

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Parks and Recreation

AGENDA DATE: July 10, 2018

CONTACT PERSON/PHONE: Lauren Baldwin, (212-1835)
Tracy Novak, Director, (212-1708)

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 8: Nurture and promote a healthy, sustainable community

SUBGOAL: 8.8 Improve community resilience through education, outreach, and develop the resilience strategy

SUBJECT:

A resolution that the City Council of the City of El Paso ("City") adopt this Community Garden Use Agreement ("Agreement") as a master use agreement. The resolution will authorize City and Community Partners to utilize the Agreement to manage and maintain community gardens on City-owned land and authorizes the City Manager or designee to sign and amend this Agreement by and between the City of El Paso, Texas, a home-rule municipal corporation of the State of Texas and any interested Community Partner.

BACKGROUND / DISCUSSION:

The Park Partner Agreement, established in 1997, outlines shared responsibilities by the City of El Paso and the community group willing and interested in maintaining and improving City of El Paso-owned land designated as parkland. This Community Garden Use Agreement extends this potential for partnership to City-owned land that is not designated as parkland. This agreement offers an opportunity to partner with community organizations to improve or add value to vacant or underutilized City-owned land through the creation of community gardens. This agreement outlines shared responsibilities between the City of El Paso and the community group to ensure the community gardens are well maintained and efficiently and equitably managed.

Many other cities, such as Tucson, Pittsburgh, Milwaukee, Baltimore, and Newark, have also embraced similar community use partnerships to encourage community gardens to support sustainable food systems in their community. Community gardens have many benefits, including improving healthy food access, reducing food insecurity, reducing food miles traveled, supporting physical and mental health benefits for community members, providing air quality and ecosystem benefits, and increasing access to green spaces and community gathering spaces.

In El Paso, there are currently three community gardens on city-owned land. The goal is to increase the number of community gardens in our region so we can decrease the number of food insecure children and families in our community. Currently, 23% of children in El Paso County are food insecure, meaning they may not know when their next meal is coming. Additionally, over 60% of our community is overweight or obese and less than 15% of El Paso County adults eat fruits and vegetables fewer than five times per day. Community gardens can help solve these challenges because community gardens are a gateway to sustainable food systems--community members can test out their gardening skills and interests by renting one plot, encouraging them to start their own garden. As they start to learn more and more, they can start to provide healthy, locally-grown meals for their family. Some gardeners may really have a passion for growing fruits and vegetables and choose to make it a career, which is something that would also benefit our community tremendously. According to the USDA, our "top crop items" by acreage are pecans and cotton. The more farmers we can grow, the more we can start to

source healthy, locally-grown fruits and vegetables to food banks, restaurants, and farmers' markets, leading to a more sustainable, resilient food system.

PRIOR COUNCIL ACTION:

1997 – Park Partner Agreement established.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: T. Norale

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

A resolution that the City Council of the City of El Paso ("City") adopt this Community Garden Use Agreement ("Agreement") as a master use agreement authorizing the City and Community Partners to enter into an agreement that will allow for Community Partners to manage and maintain community gardens on City-owned land and that the City Manager or designee be authorized to sign and amend this Agreement by and between the City of El Paso, Texas, a home-rule municipal corporation of the State of Texas and any interested Community Partner.

APPROVED this ____ day of _____, 2018.

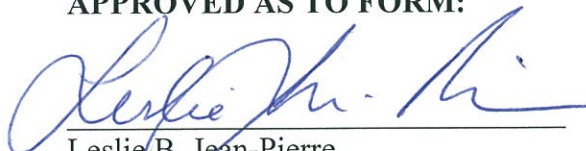
CITY OF EL PASO

Dee Margo
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Tracy Novak, Director
Park and Recreation Department

CITY OF EL PASO
PARKS AND RECREATION DEPARTMENT
City 3 Building, 801 Texas, Ave, 2nd Floor
El Paso, Texas 79901

This Community Garden Use Agreement (the "Agreement") is between:

Name of Group or Organization ("Community Partner") _____

Group Chair's First and Last Name: _____

Address: _____

Daytime Phone#: _____ Alternative Phone #: _____

Email Address: _____

("Community Partner") and the CITY OF EL PASO, a home rule municipal corporation ("City"), and is made effective the date of execution written below.

WHEREAS, on March 15, 2005, City Council adopted Ordinance No. 16015 allowing the City Manager or his or her designee to enter into and sign contracts relating to the provision of goods and services by persons or organizations to the City at no cost to the City, such as park partner agreements, traffic signal agreements and median landscaping agreements on behalf of the City; and

WHEREAS, on May 4, 2016, the City of El Paso created policies and procedures for the Community Garden Program attached hereto as **Exhibit A** ("Program") to allow for community members to use City-owned land as community gardens; and

WHEREAS, The Program provides multiple benefits to City residents including supporting a sustainable food system, reducing food miles traveling, providing physical and mental health benefits to community members, and providing air quality and ecosystem benefits;

WHEREAS, City and Community Partner desire to enter into an Agreement that will allow for Community Partner to manage and maintain the City community garden at Name of Park or Address of the Property (the "Premises"), located at _____ under the Program as depicted and attached hereto as **Exhibit C**; and

WHEREAS, the activities contemplated herein further a public purpose by providing recreational and healthy activities for the community, while supporting a sustainable food system.

NOW THEREFORE, for and in consideration of the following agreement set forth herein, and other good and valuable consideration the Parties agree as follows:

1. The Community Partner and all participants are volunteers. The Community Partner and the participants shall not receive any compensation or benefits from the City, other than as expressly set forth in this Agreement. No partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the City and Community Partner. The Community Partner does not have, or attempt to assert, the authority to make commitments for or to bind the City to any obligation.

2. This Agreement shall remain in effect for a period of ____ year(s), and may be extended for a successive ____ year term, by written agreements of both Parties for a total period not to exceed ____ years.

3. Either party may terminate this Agreement by providing 20 days written notice to the other Party. If a party is in default in a matter of serious importance to the aggrieved party; the aggrieved party will provide the other party with 15 days to remedy the situation. If the situation cannot be resolved within the 15 days; this Agreement will terminate 20 days upon the aggrieved party's having provided notice to the other party. Termination shall be without prejudice to any obligation by one party to the other, which shall have accrued and/or are owing prior thereto.

4. The Community Partner agrees to provide the following services and general maintenance ("Services") on the City property described above:

a. The Community Partner agrees to establish and maintain a Garden Group composed of community members and garden plot holders for the purpose of shared decision-making and delegation of community garden responsibilities.

b. The Community Partner agrees to be responsible for the intake and orientation of each new garden plot holders to include providing each plot holder with the City's Garden Program Policy and Procedures and Safety Procedures.

c. The Community Partner agrees to ensure that all applicants sign a waiver of liability agreement before a plot is assigned and to maintain up to date and accurate records of all signed waiver of liability agreements

d. Maintain the waiting list for the garden plots.

e. The Community Partner agrees to ensure that all plot holders abide by the City's Garden Program Policy and Procedures attached as **Exhibit A** and Safety Instructions attached as **Exhibit B**.

f. Provide contact information for all Garden Group members and three Vice-Chairs.

g. Be accessible via phone, email or in person and responding within seven (7) business days to a request made by the City of El Paso.

h. Provide an updated list of the names of all plot holders to the Parks and Recreation Department on an annual basis (by January 31st).

- i. Provide general maintenance including: Planting, watering, weeding, harvesting, and general upkeep, including trash pickup, on the entire area identified as Community Garden (may not necessarily include the right of way).
- j. Cover expenses of tools, garden supplies, and keys through their own garden budget mechanism. One copy of the key(s) for the garden must be provided to the City of El Paso.
- k. Employ water-smart techniques for watering garden plots (*Resource*: Watersense, EPA, <https://www.epa.gov/watersense>).
- l. Conduct at least two free educational community events annually, including, but not limited to, workshops on topics ranging from composting to garden skills. Garden Leadership will share these dates with the City of El Paso.
- m. Provide semi-annual photos of garden plots to show progress and upkeep.
- n. Provide a proposed "Maintenance Plan" created and signed by the garden group.
- o. Regularly monitor the property and notify El Paso Parks and Recreation Department (the "Department") of damage to facilities, vandalism, or graffiti.
- p. Regularly monitor the property and notify Police in case of violation of law, including park curfew.
- q. The Community Partner and all participants will comply at all times with the safety instructions attached hereto as **Exhibit B**.
- r. The Community Partner and all participants will comply at all times with the Community Garden Policies and Procedures attached in **Exhibit A**.

5. The City agrees to do the following:

- a. Provide recognition to the Community Partner.
- b. Provide specifications and technical assistance on park improvement projects approved by the City of El Paso Parks and Recreation Director ("Director).
- c. Provide supplies and materials if they are available.
- d. Allow Community Partner to conduct fundraising activities in the park (no more than six per year) for the benefit of the garden or park approved by the Director, provided all permit procedures are followed.
- e. Allow Community Partner to conduct free community workshops in a park or at the community garden affiliated with the Community Partner for the benefit of the community, provided all permit procedures are followed.

- f. Assign a staff member as a responsible party for communication with the Community Partner in reference.
 - g. Provide names and phone numbers of Department personnel to Community Partner in order for the Community Partner to report any problems.
 - h. Provide specifications and technical assistance on community garden improvement projects approved by the Director.
 - i. Process service requests for irrigation issues or for any infrastructure issues (e.g. pergolas, toolsheds, fencing, garden bed structures, etc.).
 - j. Process service requests for any matters of vandalism classified under both infrastructure and non-infrastructure maintenance (e.g. compromised structure damage, spray painting, etc.).
 - k. Provide portable restroom service, if feasible.
 - l. Pay for water costs of the parcel in reference, within reason. In cases of negligent water use by any plot holders at the community garden in reference that result in flooding of the premise or unreasonably expensive water bill, immediate action will be taken by the City of El Paso.
 - m. Pay for electricity costs, within reason.
 - n. The City shall have access to and the right at all times to audit the Community Partner's books and other records related to the use of the Community Garden.
 - o. Coordinate and maintain signage at the parcel. If additional signage is requested, the Community Partner will be responsible for covering those additional costs.
6. The Parties expressly agree that the City's obligation to perform under this Agreement is subject to the availability of funds and staff, and is wholly within the discretion of the Director.
7. Notwithstanding the above, it is expressly agreed by the Parties that the City cannot and does not assume any liability for the actions of the Community Partner in performing maintenance on Community Garden and other City property. ACCORDINGLY, THE COMMUNITY PARTNER AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS OR JUDGMENTS ARISING FROM THE CONDUCT OF THE COMMUNITY PARTNER OR ANY OF ITS PARTICIPANTS IN THE MANAGEMENT AND MAINTENANCE SERVICES UNDER THIS AGREEMENT, WITH RESPECT TO DAMAGE TO PROPERTY OR INJURY TO PERSONS.

8. **Notices**: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City: City of El Paso
ATTN: Director
Parks and Recreation Department
801 Texas Ave.; City 3 Building
2nd Floor
El Paso, Texas 79901

Community Partner:

ATTN:

or to such other addresses as the parties may designate to each other in writing from time to time.

9. **Law Governing**. The laws of the State of Texas shall govern the validity, performances and enforcement of this Agreement. Venue shall be in the courts of El Paso County, Texas.

10. **Entire Agreement**. This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

11. **Severability**. The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

12. **Authorization to Enter Agreement**. The individual signing this Agreement acknowledges that he or she is authorized to do so and said individual further warrants that he or she is authorized to commit and bind the party to the terms and conditions of this Agreement.

13. **Dissolution/Reentry**. Should Community Partner re-organize, change its name, dissolve as an entity or cease to operate as an entity, it shall provide written notice of such event to the City ninety (90) days prior to such event. Such event shall terminate this Agreement.

14. **Texas Tort Claims Act**. Community Partner expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. Community Partner further expressly agrees that every act or omission of the City which, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

15. **Assignment**. This Agreement is for the exclusive benefit of the parties, and cannot be assigned, directly or indirectly, without the consent of the other party.

(Signatures Begin on Next Page)

EXECUTED this ____ day of ____ 20 .

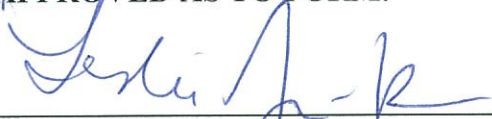
THE CITY OF EL PASO

Tracy Novak, Director
City of El Paso Parks and Recreation
Department

COMMUNITY GARDEN PARTNER:

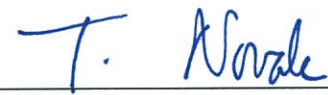
By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Tracy Novak, Director
City of El Paso Parks and Recreation
Department

EXHIBIT A
CITY OF EL PASO COMMUNITY GARDEN PROGRAM POLICY AND
PROCEDURES

I. PURPOSE

The City of El Paso and City Staff have created a community garden program on a few parcels of City land. This program would provide an opportunity for City residents to grow fresh produce or plants for personal use, to foster neighborhood improvement, provide a sense of community and connection to the environment. Community gardens help foster healthy and sustainable communities with a high quality of life.

By signing up for a community garden plot, the participant agrees to abide by the program policies, procedures and guidelines, and to indemnify, defend, and hold harmless the City of El Paso and their officers, agents, and employees from and against all damages, claims, demands, suits, actions resulting from, or because of any damage to property of bodily injury or death of any person arising out of the occupancy and/or use of the garden by the participant or guests. Applicants must sign a waiver of liability agreement before a plot will be assigned.

Gardens are located on parcels of City land and are subject to all applicable ordinances and regulations. The City of El Paso is not responsible for theft of plants, produce, or belongings left in the park by participants.

II. HOW TO OBTAIN A GARDEN PLOT

The City of El Paso invites City residents to participate in our program of raised bed gardening in one of our existing community garden plots. Garden plots are assigned on a first come, first served basis by the community garden Garden Leadership. If no plots are available in the parks or gardens selected by an applicant, the applicant will be placed on a waiting list for when one becomes available. On the application for a garden plot, the applicant must list any co-gardeners, with the exception of immediate family members. Applicants must be at least 18 years of age. Children under 12 years of age must garden with an adult.

III. COMMUNITY GARDEN LOCATIONS

The City currently has community gardens ready for use at the following locations:

1. Welden Yerby Senior Garden, 9204 Stahala Dr.
 2. Vista Del Valle Community Garden, 9031 Viscount Blvd.
 3. Chamizal Community Garden, 3212 Findley Ave.
- Additional garden locations may be added in the future.

IV. POLICY/PROCEDURE

- a) **Maintenance:** Gardeners are solely responsible for the planning and management of their own plots, including providing their own seeds, plants, fertilizer, and any tools not provided by City or Gardeners collectively. Gardeners may be in the Garden between dawn and dusk. Community garden plots **must be gardened and maintained year round on a consistent basis**. Community gardens are public spaces and must maintain a **neat appearance** throughout the year. Gardeners are responsible for hauling and disposing of their own trash and recycling. Gardeners who have untended plots will be notified in writing and asked to remedy the problems with their plot by a specified date.
- b) **Structures:** Seasonal and temporary gardening structures such as trellises are allowed if they do not encroach upon paths, community spaces, or neighboring plots. Gardeners must be considerate of neighbors and orient their structures and plantings to avoid casting shade on other plots. All structures should be removed when not in use.
- c) **Best Practice: Organic** gardening is required. **No synthetic chemicals** including herbicides, pesticides, or chemical fertilizers are allowed, except in extreme conditions as determined by garden leadership. Use of compost, organic mulch, and weeding is always acceptable.
- d) **Spacing:** Pathways between plots will be 3 feet wide, unobstructed, and level. Plants should not grow into or hang over the paths.
- e) **Composting:** Each gardener is responsible for dealing with the garden material generated from their plot. Gardeners are responsible for ensuring that the compost area/receptacle does not become a nuisance with regard to smell, rodents, insects, etc.
- f) **Water:** Each Gardener is responsible for watering his or her own plot. Gardeners must not overwater their plants or leave a hose unattended. Gardeners must conserve water by using mulch and using water smart techniques. Gardeners may not use water that may be provided by the City for any personal reasons other than for watering the Garden.
- g) **Crops:** Crops are for home or community use, and **may not be sold** for commercial purposes. All crops planted in the gardens must be legal. Gardeners may not plant invasive plants. Gardeners may not maintain plantings or plant-supporting structures that impede the security of the garden or impede adjacent gardeners' access to sunlight by the nature of their height, material or density. Gardeners must promptly harvest edible plants. If a Gardener has extra produce, they are permitted and encouraged to **donate** to local food banks, homeless shelters or food assistance programs.
- h) **Tools:** Gardeners may **bring their own tools** into the Garden to use in their plots, but they cannot store any tools in the Garden **unless they are meant for collective** use of the Gardeners. Gardeners are **responsible for any damage** caused by tools they bring into the Garden and so should use them with care. Gardeners may not use any power tools, such as those that require gasoline, batteries, or electricity. The City is not responsible for any lost or stolen tools.

i) **Assignments:** Plot holders must notify the Garden Leadership if they wish to give up their garden plot. **Abandoned plots will be reassigned to another applicant.** Abandonment of a plot means **failing to maintain a plot for two (2) weeks.** If a Gardener expects to be away from the Garden for more than two (2) weeks, but less than three (3) months, he or she must inform the Garden leadership. **A Gardener cannot give his or her plot to someone else.** Garden plots are assigned by the Garden Leadership and **only one plot may be assigned per household, unless otherwise permitted.**

j) **Security:** One key to the Garden will be given to each Gardener (or the combination or code to open the lock). **Gardeners may not make any copies of the key.** Copies to a key may be made only by the City or Garden Leadership, when requested. When leaving the Garden, Gardeners are responsible for **locking the gate** if there are no other individuals in the Garden.

k) **Termination:** Gardeners are expected to adhere to program policies, procedures and guidelines. **Garden Leadership will regularly monitor plots** throughout the year. When gardeners are found to be in non-compliance, they will receive notice of the problem and will be asked to take action by a specified date. Gardeners who receive two notices in a year must vacate the plot and the plot will be reassigned. If the City considers the violation to be of a serious nature, the **City reserves the right to terminate a participant's right to a garden plot immediately.** Gardeners under no circumstances will be entitled, directly or indirectly, to any form of refund, any direct, incidental, consequential, punitive, or other damages, any other forms of compensation from the City, or to obtain an injunction, specific performance, or other equitable remedy, as a consequence of termination from participation in the Garden.

V. CONDUCT

a) **Law Compliance:** Gardeners must comply with all applicable local, state, and federal laws. Smoking, alcohol, drugs, firearms, violence, stealing or vandalism are not allowed. Participating in any of these activities may result in removal from the program and loss of garden plot.

b) **Guests, Children and Pets:** Children are welcome at the garden when accompanied and fully supervised by an adult. Dogs must be under a Gardener's control at all times. Guest violations of these guidelines will be treated as violations by the Gardener.

c) **Respect at the Garden:** Gardeners are expected to be civil, honest, and cooperative in dealing with the City, Garden neighbors, other Gardeners, and guests of other Gardeners. Gardeners may not enter other plots, use another Gardener's tools or supplies, or harvest another Gardener's produce, without the explicit permission of the other Gardener. Gardeners may not enter property next to the Garden without the owner's permission. Gardeners may not play music or the radio loud enough to be a nuisance to other Gardeners or to the Garden's neighbors.

d) **Confidentiality:** The City and Gardeners will not use any personally identifiable information, including Gardener's name, email address, telephone number, or street address, for purposes other than the operation of the Garden, or as otherwise permitted or required by state law.

e) **No discrimination:** The City will not discriminate on the basis of race, color, national origin, religion, sex, disability, age, medical condition, ancestry, marital status, citizenship, sexual orientation, gender identity, or status as a veteran. The only exception is for the ADA accessible plots; those will be reserved for disable applicants. Applicants with a disability requiring any special assistance, or any persons having any questions or concerns, should contact the City of El Paso at (915) 212-0092 for assistance.

EXHIBIT B

SAFETY INSTRUCTIONS

The Community Partner and all participants must observe the following safety instructions at all times:

1. Work only during daylight hours and fair weather.
2. Stay away from park mowing operations and any other City maintenance or construction activities.
3. Participants under 16 years of age must be supervised by a responsible adult. Participants under 10 years of age must be supervised by at least 1 adult for each 5 participants.
4. Do not allow children under 12 years of age to work near busy streets.
5. Be aware of potential hazards such as broken glass, snakes, insects, noxious weeds, and hazardous materials.
6. Wear protective clothing, including hard-soled shoes and gloves.
7. Do not attempt to remove known or suspected toxic hazardous substances. Do not pick up discarded syringes, needles, or suspicious containers.
8. Report discarded syringes, needles, or suspicious containers to the Parks and Recreation Department, or the appropriate Police Regional Command Center.
9. Report broken equipment or any other potential hazards to the Parks and Recreation Department.
10. Know the park rules and be safety conscious at all times.