

LICENSE AGREEMENT FOR COMMUNITY GARDEN IN DISCOVERY PARK

This LICENSE AGREEMENT FOR COMMUNITY GARDEN IN DISCOVERY PARK (“Agreement”) is made and entered into this ___ day of _____, 2024 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and Discovery Co-Operative Gardeners (“Licensee”).

WHEREAS, the respective governing bodies of City and Licensee are mutually interested in enhancing the Meridian community’s quality of life by providing and supporting community gardening activities and benefits, including educational programming and cultivation of produce for local food banks, and to that end, City wishes to program approximately half-acre of ground on the west side of Discovery Park, located at 2121 E. Lake Hazel Road, Meridian, Idaho (“Park”), as a community garden (“Community Garden”);

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, City and Licensee agree as follows:

- I. License granted.** City shall, in exchange for Licensee’s services related to management and oversight of the Community Garden, grant to Licensee a non-exclusive license to maintain Community Garden for the purposes and in the manner set forth in this Agreement.
- II. Use of Community Garden.** Licensee’s use and occupancy of the Community Garden shall be limited to gardening by Licensee. Licensee shall not use or permit the use of the Community Garden for any purpose other than gardening without the express written consent of City.
- III. Term of license.** The term of this license shall be from the Effective Date through 11:59 p.m. on December 31, 2024, unless earlier terminated by either party by the method established herein. This license shall automatically be renewed from year to year thereafter unless written notice of termination is given by either party to the other in the manner set forth herein.
- IV. Rights and responsibilities of Licensee.** With regard to Licensee’s use and occupancy of the Community Garden under this Agreement, Licensee shall be responsible for, and entitled to, each and all of the following rights and responsibilities.
 - A. Produce.** Licensee shall donate a substantial portion of all produce grown at Community Garden to the Meridian Food Bank.
 - B. Equipment; shed.** Licensee may store tools and equipment at Park, including a shed as approved by the Director of the Meridian Parks and Recreation Department or designee (“Director”). Upon notice from City, Licensee shall move or remove any such property and/or equipment within a reasonable time as mutually agreed by the parties; property and/or equipment not removed within twenty-four (24) hours following such mutually agreed time shall be deemed abandoned by Licensee and shall be owned by City. Licensee shall secure the shed so as to prevent criminal conduct in or to same. Licensee shall be solely responsible for any theft, vandalism, unlawful entry, arson, or other damages incurred to the shed. Licensee shall maintain the shed in a safe and sanitary

manner. Licensee shall not store any hazardous or toxic substances in or at the shed or Community Garden without prior written consent from, City.

- C. **Irrigation.** Licensee shall be responsible for irrigating the Community Garden. City may require an increase or decrease of water usage or application in Community Garden as may be necessary or reasonable under the circumstances.
- D. **Weed and pest control.** During the growing season (approximately mid-April through mid-October), Licensee shall be responsible for weed and pest control within the planting area of Community Garden. City shall be responsible for weed and pest control throughout the remainder of Park and during the non-growing season (approximately mid-October through mid-April). Licensee shall not utilize pesticides or herbicides, or allow such use, in Community Garden without prior written consent from City.
- E. **Alterations; waste; signs.** With the exception of activities directly related to gardening, Licensee shall not make, or permit to be made, alterations on or to the Community Garden or to Park, or any portion or component thereof, whether temporary or permanent, without prior written consent from City. Any and all additions to, or alterations of, Community Garden shall become at once a part of the real property and shall belong to City. Licensee shall not install or erect thereon signs, posts, poles, fencing, or other improvements or structures without prior written consent from City.
- F. **Reasonable use.** Licensee shall employ best efforts to ensure that its use of Community Garden land, facilities, amenities, and infrastructure is appropriate, reasonable, and lawful. Where Licensee's use of same causes damage, Licensee shall reimburse City for the cost or proportionate cost of necessary repairs and/or replacement.
- G. **Surrender of possession.** Licensee agrees to surrender possession and occupancy of the Community Garden and Park premises peaceably at the termination of this Agreement and any renewal or extension thereof.
- H. **Hold harmless.** Licensee holds City harmless from any loss, liability, claim, judgment, or action for damages or injury to Licensee, to Licensee's personal property, equipment, members, agents, or volunteers arising out of or resulting from the condition of Community Garden or any lack of maintenance or repair thereon not caused by or arising out of the tortious conduct of City or its employees.
- I. **Insurance.** In the event Licensee hires any person to work on or at the Community Garden, or allows any other volunteers to work on or at the Community Garden, Licensee shall obtain worker's compensation insurance, if required by law. Licensee may, at Licensee's option, maintain property or crop insurance, as applicable, for property owned or crops planted by Licensee.
- J. **Admission.** Licensee shall have right to assess and collect reasonable contributions to Licensee's expenses from persons participating in activities conducted at Community Garden by Licensee. Licensee shall not charge any fee for public admission to Community Garden without the prior written consent of City.

K. **Assumption of risk.** Licensee acknowledges that provision of services under this Agreement may carry a risk of injury, illness, and/or death, some of which risks may be unknown, and, with that knowledge, Licensee hereby assumes all such risks and hazards.

L. **Indemnification.** Licensee acknowledges that provision of services under this Agreement may carry a risk of injury, illness, and/or death, some of which risks may be unknown, and, with that knowledge, Licensee hereby assumes all such risks and hazards. Licensee shall indemnify, save, and hold harmless the City and any and all of its employees, agents, volunteers, and/or elected officials from any and all losses, claims, and judgments for damages or injury to persons or property, and from any and all losses and expenses caused or incurred by Licensee or Licensee's servants, agents, employees, guests, and/or business invitees. Licensee waives and releases, on behalf of Licensee and Licensee's heirs, executors, administrators, assigns, and/or personal representatives, any and all claims and recourse against City, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to Licensee's performance of this Agreement, whether such loss or damage may be attributable to known or unknown conditions, except for liability arising out of concurrent or sole negligence of City or its officers, agents or employees.

M. **Independent contractor.** In all matters pertaining to this agreement, Licensee shall be acting as an independent contractor. It is acknowledged by Licensee that all activities described in this Agreement are outside the course and scope of Licensee's employment with City, and are completely unrelated to such employment. Further, and without limitation, Licensee understands, acknowledges, and agrees:

1. Licensee is free from actual and potential control by City in the provision of services under this Agreement.
2. Licensee is engaged in an independently established trade, occupation, profession, or business.
3. Licensee has the authority to hire subordinates.
4. Licensee owns and/or will provide all major items of equipment necessary to perform services under this Agreement.
5. Neither Licensee nor City shall be liable to the other for a peremptory termination of the business relationship described under this Agreement.
6. Any injury Licensee may incur in the course of activities described in this Agreement shall not be covered by City's workers' compensation insurance.
7. Licensee shall not represent that he is acting as a Meridian Fire Department employee for the purpose or in the course of fundraising for activities described in this Agreement.

V. **Rights and responsibilities of City.** With regard to Licensee's use of the Community Garden under this Agreement, City shall be responsible for the following.

A. **Utilities.** City shall pay for any power, water, or other utilities utilized or provided at Community Garden.

B. **Assessments; property taxes.** City shall pay the regular assessments and property taxes, if any, due and owing on Community Garden and/or Park.

- C. **Landscape maintenance.** City shall be responsible for tree, turf, and landscape maintenance; mowing; custodial services; and hardscape cleaning and maintenance at Community Garden. Licensee shall not mow, spray, prune, or otherwise alter or maintain any natural or hardscape portion of Park.
- D. **Scheduling.** The parties hereto expressly acknowledge that Park is a public space, the management and scheduling of which shall at all times be within the sole purview of City. City shall have the right to use or allow the use of Park for any and all purposes and under any and all conditions, so long as such use does not conflict or interfere with scheduled use by Licensee.
- E. **No right to exclude conveyed.** Licensee shall not have the right to exclude any law-abiding person from Community Garden where such person is not interfering with Licensee's reserved use thereof, nor the right to interfere with any person's concurrent, lawful use of Community Garden or Park where such concurrent use does not conflict or interfere with Licensee's use.
- F. **Alterations.** Upon thirty (30) days notice to Licensee in the manner established herein, City shall have the right to make alterations to Community Garden and/or to construct or locate landscaping, fixtures, structures, and/or any other improvements in or upon Community Garden or Park, except that City may undertake such alterations, construction, or improvements on an emergency or immediate basis without notice to Licensee where such action is necessary to protect the health, safety, and/or welfare of the public, or where such alterations, construction, or improvements will not unreasonably affect Licensee's use of Community Garden as set forth in this Agreement.
- G. **Right of entry.** City and City's contractors, employees, agents, and invitees, shall be authorized to, at all times, to enter the Community Garden and all storage areas for the purposes of inspection for compliance with the terms of this Agreement and for the exercise of City's rights hereunder, the posting of notices, and for all other lawful purposes. The parties shall supply each other with keys and any other instruments necessary to allow mutual entry onto the Community Garden and all storage areas.

VI. General provisions.

- A. **Acceptance as is.** Licensee acknowledges that Licensee has inspected the Community Garden and does hereby accept the Community Garden as being in good and satisfactory order, condition, and repair. It is understood and agreed that City makes no warranty or promise as to the condition, safety, usefulness or habitability of the Community Garden, and Licensee accepts the Community Garden "as is."
- B. **No agency.** It is understood and agreed Licensee shall not be considered an agent of City in any manner or for any purpose whatsoever in Licensee's use and occupancy of Community Garden and/or any activity undertaken with regard to Community Garden, to Park, or to this Agreement. Neither Licensee nor any officer, employee or agent thereof shall be deemed an employee of City. Licensee shall have no authority or responsibility

to exercise any rights or power vested in City. The selection and designation of the personnel of City in the performance of this agreement shall be made by City.

- C. **Breach; cure; termination.** If Licensee is in breach or default of any of the terms, covenants or conditions of this Agreement and Licensee fails or refuses to cure such breach or default within three (3) days of written notice thereof, or if City determines that termination is in the best interest of the City, this Agreement, and all rights of Licensee in and to Community Garden, at City's option, may be deemed terminated and forfeited without further notice or demand. In the event of termination of this Agreement, Licensee shall forfeit any right to harvest produce planted and any right to the proceeds thereof, except that where termination occurs due to City's determination that termination is in the best interest of the City, Licensee may request that City permit termination after Licensee's harvest, which permission shall not be unreasonably withheld. In the event of termination, City shall provide Licensee with fourteen (14) days to, at the time and manner as may reasonably be required by City, remove its tools, equipment, and shed from Park. If any tools, equipment, or the shed remain in Park following this period, such items shall be deemed abandoned and shall be owned by City.
- D. **Force Majeure.** No Party will be liable for failure to perform any duty under this Agreement where such failure is due to or made impracticable by unforeseeable causes beyond the Parties' control and without the fault or negligence of the Parties, including, but not restricted to, acts of God or the public enemy, fire, flood, natural disaster, epidemic, strike, or order of any court or authorized agency.
- E. **No waiver.** City's waiver on one or more occasion of any breach or default of any term, covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach or default of the same or a different term, covenant or condition, nor shall such waiver operate to prejudice, waive, or affect any right or remedy City may have under this Agreement with respect to such subsequent default or breach by Licensee.
- F. **No obligation.** By the granting of this lease, City does not in any way bar, obligate, limit, or convey any warranty with regard to any action relating to development or operation of Community Garden or Park.
- G. **No third-party beneficiaries.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person or entity not a party hereto.
- H. **No assignment.** Licensee shall not assign, sublet, subcontract, or transfer its rights or responsibilities hereunder without the express written consent of City. Should Licensee cease to exist as an organization, this Agreement and all rights granted to Licensee hereunder shall be void.
- I. **Annual review.** Between November 1 and December 31 of each year, Licensee and City shall together review the year to address any problems which may have arisen and to discuss possible changes to improve matters regarding the parties' joint use of Community Garden.

J. **Notices.** All notices to be provided under this Agreement shall be in writing and addressed as follows:

Licensee:

Discovery Co-Operative Gardeners
Chris Verkerk, President
2465 E. Springwood Dr.
Meridian ID 83642

City:

City of Meridian
Director, Parks and Recreation Department
33 East Broadway
Meridian ID 83642

Notices shall be in writing and sent by U.S. mail to the address specified above. Notice shall be deemed to have been given upon deposit in the U.S. mail.

K. **Amendments.** This License may only be amended by mutual written agreement of the parties.

L. **City Council approval required.** This lease shall not be effective until it is approved by resolution of the City Council and executed by the Mayor.

M. **Entire agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements, leases, or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

IN WITNESS WHEREOF, the parties shall cause this Agreement to be executed by their duly authorized officers to be effective as of the day and year first above written.

LICENSEE:

 03/25/2024

Chris Verkerk
President, Discovery Co-Operative Gardeners

CITY OF MERIDIAN:

Attest:

BY:

Robert E. Simison, Mayor

Chris Johnson, City Clerk