

CITY CLERK
ORIGINAL

C-8950
05/27/2014

LICENSE AND USE AGREEMENT

This License and Use Agreement ("License") is executed to be effective this 27 day of May, 2014 between the City of Glendale, an Arizona municipal corporation ("City"), and Heart for the City, an Arizona non-profit corporation ("Heart for the City" or "Licensee") for the use of City-owned property for a community garden, as provided herein. The City and Heart for the City are sometimes collectively referred to in this License as the "Parties," either of which is sometimes individually referred to as "Party."

RECITALS

- A. The City owns approximately one-half acre of vacant land located adjacent to Fire Station No. 152 at 6850 West Bethany Home Road, Glendale, Arizona as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property").
- B. The City currently is responsible for the maintenance of the Property, including weed and dust control, and will be relieved of this obligation under the License.
- C. Heart for the City is a not-for-profit corporation that, among other things, strives to improve the physical and emotional well-being of children and poor families of inner city communities.
- D. A garden tended by a community's residents becomes a source of physical activity, civic pride for participants, and can foster relationships to create a stronger neighborhood.
- E. The City and Heart for the City desire for Heart for the City to use the Property as a community garden for the production of vegetable and fruit crops and other plants and crops, and as an educational resource regarding food production, gardening, and nutrition.
- F. Heart for the City intends to improve the Property by establishing water service and constructing other improvements, such as installing fencing and a shaded structure.
- G. The City finds that there is a public purpose for any City expenditure authorized by this Agreement and that the benefit to the City resulting from the Heart for the City's use of and improvements to the Property in accordance with the terms of this License are at least substantially equal to the City's expenditure.

AGREEMENT

NOW THEREFORE, based on the foregoing recitals, which are incorporated here as the intent of the Parties in entering into this License, and in consideration of the terms of this License, the Parties hereby agree as follows:

1. **Location and Use Fee.** The City hereby licenses to Licensee the Property, consisting of approximately 24,295 square feet (0.5577 acres) of land as depicted and legally described in Exhibit A, attached and incorporated herein by this reference, for the term of this License for payment of a Use Fee equal to Ten and No/100 Dollars (\$10.00) per year

payable within 30 days of the Effective Date and annually thereafter, subject to the Licensee's performance of its obligations under this License.

2. **Effective Date & Duration.** The License commences upon the Effective Date and continues for a three-year initial period ("Term" or "License Term"). The City may, at its option and with the approval of Licensee, extend the term of this License an additional two years, renewable on an annual basis. Licensee will be notified in writing by the City of its intent to extend the License period at least 30 calendar days prior to the expiration of the original or any renewal License period. There are no automatic renewals of this License.
3. **No Warranties by City.** City licenses the Property to Licensee in its current condition, "as is," with no representation or warranty by the City as to the quality, condition or suitability of use, and without any liability or obligation on the part of the City of making any alterations, improvements, or repairs of any kind on or about the Property.
4. **Use Restrictions.** Licensee shall, in consultation and coordination with the City, use the Property as follows:
 - 4.1. Licensee is granted the right during any Term to occupy and use the Property for a community garden to be operated and maintained in accordance with the terms of this License and the Community Garden Standards, as stated in Section 4.5 herein and for no other purposes; provided that Licensee shall, at its sole cost and expense, procure any and all necessary permits, certificates, licenses, and other authorizations required for said purposes.
 - 4.2. Licensee hereby covenants and agrees that it shall not use or occupy the Property or permit the Property to be used contrary to any federal, state, county, or local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by the City; nor permit, create, or tolerate any public or private nuisance upon said Property.
 - 4.3. Licensee shall not use or permit others to use the Property for any purposes other than as expressly stated herein.
 - 4.4. Licensee shall not, nor cause to be, nor allow any other person to deposit, store, dispose of, place or otherwise locate or allow to be located on, under, or within the Property, any hazardous substances, including Lead, Cadmium, Arsenic and Poly Aromatic Hydrocarbons and as the term is defined and/or regulated under any federal, state or local law, rule, regulation or order. In the event any such substances are found on, under or within the Property, the Licensee will be solely responsible for any and all liabilities from such substances on, under, or within the Property, including the removal and/or remediation of such substances. Licensee hereby agrees to fully indemnify City for any and all violations of this provision to the full extent of the law.
 - 4.5. Licensee shall comply with the following Community Garden Standards in the use of the Property:
 - a. Licensee may only place improvements and fixtures, including fencing, signage, gazebo, water meter(s), lighting, benches, accessory buildings, and the like, on the Property upon making the proper application and

obtaining City approval, including but not limited to, pursuant to the City's Zoning Ordinance and Building Codes (2012 International Building Code, 2012 International Plumbing Code, 2011 National Electrical Code, 2009 International Fire Code, 2010 Americans with Disabilities Act Standards for Accessible Design and City of Glendale Amendments). In the event that any improvements are constructed, Licensee shall be responsible for providing the insurance on the improvements.

- b. Licensee shall provide and be solely responsible for the installation, use, maintenance and cost of all utilities required for the operation of the community garden on the Property, including all water, sewer, sanitation (trash collection) and electricity.
- c. Licensee shall operate and maintain the Property in a neat and orderly manner and in accordance with all applicable City and County requirements, including erosion control, weed control, trash pick-up, and dust control. All dirt areas used for vehicle parking shall be treated with asphalt millings or other approved dust control measures. Parking on native soil is not allowed.
- d. Licensee shall not permit gardeners or invitees to enter the Property before 6:00 a.m. or be on the Property after 8:00 p.m. Licensee shall also require gardeners to conduct their activities on the Property in a manner that does not disturb the peaceful and quiet enjoyment of the residents who live in the neighborhood or create nuisances as prohibited by the Glendale City Code.
- e. Licensee must obtain approval for lighting through the City's normal approval process but in no event shall a light pole exceed 15 feet in height.
- f. Licensee shall not use or store petroleum-based products, fertilizers, pesticides, propane or other chemicals on the Property, unless expressly permitted, in writing, by the City. Use of raw animal waste (manure), unless expressly permitted, in writing, by the City and or human sewage is expressly prohibited.
- g. Sales of produce from the garden are permitted in compliance with local, county and state laws. Sales of any merchandise other than produce shall be undertaken only upon prior express permission by City, in compliance with Glendale City Code and applicable state laws. Licensee shall be solely responsible for payment of any and all associated taxes, License fees and permitting fees.
- h. Licensee agrees to pay City, within thirty (30) days of being billed, any utility expenses incurred by City during the Term of the License (and any renewal period), for utility costs directly related to Licensee's use, including but not limited to water and sewage expenses, and solid waste disposal.
- i. Licensee agrees to maintain its non-profit status during the Term of this License (and any renewal period). Should Licensee fail to qualify as a

tax-exempt charitable organization or otherwise cease to operate as a charitable organization under I.R.C. 501(c)(3), the City may immediately terminate this License in addition to all other rights and remedies available by law or in equity, for breach of this License.

- j. The Licensee, at its sole expense, shall construct all improvements in compliance with the Americans with Disabilities Act (ADA), as amended from time to time, including City amendments. Licensee shall submit all plans pertaining to ADA compliance to the City for approval prior to any construction of improvements.

5. Soils Testing.

- 5.1. Prior to using the Property, Licensee shall obtain, and provide to the City soil test results for Lead, Cadmium, Arsenic and Poly Aromatic Hydrocarbons (PAHs) from a soils testing consultant acceptable to the City. If the soil test results indicate a contaminant level exceeding the maximum level established by EPA/ADEQ and as listed in the Arizona Administrative Code: http://www.azsos.gov/public_services/Title_18/18-07.htm ("Maximum Contaminant Level"). Licensee shall not use the Property and this License shall be automatically terminated. In no case may Licensee begin planting until acceptable soil test results are provided to the City.
- 5.2. Prior to the addition any soil, topsoil, soil enhancement or similar product to or on the Property, except soil, topsoil, soil enhancements or similar products purchased from a commercial retailer, Licensee shall obtain and provide to the City the soil tests as set for in Section 5.1. If the soil test results indicate a contaminant level exceeding the Maximum Contaminant Level established by, Licensee shall not add to or use the product on the Property.
- 5.3. Within 30 days prior to any License termination, Licensee shall obtain, and provide to the City soil test results for Lead, Cadmium, Arsenic and Poly Aromatic Hydrocarbons (PAHs) from a soils testing consultant acceptable to the City. If the soil test results indicate a contaminant level exceeding the Maximum Contaminant Level established by, Licensee will be solely responsible for any and all liabilities from such substances on, under, or within the Property, including the removal and/or remediation of such substances. Licensee hereby agrees to fully indemnify City for any and all violations of this provision to the full extent of the law.

6. Maintenance and Repair. During the Term, Licensee at its sole cost and expense shall do and perform the following:

- 6.1. Keep the Property in a neat, clean, pest-free and debris-free condition, including but not limited to keeping the Property free of weeds, pests, dead vegetative materials, garbage, compost, offensive odors, and tools and equipment.
- 6.2. Keep the Property clear of all obstructions or refuse of any kind.
- 6.3. Keep and maintain the Property in good and substantial repair so that the Property fully complies with all applicable laws, statutes, ordinances and regulations.

- 6.4. Keep and maintain any abutting sidewalk around the Property in a neat, clean and dust-free condition, free and clear of all obstructions or refuse of any kind.
 - 6.5. In the event the Property shall be in such condition, need or state of disrepair that Licensee cannot continue to occupy and use the Property as permitted hereunder, City shall have no obligation to make, or liability for not undertaking to make, any alterations, improvements or repairs of any kind to the Property necessary to continue Licensee's use and occupancy of the Property during the Term, and that upon such an event Licensee may make the alterations, improvements or repairs necessary to continue the License, all at Licensee's sole cost and expense, and with the prior written approval of City, which approval shall not be unreasonably withheld.
 - 6.6. Erect and maintain a fence in accordance with City requirements enclosing the community garden Property. Licensee shall submit a site plan which depicts the location and design of the fence.
 - 6.7. Property shall at all times be under the control of Licensee. As a result, Licensee is solely responsible for all security to protect the community garden on the Property. However, the City reserves the right to have designated employees or agents enter the Property at any and all reasonable times. The designation of authorized individuals authorized to enter the Property shall be determined solely by the City or its designee, such interruption is necessary in the interest of public health or safety.
7. **Alterations and Modifications.** Licensee shall not make, or cause to be made, any alterations or modifications to the Property without the prior written consent of the City. All City-approved alterations and modifications shall be (i) performed and completed in a good, workmanlike manner at the sole cost and expense of Licensee; (ii) completed in compliance with all applicable laws, ordinances, codes, rules, regulations, and/or orders; and (iii) shall become a part of the Property, and any title shall vest in and be retained by City. In any operation where more than one-tenth (1/10th) of an acre of surface area is distributed and/or when unpaved onsite haul roads are used, Licensee will obtain a dust control permit from the Maricopa County Air Quality Department.
8. **Improvements and Liens.**
- 8.1. Licensee covenants and agrees that any and all improvements made by Licensee to the Property during the Term shall be made only with the written consent of City, and shall, at the termination of this License, without any cost to the City, right of recoupment or right of set-off against any unpaid amounts, become the sole property of City.
 - 8.2. Licensee shall not permit the Property to become subject to any lien, including for liens imposed as a result of activities of Licensee, and if any lien attaches to the Property or any portion thereof, it shall constitute a material breach of the License. City retains the right in its discretion to pay and discharge any such liens, and the amount of the liens, together with costs and reasonable attorneys' fees, shall become additional amounts due immediately hereunder from Licensee.

9. **Utilities and Services.** Licensee shall be solely responsible for the provision and payment of all City water, electricity, sewer or storm sewer charges, including the installation of a water meter, or any other utility service used on the Property during the Term, and any accruing prior to or following the Term, relating to Licensee's use of the Property.
10. **Assigning and Subletting.** This Agreement is not assignable by and any assignment will be void and vest no rights in the purported assignee. Notwithstanding this provision, the City hereby consents to Licensee permitting community gardeners access to and use of the Property in accordance with the terms of this License.
11. **Right of Inspection.** Licensee agrees to permit City or City's agents, contractors, or employees to enter the Property at all reasonable times, and at any time in the case of emergency maintenance or repair, to view, or for normal maintenance or repair work, and Licensee hereby waives any and all claims and demands for loss or damage on account thereof. City shall conduct its right of entry in a manner so as to reasonably minimize the disruption of Licensee's operations.
12. **Use of City's Name/Logo.** In its activities pursuant to this License, the Licensee shall not display the name "City of Glendale" or the City's logo or seal on its written materials without the prior written approval of the City Manager or designee.
13. **Indemnification.** Licensee agrees to pay and to protect, defend, indemnify and save harmless City from and against, any and all liabilities, damages, costs, expenses (including any and all attorneys' fees and expenses of Licensee and any and all reasonable attorneys' fees and expenses of City), causes of action, suits, claims, demands, or judgments of any nature whatsoever arising from any acts or omissions as a result of Licensee's or any of its agents, servants, employees, contractors, licensees, sub-licensees or invitees use and occupancy of the Property including, but not limited to the following:
 - 13.1. Any work or thing done in, on, or about the Property or any part thereof, except for any work or things done by City.
 - 13.2. Injury to, or the death of persons or damage to property on the Property or upon adjoining sidewalks, including such injuries, death or damages which may occur on adjoining streets, alleys and curbs in any manner growing out of or connected with the use, non-use, condition, possession, operation, maintenance, management, or occupation of the Property.
 - 13.3. Any negligence or intentional wrongful acts on the part of the Licensee or any of its agents, contractors, servants, members, officers, directors, volunteers, employees, licensees, sub-licensees and/or invitees.
 - 13.4. Violation of any agreement or condition of this License and of conditions, permits, agreements, restrictions, statutes, charters, laws, rules, ordinances, or regulations affecting the Property or the ownership, occupancy, or use thereof.
 - 13.5. Nothing herein shall be construed to obligate Licensee to protect, indemnify, and save City and its officers and employees harmless from and against liabilities, losses, damages, costs, expenses (including attorneys' fees), causes of action, suits, claims, demands, and judgments arising from or by reason of the grossly

negligent or intentional wrongful acts of City or any of its agents, employees, or officers.

14. **Insurance.** Licensee shall procure and maintain for the duration of the License, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the License and use of the Property hereunder and the results of that License and use by the Licensee, his agents, representatives, employees or subcontractors as detailed in Exhibit B, attached and incorporated herein by this reference.
15. **Taxes.** Licensee shall be responsible for the payment of any property or other applicable taxes (personal or real estate) or ad valorem taxes and assessments which may be assessed, levied or imposed upon the Licensee or the Property during the Term including any resulting from Licensee's occupancy and/or use of the Property. Licensee shall have the right to lawfully contest the amount of any such taxes or assessments.
16. **Breach and Right of Re-Entry.** If any part of the Property shall be assigned without the consent of City as required herein; or if any term, condition, covenant, or obligation is breached by Licensee, Licensee hereby authorizes and fully empowers City to use all lawful means available to terminate this License and to re-enter and take possession of the Property, and remove all property thereon.
17. **Termination of License.**
 - 17.1. At any time during the Term (or any renewal period), either the City or the Licensee may terminate this License without cause by giving the other party ninety (90) days prior written notice of License termination.
 - 17.2. The City may terminate the License with cause for a breach by Licensee of this License by giving Licensee fifteen (15) days prior written notice of License termination. In addition, the License is subject to cancellation pursuant to A.R.S. § 38-511.
 - 17.3. In the event of termination for any reason, Licensee will keep and maintain the Property during the Term (or during any renewal period), and quit and deliver up the Property to City peaceably and quietly at the end of the Term (or at the end of any renewal of the period), or at any earlier termination date determined by City, in a good order and condition, and restored close to its original state, reasonable use excepted.
18. **No Relocation Benefits.** Upon termination of the License, Licensee acknowledges and agrees that it is not entitled to receive any relocation benefits or assistance under federal and state relocation laws and regulations and shall make no claim for such relocation benefits.
19. **ADA and Legal Compliance.** Licensee in the construction, repair and/or maintenance of any improvements on the Property shall fully comply with state law concerning the Legal Arizona Workers' Act and the requirements of the Americans with Disabilities Act (ADA), as amended from time to time. Licensee is solely responsible to select and retain contractors for the construction, installation, repair or maintenance of all permitted improvements, so long as all selection, retention and payment is in compliance with applicable law. City shall not in any way, be held liable or responsible for the debts of

Licensee, including the obligations concerning construction, installation, repair or maintenance of the Property.

20. **Entire Agreement.** This License contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement, amendment, modification or promise made by any party or by any employee, officer, or agent of any party shall be binding, unless it is in writing and signed by all the parties to this License.
21. **Governing Law.** This License is to be construed and enforced according to and governed by the laws of the State of Arizona, County of Maricopa.
22. **Time.** Time is of the essence in the performance of this License.
23. **Severability.** Should any term or provision of this License be held to be invalid or unenforceable then the remainder of this License shall not be affected thereby and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
24. **Successors.** All of the provisions contained in this License shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
25. **Captions.** The captions of this License are for convenience only, and are not a part of this License and do not in any way limit or amplify the terms and provisions hereof.
26. **Notices.** Any notice, consent or waiver required or permitted to be given or served by either party to this License shall be in writing and either delivered personally to the other party or mailed by certified or registered mail, return receipt requested, addressed as follows:

CITY: City of Glendale
Attention: Stuart Kent
6210 West Myrtle Avenue
Suite 111
Glendale, Arizona 85301

COPIES TO: City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

LICENSEE: Joe Enriquez
CEO/President
Heart for the City
P.O. Box 2
Glendale, Arizona 85311

Either party may change its address by serving written notice on the other party.

27. **Surrender of Possession.** Licensee shall on the last day of occupancy, or on the earlier termination as provided in this License, peaceably and quietly surrender and deliver the Property, and every part thereof, to City. Any trade fixtures, equipment or personal property used in connection with the use and operation of the Property which are not removed at the termination of this License shall be deemed abandoned and become the sole property of City without any payment or offset therefore.
28. **Binding.** The parties agree that all the covenants, terms, obligations and conditions of this License shall extend, apply to, and firmly bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto as fully as the respective parties are themselves bound, but this provision shall not authorize the assignment or underletting of this License contrary to the provisions herein contained.

(Signatures appear on the following page.)

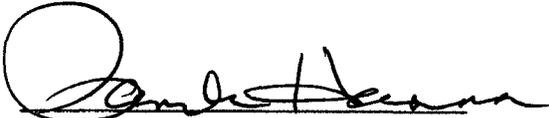
The parties have signed and executed this 27 day of May, 2014.

CITY OF GLENDALE,
an Arizona municipal corporation



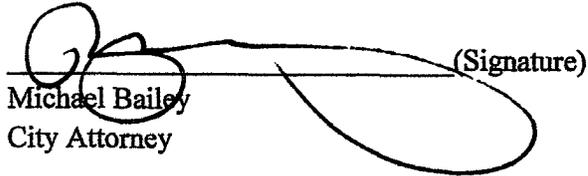
Brenda S. Fischer
City Manager

ATTEST:



Pamela Hanna, (SEAL)
City Clerk

APPROVED AS TO FORM:



(Signature)

Michael Bailey
City Attorney

LICENSEE
Heart for the City,³
an Arizona non-profit corporation

By:  _____
Its: CEO/President _____

EXHIBIT A

Legal Description and Depiction

All that certain parcel or parcels of land, consisting of approximately 24,295 square feet (0.5577 acres) of land located adjacent to City of Glendale Fire Station 152 at 6850 West Bethany Home Road, City of Glendale, County of Maricopa, State of Arizona, more particularly described as follows:

The North 146 Feet of the South half of the West half of the West half of the West half of the Southeast quarter of the Southeast quarter, Section 12, Township 2 North, Range 1 East of the Gila and Salt River Base and Meridian, records of Maricopa County, Arizona.

EXHIBIT B
Insurance Requirements

Licensee shall procure and maintain for the duration of the License insurance against claims for injuries to persons or damages to property which may arise from or in connection with the License and use of the Property hereunder and the results of that License and use of the Property by the Licensee, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$1,000,000** per occurrence, **\$2,000,000** aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Contractors' Pollution Legal Liability** with limits no less than \$1,000,000 per occurrence or claim and \$2,000 policy aggregate. If coverage is provided on a claims-made coverage basis, the retroactive date must be shown and this date must be before the execution date of the License or the beginning of work. Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after termination of the License.
3. **Workers' Compensation:** as required by the State of Arizona, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the Licensee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Licensee.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage

For any claims related to this License, the Licensee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or

self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation

Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Licensee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.