		\$19,947.53	\$239,370.36
Electrical Installation (Estimate)	\$15,000		
IT/Setup Move (Estimate)	\$8,000		
Total Relocation Expenses			\$262,370.36

**Exhibit C
INDEMNIFICATION**

Farm Share shall hold harmless, indemnify, and defend the City of Jacksonville and City's members, officers, officials, employees and agents (collectively the "Indemnified Parties") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties' performance of the Agreement, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within 60 days, for the Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to Buyer, so that the Service or product is non-infringing.

If an Indemnifying Party exercises its rights under this Agreement, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

EXHIBIT D
INSURANCE REQUIREMENTS

Without limiting its liability under this Agreement, Farm Share shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Farm Share shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation	Florida Statutory Coverage
Employer's Liability	\$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease

This insurance shall cover the Farm Share (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 50,000	Fire Damage
	\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability	\$1,000,000	Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement)		

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent

manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability \$1,000,000 per Claim and Aggregate

Any entity hired to perform professional services as a part of this contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a three year reporting option beyond the annual expiration date of the policy.

Sexual Molestation \$1,000,000 Per Claim
\$2,000,000 Aggregate

Sexual Molestation Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement. If provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

Pollution Liability \$1,000,000 per Loss
\$2,000,000 Annual Aggregate

Any entity hired to perform services as part of this contract for environmental or pollution related concerns shall maintain Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

Pollution Legal Liability \$1,000,000 per Loss
\$2,000,000 Aggregate

Any entity hired to perform services as a part of this contract that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this contract.

Additional Insurance Provisions

- A. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2026, Automobile Liability CA2048.
- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.

- C. Farm Share's Insurance Primary. The insurance provided by the Farm Share shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Farm Share. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- E. Farm Share's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Farm Share or its Subcontractors, employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- F. Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by Farm Share shall relieve Farm Share of Farm Share's full responsibility to provide insurance as required under this Agreement.
- G. Certificates of Insurance. Farm Share shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. The Farm Share shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Farm Share, as applicable, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of the Farm Share under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, Farm Share shall present this Agreement and **Exhibit C & D** to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Agreement, and (2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Farm Share.