

Real Estate Gift Agreement

This Real Estate Gift Agreement is dated _____, 2023 and is between the Earlham Community School District, an Iowa school corporation (the "District"), and the City of Earlham, Iowa, an Iowa municipal corporation (the "City").

The parties agree as follows:

1. **Property.** The District agrees to convey, and the City agrees to accept, fee simple title to the water tower property located at the corner of NW 6th Street and NW Elm Avenue in Earlham, Iowa, in the northwest corner of Madison County Tax Parcel No. 850000600015000 as shown on the depiction attached as **Exhibit A** (the "Property") subject to (i) zoning restrictions, (ii) easements of record, and (iii) restrictive covenants of record. The parties agree that the legal description of the Property will be determined by a survey performed under section 10 of this agreement.

2. **Consideration.** No cash consideration shall be paid by the City to the District for the Property. The District is gifting the Property to the City pursuant to Iowa Code § 297.22(2)(a).

3. **Real Estate Taxes.** No real estate taxes have accrued against the Property while owned by the District. Therefore, there shall be no pro-ration of real estate taxes at closing. The City shall pay all real estate taxes that accrue against the Property, if any.

4. **Special Assessments.** The City shall be responsible for all special assessments against the Property.

5. **Closing.** Closing shall be on a date acceptable to both parties on or before November 17, 2023. The City will be entitled to possession of the Property at closing. This transaction shall be considered closed upon the delivery to the City of a duly executed deed for the Property.

6. **District Closing Costs.** The District will pay only the District's attorneys' fees in connection with this transaction.

7. **City Closing Costs.** The City will pay all other costs associated with this transaction not paid by the District under paragraph 6 of this agreement, including: (i) the City's attorneys' fees; (ii) the cost to prepare and record the survey of the Property; (iii) the cost to create an abstract of title; (iv) transfer tax, if any; and (v) all recording fees.

8. **Fixtures.** Included with the Property shall be all fixtures that integrally belong to, are specifically adapted to, or are a part of the real estate, whether attached or detached.

9. **Condition of Property.** The City acknowledges and agrees that the City is currently in sole possession and control of the Property. The City acknowledges and agrees that the District is not making and has not at any time made any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to, any warranties or representations as to habitability, merchantability, fitness for a particular purpose, title, leasing, zoning, tax consequences, latent or patent physical condition, utilities, operating history or projections, valuation, governmental approvals, or the compliance of the Property with laws. The City represents to the District that the City has conducted, or will conduct prior to Closing, any investigations of the Property, including its physical and environmental condition, as the City deems necessary to satisfy itself as to the condition of the Property. The City acknowledges and agrees that, at the Closing, the City shall accept the Property "as is, where is, with all faults." At the Closing, the City shall be deemed to have released the District from any claims, known or unknown, which the City might have asserted or alleged against the District arising out of any latent or patent physical condition of the Property, violations of any applicable laws, and any other matters regarding the Property. The City acknowledges that the nature of this transaction as a gift was made in contemplation of the Property is being sold subject to the provisions of this section 9.

10. **Survey.** Within 90 calendar days of the date of this agreement, the City shall have the Property surveyed and properly subdivided as a separate parcel. The survey is subject to the approval of the District and will supply the legal description used to create the abstract and prepare the conveyance deed.

11. **Abstract of Title.** Upon completion and recording of the survey described in paragraph 10, the City may, at its request and expense, obtain an abstract of title to the Property continued through the date of recording of the survey and deliver it to the City's counsel for examination. The abstract shall show merchantable title in the District in conformity with this agreement, Iowa law and Title Standards of the Iowa State Bar Association. If title is not marketable, or is not easily corrected to be marketable, the City may terminate this agreement by written notice to the District. The abstract shall become the personal property of the City following closing.

12. **Conveyance Documents.** At Closing, the District shall convey the Property to the City by deed without warranty.

13. **District's Reserved Right of First Offer.** At Closing, the District may reserve a right of first offer to acquire the Property back from the City if the City decides to sell it in the future. This reserved right of first offer will be memorialized in the deed between the parties that will be recorded at Closing. The reservation language will provide, at a minimum, that before the City may sell the Property, the City must first offer to transfer it to the District for no consideration. The City's offer to transfer the Property must remain open for a period of 60 days and must be made on other terms and conditions like the terms of this agreement.

14. **Remedies of the Parties.**

- a. If the District breaches, repudiates, or otherwise fails to timely perform this agreement, the City's sole and exclusive remedy shall be to terminate this agreement by providing written notice of termination to the District.
- b. If the City breaches, repudiates, or otherwise fails to timely perform this agreement, the District's remedy shall be to terminate this agreement by providing written notice of termination to the City and to recover the District's out of pocket expenses associated with this transaction from the City. The City shall pay the District's attorney's fees incurred in any action arising out of this transaction.
- c. The City acknowledges that the District would not agree to donate the Property to the City on the terms contained in this agreement without the remedies provisions included in this section 14.

15. **Notice.** For a notice under this agreement to be valid, it must be in writing and must be delivered either (i) in person, (ii) via certified mail to the address noted below, or (iii) via email if the receiving party consents to receiving notice via email. All notices shall be effective upon receipt.

To the City:
City of Earlham, Iowa
Attn: City Clerk
140 S. Chestnut Avenue
Earlham, IA 50072

To the District:
Earlham Community School District
Attn: Superintendent
535 N. Chestnut Avenue
Earlham, IA 50072

16. **Survival.** This agreement shall survive closing.

17. **Time of the Essence.** In the performance of each part of this agreement, time shall be of the essence.

18. **No Real Estate Agent or Broker.** Neither party has used the services of a real estate agent or broker in connection with this transaction. Each party shall hold the other party harmless from any claim by any real estate agent or broker for any commission arising from this transaction.

19. **Choice of Law.** All claims relating to this agreement shall be governed by the laws of the State of Iowa without regard to principles of conflicts of law.

20. **No Assignment.** Neither party may transfer to any other person (i) any discretion granted under this agreement, (ii) any right under this agreement, (iii) any remedy under this agreement, or (iv) any obligation imposed under this agreement.

21. **Entire Agreement.** This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral; between the parties.

22. **Modification.** No amendment of this agreement will be effective unless it is in writing and signed by both parties.

23. **Waiver.** No waiver under this agreement will be effective unless it is in writing and signed by the party granting the waiver.

24. **Severability.** The parties agree that if a dispute between the parties arises out of this agreement, they would want the court to interpret this agreement as follows:

- a. With respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision;
- b. If an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of this agreement will remain in effect;
- c. By holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and
- d. If modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

25. **Approval.** This agreement is not valid unless approved by the Board of Directors of the Earlham Community School District in accordance with Iowa Code § 297.22 and the City Council of the City of Earlham, Iowa.

26. **Counterparts.** This agreement may be executed in one or more counterparts. Taken together, these counterparts will constitute one agreement.

[The parties have signed this agreement on the following page]

The parties are signing this agreement as of the date stated in the introductory clause.

City Of Earlham, Iowa

Earlham Community School District

By: _____
Mayor

By: _____
Board President

By: _____
City Clerk

By: _____
Board Secretary

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Exhibit A

