

RESOLUTION NO. __
May 18, 2021

**A RESOLUTION TO SIGN A DONATION AGREEMENT WITH GALVAN
INITIATIVES FOUNDATION FOR 400 STATE STREET**

WHEREAS, the City of Hudson is a signatory to a settlement agreement with the Department of Justice requiring the City to make changes to City Hall to make it accessible in accordance with the Americans With Disabilities Act; and

WHEREAS, the City of Hudson has long recognized that the existing City Hall at 520 Warren Street is inadequate to meet the City's needs and the City has been weighing the option of making 520 Warren Street ADA accessible or finding a new location for City Hall that would be ADA accessible and allow for the consolidation of City offices; and

WHEREAS, the Galvan Initiatives Foundation (Galvan) is offering the City \$100,000 to study the feasibility of adapting the building located at 400 State Street for City Hall and if the City should decide such use is feasible, Galvan will donate 400 State Street to the City along with an additional \$1,400,000 for the renovation of the building as set forth in a draft donation agreement; and

WHEREAS, if the City accepts the donation agreement it will only be obligated to accept the \$100,000 for a feasibility study and will not have any obligation to complete the donation if it determines that accepting 400 State Street and the additional funds are not in the City's interest; and

WHEREAS, the City will only proceed with accepting 400 State Street if it is satisfied with the results of the study, considers public comment and the Common Council votes to accept the rest of the donation.

NOW, THEREFORE BE IT RESOLVED, that the Mayor is authorized to sign the Donation Agreement and accept the \$100,000 study funds and is not authorized to exercise the rest of the Donation Agreement concerning the acceptance of the building at 400 State Street and the additional renovation funds until explicitly authorized by the Common Council.

Introduced: _____

Seconded: _____

Approved: _____
Kamal Johnson, Mayor

Dated: _____

DRAFT

DONATION AGREEMENT

THIS DONATION AGREEMENT (this “Agreement”) is dated as of _____, 2021 (the “Effective Date”), between **GALVAN INITIATIVES FOUNDATION**, a charitable trust organized and existing under the laws of the State of New York with an address at 42 West 39th Street, 14th Floor, New York, New York 10018 (“Donor”) and **CITY OF HUDSON**, a municipal corporation organized and existing under the laws of the State of New York with an address at City Hall, 520 Warren Street, Hudson, New York 12534 (“Donee”). Donor and Donee may individually be referred to herein as a “Party” and collectively, as the “Parties.”

BACKGROUND

WHEREAS, Donor is the owner in fee simple of certain real property and the improvements located thereon, ± 0.39-acres in size, located at and commonly known as 400 State Street, City of Hudson, Columbia County, State of New York, identified as City of Hudson tax map no. 109.44-2-67 (the “Property”); and

WHEREAS, Donee desires to design, develop and construct a new city hall at the Property (the “Project”); and

WHEREAS, to facilitate Donee’s development and construction of the Project, Donor desires to donate for no consideration the Property, the plans and specifications and such other documents and studies relative to the condition of the Property listed in **Exhibit A** attached hereto and made a part hereof (the “Property Documents”), and an amount equal to One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) (the “Donated Funds” and together with the Property and Property Documents, hereinafter collectively referred to as the “Donated Property”); and

WHEREAS, Donee desires to accept the Donated Property from Donor, provided that Donee constructs, develops, operates and maintains the Property solely for the purposes of the Project; and

WHEREAS, Donor and Donee desire to enter into this Agreement to set forth the terms and conditions upon which Donor will donate and Donee will accept the Donated Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Donation Agreement; Contingencies.

a. In consideration of the mutual covenants and promises contained in this Agreement and in acknowledgement of the Parties' material reliance on this Agreement, Donor shall donate to Donee, and Donee shall accept the donation from Donor, subject to the terms, contingencies and conditions stated herein, any and all of Donor's right, title, and interest in and to the Donated Property.

2. Studies; Insurance; Indemnifications.

a. Studies.

i. Commencing upon the Effective Date and continuing through Closing, Donee shall have the right, at its sole cost and expense, to enter upon the Property and conduct Studies (as defined below) of the Property. For the purposes of this Agreement, "Studies" shall mean title examinations; surveys; architecture, financial, economic, environmental, engineering, and other tests, studies or reports, including Invasive Tests (as hereinafter defined), inspections, audits, investigations, reviews, and/or other similar studies or reports as determined by Donee in its sole and absolute discretion.

ii. Upon its determination of the suitability of the Property for the Project based upon the results of the Studies, in its sole and absolute discretion, on or before the Closing, Donee shall deliver notice to Donor of (i) its election to proceed with the transfer of the Donated Property; or (ii) its election to terminate this Agreement, whereupon the Parties shall be relieved of any further liability hereunder, except as expressly set forth herein.

b. Insurance; Indemnification.

i. Donee shall not enter, or permit its agents, professional consultants or contractors to enter, the Property except upon prior notice to Donor in each instance. Donee shall (1) promptly restore the Property to the condition it existed in immediately preceding the Studies and Donee's examination, (2) keep the Property free and clear of any mechanic's liens or materialmen's liens in connection with the Studies, and (3) at all times may be accompanied by a representative of Donor when at the Property, at Donor's election. Prior to the commencement of any Studies on the Property, Donee shall furnish Donor with evidence of liability insurance as required in this Section 2(b).

ii. Donee shall obtain Donor's consent for the performance of any Invasive Tests (as defined below) and said request for consent shall set forth (1) a reasonably detailed description of the nature of such Study and, if Donee desires to conduct any Invasive Tests, a description of the exact procedures Donee desires to perform, and (2) the identity of each consultant who shall be conducting such Study. The term "Invasive Tests" shall mean any physical inspection or testing pertaining to the Property other than mere visual examination, and shall include, without limitation, sampling of soils, other media, building materials or the like.

iii. Donee shall, and shall cause its agents, professional consultants and contractors to, exercise reasonable care at all times that Donee and/or such agents, professional consultants and contractors shall be present upon the Property and in the performance of all

Studies. Donor shall have the right, at Donor's expense, to have a representative of Donor accompany Donee or Donee's agents, professional consultants or contractors during any Study. Donee shall repair and restore any portion of the surface of the Property disturbed by Donee, its agents, professional consultants or contractors during the conduct of any of the Studies to the same condition as existed prior to such disturbance.

iv. Donee shall observe and comply with, and shall cause its agents, professional consultants and contractors, to observe and comply with, at Donee's expense, all applicable laws, rules and regulations, and will not engage in or permit such agents, professional consultants or contractors to engage in any activities which would violate the provisions of any permit or license pertaining to the Property of which Donee has received prior notice or of which Donee is aware.

v. Donee hereby indemnifies and shall hold Donor harmless from and against any and all loss, harm, damages, claims and/or causes of action associated with Donee or its agents performing any Studies. Furthermore, Donee agrees to maintain and to cause all of its representatives or agents conducting any Studies to maintain and have in effect workers' compensation insurance, with statutory limits of coverage, and commercial general liability insurance with (1) appropriate coverages, (2) waiver of subrogation, (3) limits of not less than Two Million and 00/100 (\$2,000,000.00) for personal injury, including bodily injury and death, and property damage (or such lesser reasonable amount for low risk vendors as is industry standard), and (4) for the vendors providing professional services; appropriate coverages of professional liability insurance (including pollution coverage) with limits of no less than One Million and 00/100 (\$1,000,000.00) per occurrence and Two Million and 00/100 (\$2,000,000.00) in the aggregate and contractor's pollution liability with limits of no less than Five Million and 00/100 (\$5,000,000.00) per occurrence and Five Million and 00/100 (\$5,000,000.00) in the aggregate. Such insurance shall be an "occurrence policy," covering claims that shall arise during the policy period no matter, covering claims whenever made, shall name Donor, its lenders and any Donor affiliates of which Donor has provided Donee written notice of the name as additional insured parties and shall be with companies, with deductibles and otherwise in form reasonably acceptable to Donor. Donee shall deliver to Donor prior to commencing any Studies evidence reasonably satisfactory to Donor that the insurance required hereunder is in full force and effect with respect to the activity. Furthermore, any coverage written on a "Claims-Made" basis shall be kept in force, either by renewal or the purchase of an extended reporting period, for a minimum period of one (1) year following the Closing or other termination of this Agreement.

vi. Donee shall deliver to Donor copies of all reports, plans and studies prepared by Donee's consultants in connection with the Studies.

vii. The indemnity and hold harmless provisions of this Section 2 shall survive the Closing or any termination of this Agreement. Notwithstanding any provision of this Agreement to the contrary, in addition to any other rights and remedies of Donor hereunder, Donor shall have the right to seek and collect damages for the breach of any of Donee's covenants, agreements and obligations under this Section 2.

3. Reimbursement of Pre-Development Costs. Subject to Donor's reasonable approval, Donee may submit to Donor for reimbursement any pre-development costs and expenses related to the Project incurred by the Donee from the Effective Date until the Closing Date, up to an amount equal to One Hundred Thousand and 00/100 Dollars (\$100,000.00). Donee shall furnish to Donor copies of any receipts or invoices for such pre-development costs or expenses which Donee wishes to have considered for reimbursement. Within a commercially reasonable time thereafter, Donor shall either approve or disapprove the reimbursement of such costs and remit reimbursement of such approved costs to Donee. In addition to the foregoing, Donee, at its election, may submit such pre-development costs and expenses to Donor for pre-approval prior to incurring such costs, which Donor shall approve or disapprove, in Donor's reasonable discretion, within a commercially reasonable time after receipt thereof.

4. Title.

a. Donor shall convey, and Donee shall accept, such title to the Property that any title insurance company which is otherwise authorized and licensed to do business in New York State (the "Title Company") would be willing to insure at regular rates, subject only to the Permitted Exceptions (as hereinafter defined).

b. "Permitted Exceptions" shall mean and include all of the following: (i) applicable zoning and building ordinances and land use regulations; (ii) the lien of taxes and assessments which are being transferred with the Property, if any, as well as those not yet due and payable, subject to any apportionments as provided for in this Agreement; (iii) any exclusions from coverage set forth in the jacket of any Owner's Policy of Title Insurance or any standard printed exceptions; (iv) any exceptions caused by Donee, its agents, representatives or employees; (v) such other exceptions as the Title Company shall commit to insure over, without any additional cost to Donee, whether such insurance is made available in consideration of payment, bonding, indemnity of Donor or otherwise; (vi) any state of facts that an accurate survey of the Property would show; (vii) easements, encumbrances, covenants and restrictions of record, including without limitation, utility, water and sewer easements; and (viii) any matters deemed to constitute Permitted Exceptions under Section 4(c) hereof, if any.

c. As soon as practicable after the Effective Date, Donee shall order from the Title Company a commitment to issue an owner's policy of title insurance with respect to the Property (the "Title Commitment"). Donee shall deliver copies of the Title Commitment, including copies of the exception documents referenced in the Title Commitment, to Donor promptly after receipt of such items by Donee. Donee shall be solely responsible for all costs associated with Title Commitment and any title insurance.

d. Unless Donee shall object in writing to any encumbrance set forth in the Title Commitment on or prior to the date which is thirty (30) days after receipt thereof, all such encumbrances, liens and restrictions shall be deemed to constitute additional Permitted Exceptions. Any exceptions which are timely objected to by Donee in writing and which are not otherwise herein described as Permitted Exceptions shall be herein collectively called the "Title Objections." If, after giving the Title Objection, Donee receives any amendment or update to the Title Commitment showing any title defects which Donee claims are not Permitted Exceptions, Donee

shall give written notice thereof to Donor promptly after the date Donee receives such evidence (unless an additional matter shown on such subsequent update first arises on the Closing Date, in which event notice of same may be given on the Closing Date and the Closing Date shall be extended day for day without need for additional action by either Party). Donor may elect (but shall not be obligated) to remove or cause to be removed, or insured over, at its expense, any Title Objections, and shall be entitled to a reasonable adjournment of the Closing for the purpose of such removal, which removal will be deemed effected by the issuance of title insurance eliminating or insuring against the effect of the Title Objections. Donor shall notify Donee in writing (“Donor’s Title Response”) within ten (10) business days after receipt of Donee’s notice of Title Objections whether Donor elects to remove, cause to be removed or be endorsed over, the Title Objections. If Donor is unable or elects not to remove, cause to be removed, or endorsed over, any Title Objections prior to the Closing, Donee may elect, as its sole and exclusive remedy to either (a) terminate this Agreement by giving written notice to Donor within five (5) Business Days after Donee’s receipt of Donor’s Title Response and, thereafter, the parties shall have no further rights or obligations hereunder except for those obligations which expressly survive the termination of this Agreement, or (b) waive such Title Objections, in which event such Title Objections shall be deemed additional “Permitted Exceptions” and the Closing shall occur as herein provided. If before the end of such five (5) business day period, Donee fails to give Donor such written notice, then Donor shall be deemed to have elected to waive such Title Objections and its right to terminate this Agreement pursuant to this Section.

5. Closing.

a. The closing of the transactions contemplated by this Agreement (the “Closing”) will take place on or about the date that Donee closes on the construction loan financing for the Project, or such other later date to which the Parties may extend the Closing (the “Closing Date”), but in no event shall the Closing Date occur after October 23, 2022, TIME BEING OF THE ESSENCE (the “TOE Date”). The Closing shall occur at the offices of Donee or such other place as the Parties may mutually agree. In the event the Closing does not occur on or prior to the TOE Date, then this Agreement shall automatically terminate without any further action necessary, whereupon the Parties shall be relieved of any further liability hereunder, except as expressly set forth herein.

b. At the Closing, Donor shall deliver to Donee the following:

i. Statutory form of Bargain and Sale Deed With Covenants Against Grantor’s Acts (the “Deed”), and all other related documents and instruments (including, without limitation, Forms TP-584 and RP-5217), all properly executed and in proper form for recording, conveying Donor’s interest in the Property to Donee;

ii. The Donated Funds by official bank check, good certified check or federal wire transfer of immediately available funds;

iii. Fully executed assignment agreement transferring ownership of the Property Documents to Donee;

iv. Exclusive possession of the Property, free of all persons or parties in possession; and

v. Any other documents reasonably required by Donee to effectuate the transactions contemplated hereunder.

6. Deed Restrictions. The Parties agree that the Deed shall contain such language necessary to restrict in perpetuity the use of the Property to that as the City of Hudson City Hall and other related public purposes only.

7. Recording and Filing Fees. Donee will pay all standard recording and filing fees incurred in connection with recording the Deed, and any and all transfer, gains, sales or documentary stamp taxes and other taxes due in connection with conveyance of the Donated Property.

8. Authority. Donor and Donee hereby represent and warrant to each other that they have full right, power and authority to execute this Agreement without obtaining any further consents or approvals from, or the taking of any other actions by any third parties, and this Agreement, when executed by Donor and Donee, will constitute the valid and binding agreement of the parties, enforceable against each other in accordance with its terms.

9. Condition of Donated Property; Release; Indemnity.

a. On or prior to the Closing Date, Donee acknowledges and agrees that it shall have been given a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Donee's choosing, including, without limitation:

i. All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements, and building codes;

ii. The physical condition and aspects of the Property, including, without limitation, the structure, the paving, the utilities, and all other physical and functional aspects of the Property, including, without limitation, an examination for the presence or absence of Hazardous Materials;

iii. Any easements and/or access rights affecting the Property;

iv. All other matters of material significance affecting the Property.

b. Donee has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of Donor or any of Donor's agents or representatives, and Donee acknowledges that no such representations have been made. Donor specifically disclaims, and neither it nor any other person is making, any representation, warranty or assurance whatsoever to Donee and no warranties or representations of any kind or character, either express or implied, are made by Donor or relied upon by Donee with respect to the status of title to or the

maintenance, repair, condition, environmental condition, design or marketability of the Property, or any portion thereof, including but not limited to (i) any implied or express warranty of merchantability, (ii) any implied or express warranty of fitness for a particular purpose, (iii) any rights of Donee under appropriate statutes to claim diminution of consideration, (iv) any claim by Donee for damages because of defects, whether known or unknown, with respect to the Improvements, (v) the financial condition or prospects of the Property, (vi) the quality, accuracy and content of any materials, reports or studies provided to Donee, and (vii) the compliance or lack thereof of the Property or the Improvements with governmental regulations, and Donee hereby waives any right to make any claim based on any of the foregoing, it being the express intention of Donor and Donee that, except as expressly set forth in this Agreement, the Property will be conveyed and transferred to Donee in its present condition and state of repair, "AS IS" and "WHERE IS", with all faults.

c. Donee, with Donee's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance and effect thereof. Donee acknowledges and agrees that the disclaimers and other agreements set forth in this Agreement are an integral part of this Agreement, and that Donor would not have agreed to donate the Property to Donee without the disclaimer and other agreements set forth in this Agreement.

d. Donor is hereby released from all responsibility and liability to Donee regarding the condition (including its physical condition and its compliance with applicable laws, and the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines), valuation, saleability or utility of the Property, or its suitability for any purpose whatsoever. For the purposes of this Agreement, "Hazardous Materials" means any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as such terms are used in any applicable laws (excluding solvents, cleaning fluids and other lawful substances used in the ordinary operation and maintenance of the Property, to the extent in closed containers).

e. Donee hereby presently, unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel acceptable to Donor and release and save harmless Donor, its members, officers, employees, affiliated companies, agents, successors and assigns (the "Indemnified Parties") for, from and against any and all damages, losses, liabilities, obligations, claims, litigation, demands, defenses, judgments, suits, proceedings, fines, penalties, costs, disbursements and expenses (including without limitation, attorneys' and experts' fees and expenses, loss of use, cleanup costs, waste disposal costs and all costs, expenses, penalties and fines), of any kind or nature whatsoever which may at any time be imposed upon, incurred by, asserted, or awarded against any of the Indemnified Parties, whether known or unknown, whether involving the negligence of Donor, that arise from any violation or alleged violation of applicable environmental laws, environmental problem, or other environmental matter described herein or that in any way relates to or results from operations in connection with the Property, including without limitation, releases or threatened releases of Hazardous Materials from the Property or

from equipment, containers, tanks or vehicles used in connection with the Property. Donee does further agree and covenant that none of the Indemnified Parties shall assume any liability or obligation for loss, damage, fines, penalties, claims or duty to investigate, remove, remediate, or dispose of Hazardous Materials in any way related to or resulting from the Property or operations in connection therewith, including, without limitation to the extent the same is incurred after the transfer of the Property to Donee. Donee shall give Donor prompt written notice of any claims threatened or made or suit instituted against it that could result in a claim for defense and indemnity hereunder.

f. Notwithstanding any other provisions contained in this Agreement, or in any document or instrument delivered in connection with the transfer contemplated hereby, to the contrary (including, without limitation, any language providing for survival of certain provisions hereof or thereof), Donee acknowledges and agrees that Donor shall, upon consummation of Closing, be deemed to have satisfied and fulfilled all of Donor's covenants, indemnities, and obligations contained in this Agreement and the documents delivered pursuant hereto, and Donor shall have no further liability to Donee or otherwise with respect to this Agreement, the transfers contemplated hereby, or any documents delivered pursuant hereto.

g. The provisions of this Article 9 shall survive Closing, or, if the Closing is not consummated, any termination of this Agreement.

10. Operation of Property to Closing. From the Effective Date until the Closing, or the termination of this Agreement, whichever shall first occur: (a) Donor will continue to do routine maintenance to the Property in the same manner and with the same frequency as such maintenance is presently done; (b) Donor shall not place any mortgage or any other encumbrance on the Property; and (c) Donor shall not enter into any new agreement affecting the Property that will be binding on the Donee following the Closing, without Donee's consent, including, but not limited to, any lease or license agreement.

11. Successors and Assigns; Construction; Assignment. This Agreement shall be (a) binding upon the Parties and upon its legal representatives, successors and assigns, and (b) construed, interpreted and enforced in accordance with the laws of the State of New York, without regard to the law of any other jurisdiction. Donee may not assign its rights and obligations under this Agreement without the prior written consent of Donor. Donor may not assign this Agreement, negotiate with another party regarding the transfer of the Donated Property or lease or sublet any portion of the Property without the express written consent of Donee.

12. Brokers. Donor and Donee represent and warrant to each other that they have not dealt with any brokers in connection with this transaction. Each party will indemnify defend and hold the other party harmless from any breach of the foregoing.

13. Captions. Any and all captions and headings used in this Agreement are for convenience of reference only and shall not be deemed or construed to modify or interpret the terms and conditions of this Agreement.

14. Modification; Waiver. This Agreement, including the recitals first set forth above and any and all Exhibits attached hereto, all of which are expressly incorporated herein and deemed a part hereof, constitutes the entire agreement and understanding, and supersedes any and all negotiations or agreements, written or oral, among the parties with respect to the Donated Property. This Agreement may only be modified or amended by a written instrument duly executed by the parties. No waiver by a party of any term or provision hereof, or any default or breach hereunder, shall be deemed to extend to any prior or subsequent circumstances, including any prior or subsequent default, misrepresentation or breach hereunder. No failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. In the absence of any standard for the exercise of a party's discretion, the relevant determination may be made in such party's sole and absolute discretion.

15. Counterparts; Electronic Signature. This Agreement may be executed in counterparts and by facsimile or electronic signature, each of which will be deemed an original and all of which will be considered one instrument. This Agreement shall only become effective and legally binding upon full execution and delivery hereof by both Donor and Donee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

DONOR:

GALVAN INITIATIVES FOUNDATION

By: Dan Kent
Its: Authorized Representative

DONEE:

CITY OF HUDSON

By: Kamal Johnson
Its: Mayor

EXHIBIT A

LIST OF PROPERTY DOCUMENTS

[to be inserted]