

AGREEMENT FOR PROPERTY ACQUISITION

This Agreement for Property Acquisition is made this ___ day of May, 2021 by and between THE CITY OF NORMAN, OKLAHOMA, a municipal corporation (“City”), the HISTORIC BERRY FARMS, LLC (“HBF”), which are collectively herein referred to as “Parties”.

WITNESSETH:

WHEREAS, the City, by adoption of Resolution No. R-1112-60 on November 22, 2011, selected a roadway improvement project wholly located in the city limits of the City of Norman, Oklahoma and described as follows: (1) Widening and reconstruction of Lindsey Street, from 24th Avenue SW to Berry Road, (2) Drainage Improvements; and (3) Utility Relocations (collectively “the Lindsey Street Project”); and

WHEREAS, on August 28, 2012, the citizens of Norman, Oklahoma approved a \$42.5 million bond project that includes eight major transportation and storm water projects, and included funding to construct the Lindsey Street Project; and

WHEREAS, HBF owns the property located at 1300 W. Lindsey Street, Norman, Oklahoma 73069, the “Subject Property”; and

WHEREAS, the Lindsey Street Project necessitated the acquisition of an interest in portions of the Subject Property for Sidewalk Easement, Temporary Construction Easement, and Temporary Driveway Easement (collectively the “ROW”) from HBF; and

WHEREAS, the acquisition of the ROW for the Lindsey Street Project is necessary for public convenience and use; and

WHEREAS, the City has endeavored to purchase and acquire ROW from HBF and offered to pay HBF the fair, reasonable and just market value of the ROW based on independent review of the values of said ROW; and

WHEREAS, the City, by adoption of Resolution No. R-1415-104, authorized the City Attorney to institute eminent domain proceedings for condemnation of the ROW for a public purpose; and

WHEREAS, the City was unable to acquire the ROW from HBF and filed the following eminent domain case for condemnation in the Cleveland County District Court: *City of Norman vs. Historic Berry Farms, LLC (CV-2015-674)* (“Eminent Domain Action”); and

WHEREAS, the Parties to the litigation initiated by the City to acquire the ROW desire to resolve said litigation under the provisions of this settlement agreement that will culminate in the filing of a Dismissal with Prejudice of the case now pending in the Cleveland County District Court.

Property Acquisition Agreement
HBF / City of Norman
Lindsey Street Project

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which are hereby acknowledged, and as reflected in the attached exhibits, the parties hereby agree as follows:

I. Transfer of Property and Other Actions.

A. Property Owned by HISTORIC BERRY FARMS, LLC

1. HISTORIC BERRY FARMS, LLC agrees to execute a separate easement retroactively effective to July 28, 2015 (the date upon which the City had deposited all funds due in the Eminent Domain Action with the Court), in favor of the City for the property identified in Exhibits A. These easement reflects the revisions to the left-turn lane and pocket in order to minimize impacts to HBF's property. A copy of the easement is attached as Exhibit B.
- B. Timing for the Transfer of Property.** The signed easement as described in this section shall be delivered to the City contemporaneously with and expressly conditioned upon the City's approval of this Agreement. The City may not file the easement of record until it has delivered the Compensation set forth in Paragraph II of this Agreement to HISTORIC BERRY FARMS, LLC.
- C. The City acknowledges and agrees that the Transfer of Property is in an AS-IS, WHERE-IS, WITH ALL FAULTS condition and the seller makes no warranties express or implied about the condition of the property. In addition, the City agrees that the Transfer of Property is in lieu of condemnation and therefore the seller may treat the transaction as necessary for a 1031 or 1033 tax free exchange, with the seller allocating the payments as the seller so chooses.**

II. Cooperation by HISTORIC BERRY FARMS, LLC

- A. HISTORIC BERRY FARMS, LLC shall cooperate as much as is reasonably necessary with the City and necessary third parties in order for the City to obtain permissions from the Court and/or the Court Clerk of the Eminent Domain Action for the City to withdraw the funds deposited with the Court in the Eminent Domain Action.**
- B. HISTORIC BERRY FARMS, LLC shall cooperate as much as is reasonably necessary with the City and necessary third parties in order for the City to obtain permissions from the Bank of Western Oklahoma for the City to collect the funds identified in Paragraph III(A) of this Agreement.**

III. Compensation.

- A. Compensation for HISTORIC BERRY FARMS, LLC
 - 1. The total compensation for the acquisition of property described in Exhibit A is \$19,500.
- B. Delivery of Compensation. The Payment set forth in Paragraph 1(A) shall be delivered to HISTORIC BERRY FARMS, LLC within five (5) business days of the completion of all of following:
 - 1. Approval of this Agreement and the easement described in Paragraph I by the City Council of the City of Norman;
 - 2. Notification to the City from the Bank of Western Oklahoma that the funds identified in Paragraph III(A) of this Agreement, and any accrued interest, are available for immediate disbursement to the City; and
 - 3. Notification or other assurances from the Court and/or Court Clerk, as necessary, confirming that the funds deposited by the City in the Eminent Domain Action are available for immediate disbursement to the City.
- C. Disbursement of Funds to City. Upon delivery of Compensation to HISTORIC BERRY FARMS, LLC, the City may immediately take possession of the funds identified in Paragraphs II(B)(2)-(3) above.

IV. Other Items.

- A. In September 2002, accompanying their final plat, Historic Berry Farms submitted a certificate of deposit in the amount of \$13,574.00 in order to defer the construction of Lindsey Street. The Parties recognize that those funds will now be applied to the Lindsey Street Improvement Project. HBF agrees not to seek a refund of those funds as a condition of the proposed Settlement.
- B. Dismissal of Pending Litigation: The Parties agree that upon approval of this Agreement by the Parties and execution and delivery to the City of the easements by HBF, the Parties will submit to the District Court a Joint Journal Entry of Dismissal with Prejudice dismissing all claims and counter-claims alleged by the Parties.

Property Acquisition Agreement
HBF / City of Norman
Lindsey Street Project

- C. Entire Agreement: All matters contained in this Agreement have been negotiated and agreed upon as stated herein. The terms and conditions in this Agreement represent the full and complete understanding between the Parties and shall supersede any other documents or conversations to the contrary.

- D. Execution in Counterparts. This Agreement may be executed in counterparts and each counterpart considered an original.

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Property Acquisition Agreement
HBF / City of Norman
Lindsey Street Project

IN WITNESS WHEREOF, THE CITY OF NORMAN, OKLAHOMA and HISTORIC BERRY FARMS, LLC, as Parties to this Agreement, have caused this Agreement to be duly executed and delivered as of the date first above written.

THE CITY OF NORMAN, OKLAHOMA

By: _____
Name: Brea Clark
Title: Mayor

By: _____
Name: Ellen Usry
Title: Deputy City Clerk
(SEAL)

ATTEST:

Name: Ellen Usry
Title: Deputy City Clerk

Reviewed and approved as to form and legality on this 11 day of May, 2021:


Office of the City Attorney

HISTORIC BERRY FARMS, LLC


Terry L. Stowers, Manager

Property Acquisition Agreement
HBF / City of Norman
Lindsey Street Project

Exhibit A
PERMANENT SIDEWALK EASEMENT

Parcel 65.3 –

A strip of land being the North 5.00 feet of the west 80.00 feet of Lot 1, Block 1, of Historic Berry Farms Addition to the City of Norman in Section 1, T8N, R3W in Cleveland County, Oklahoma, according to the Plat recorded in Book 19, Page 135.

Containing 400 square feet or 0.0092 acres, more or less.

Property Acquisition Agreement
HBF / City of Norman
Lindsey Street Project

Exhibit B

SIDEWALK EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

29293(04) Parcel No. 65.3

THAT, Historic Berry Farms, L.L.C., in consideration of the sum of One Dollar (\$1.00), receipt of which is hereby acknowledged, and for and upon other good and valuable considerations, does hereby grant, bargain, sell, and convey unto the City of Norman, a municipal corporation, a Perpetual Sidewalk Easement and right-of-way over, across, and under the following described real estate and premises situated in the City of Norman, Cleveland County, Oklahoma, to wit:

A strip of land being the North 5.00 feet of the west 80.00 feet of Lot 1, Block 1, of Historic Berry Farms Addition to the City of Norman in Section 1, T8N, R3W in Cleveland County, Oklahoma, according to the Plat recorded in Book 19, Page 135.

Containing 400 square feet or 0.0092 acres, more or less.

with the right of ingress and egress to and from the same, for the purpose of surveying, laying out, constructing, maintaining, and operating a public utility(ies) and/or roadway(s) as indicated below:

Sidewalk

To have and to hold the same unto the said City of Norman, its successors, and assigns, until official completion of construction of the proposed project pertinent to the above described parcel.

SIGNED and delivered this ____ day of _____, 20__.

BY: _____ BY: _____

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF OKLAHOMA, COUNTY OF CLEVELAND, SS:

Before me, the undersigned, a Notary Public in and for said County and State, on this ____ day of _____, 20__, personally appeared _____ to me known to be the identical person(s) who executed the foregoing grant of easement and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.

Notary Public

My Commission Expires: _____

Commission No: _____

Approved as to form and legality this ____ day of _____, 20__.

City Attorney

Approved and accepted by the Council of the City of Norman, this ____ day of _____, 20__.

Mayor

ATTEST:

City Clerk

SEAL: