

## AGREEMENT FOR DONATION OF PROPERTY

JCM FARMING, INC., A CALIFORNIA CORPORATION, EQUITY AG FINANCIAL, INC., A CALIFORNIA CORPORATION, AND JOHN C. MARRELLI, TRUSTEE, THE JOHN C. MARRELLI REVOCABLE TRUST, DATED MAY 13, 2005, (collectively, Donor) hereby offers to donate to the CITY OF FRESNO, a municipal corporation (City), the hereinafter described property on the following terms and conditions:

1. The real property which is the subject of this Agreement is situated in the City of Fresno, County of Fresno, State of California and shall be referred to as the "Donated Property," located at 770 East Shaw Avenue, Fresno, California (APN 418-091-12) which is more particularly described on Exhibit "A" and by reference made a part hereof.

2. The purchase price for the Donated Property shall be the sum of ZERO DOLLARS as the property is being donated by the Donor. In return the City agrees to use Donated Property for the creation of a public pocket park. If due to changed circumstances it is impracticable to carry out the above purpose, the Donated Property will be used for similar purposes that shall benefit the public.

3. It is agreed and confirmed by the City and Donor that, notwithstanding other provisions of this Agreement, the right of possession and use of the Donated Property by the City, including the right to remove and dispose of improvements on the Donated Property, shall commence upon full execution of this Agreement.

4. Donor represents and warrants that it has the authority to make the offer herein made and that it holds fee title and can convey the Donated Property free and clear of all liens, encumbrances, and restrictions of record.

5. The donation of property shall be completed with the City, through an internal escrow, after approval by the Fresno City Council as follows:

a. Donor shall deliver to the City a fully executed and acknowledged deed to the Donated Property.

b. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City.

c. It is understood that Donor shall be responsible for the payment of all costs to clear title, taxes, penalties, redemptions, and costs allocable to the Donated Property. It is further Donor's responsibility to apply to the County Tax Collector for any refund or decrease in taxes which may be granted.

6. Miscellaneous Provisions:

a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

b. Governing Law and Venue. This Agreement shall be governed

by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.

c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.

e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.

h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.

j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Sellers.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

JCM FARMING, INC., A CALIFORNIA CORPORATION

By: \_\_\_\_\_  
Scott L. Mozier, PE Date  
Public Works Director

By: \_\_\_\_\_ Date  
Title:

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

EQUITY AG FINANCIAL, INC., A CALIFORNIA CORPORATION

By: \_\_\_\_\_  
Tracy N. Parvanian Date  
Senior Deputy City Attorney

By: \_\_\_\_\_ Date  
Title:

ATTEST:  
TODD STERMER, CMC  
City Clerk

JOHN C. MARRELLI, TRUSTEE OF THE  
JOHN C. MARRELLI REVOCABLE  
TRUST, DATED MAY 13, 2005

By: \_\_\_\_\_  
Deputy Date

By: \_\_\_\_\_  
John C. Marrelli, Trustee Date

REVIEWED BY:

By: \_\_\_\_\_  
Name: Date

CITY:  
City of Fresno  
Attention: Scott L. Mozier, PE  
Public Works Director  
2600 Fresno Street  
Fresno, CA 93721  
Phone: (559) 621-8650

DONOR:  
Attention: John C. Marrelli, Trustee  
3160 Lionshead Ave., Ste 1  
Carlsbad, CA 92010

- Attachments:  
1. Exhibit A – Legal Descriptions

EXHIBIT A  
LEGAL DESCRIPTIONS

EXHIBIT "A"

APN 418-091-12 (portion)  
Grant Deed

That portion of Parcel "C" of Parcel Map No. 77-22, according to the map thereof recorded in Book 24 of Parcel Maps, at Page 75, Fresno County Records, lying in Southeast quarter of Section 10, Township 13 South, Range 20 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, more particularly described as follows:

**BEGINNING** at the Northwest corner of said Parcel "C"; thence South 89°46'01" East, on the northerly line of said Parcel "C", a distance of 352.73 feet to the beginning of a tangent curve concave northwesterly, having a radius of 30.00 feet; thence northeasterly continuing on said northerly line, on said curve, through a central angle of 89°37'34", an arc length of 46.93 feet; thence North 0°36'27" East, continuing on said northerly line, a distance of 0.20 feet; thence South 89°46'01" East, continuing on said northerly line, a distance of 25.10 feet; thence South 0°09'54" West, leaving said northerly line, a distance of 58.39 feet; thence North 89°25'06" West, a distance of 21.87 feet; thence South 1°21'38" West, a distance of 6.70 feet; thence North 89°41'05" West, a distance of 39.61 feet; thence North 0°04'10" West, a distance of 6.61 feet; thence North 89°45'45" West, a distance of 30.87 feet; thence South 0°04'10" East, a distance of 6.61 feet; thence North 89°45'15" West, a distance of 315.67 feet to the easterly line of said Parcel "C"; thence North 0°37'35" East, on said easterly line, a distance of 34.82 feet to the **POINT OF BEGINNING**.

Containing an area of 14,825 feet, more or less.

