

**Permit Agreement for Operating a Recreational
Community Agriculture Project on City of Flagstaff Property**

THIS PERMIT AGREEMENT ("Permit") is between the City of Flagstaff, an Arizona Municipal Corporation ("City"), and _____, an Arizona non-profit organization ("Project Manager") to allow Project Manager to develop and manage a recreational Community Agriculture Project, subject to the terms and conditions of this permit, on properties owned by the City of Flagstaff.

RECITALS

- A. The City recognizes the role that Community Agriculture has in supporting a sustainable community by providing locally grown food, reducing greenhouse gases from shipping food from distant locations, and building a sense of community among participants and the City as a whole.
- B. The City has available vacant property that could be used for recreational Community Agriculture Projects.
- C. Project Manager is a non-profit organization interested in sustainable communities and is willing and capable of managing a Community Agriculture Project.
- D. The City desires to partner with the Project Manager to operate a Community Agriculture Project on vacant City property, subject to the terms and conditions of this Permit.
- E. The City has determined the desirability of conducting this Community Agriculture Project on certain parcel(s) of property owned by the City.

The purpose of the Community Agriculture Project is to provide opportunities for the public to have greater opportunities to be self sustaining by growing their own food through recreational community agriculture. The project will serve to educate the community on how to sustainably grow food in Flagstaff's unique high elevation environment, arid climate and short growing season. It will promote the environmental and health benefits locally grown food and strengthen the sense of community and social/cultural equity in the neighborhoods where the agriculture sites are located.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and obligations set forth in this Permit, the City and Project Manager agree as follows:

I. GRANT OF PERMIT

1.1 The City hereby permits the Project Manager to establish, promote and manage Community Agriculture on City properties, as identified by the City, subject to the terms and conditions of this Permit.

II. SPECIFIC CONDITIONS

2.1 Allowable use: This permit authorizes the use of City identified property(s) for the sole purpose of recreationally growing vegetables, decorative and edible plants, and accompanying agricultural activities (i.e. composting, educational programs, workshops, etc.). A Special Event Permit will be required for any activity that is publicly advertised or will draw public activity to the property. No overnight camping is allowed. No storage of non-agriculture related materials is allowed. The permittee shall not remove any trees or shrubs from the property without prior

consultation from the Sustainability Manager or Designee.

2.2 Structures: No permanent structures will be constructed on the property. The erection of temporary structures (i.e. raised beds, fences, signs, sheds, greenhouses, etc.) must be approved by the City's Sustainability Manager or Designee prior to construction. Compliance with all City codes and regulations is required, and the Project Manager will have the property Blue Staked before digging.

2.3 Water Conservation: Water conservation techniques appropriate to Flagstaff's arid climate shall be used at all times. The permittee will comply with all residential watering schedules, use restrictions and water harvesting practices maintained or imposed by the City of Flagstaff.

2.4 Flood Plain Restrictions: The Project Manager will confine all activities to the usable area outside of flood plain restrictions.

2.5 Sub-Permittees; Cooperative Membership: The Project Manager may divide the Property into plots for use by individuals or groups of sub-permittees, or in a manner the community would most benefit from for maximum production. Only the authorized representative(s) of the Project Manager identified in this Permit and sub-permittees who have submitted a signed City of Flagstaff Community Agriculture Project Participant Waiver, Release and Hold Harmless Agreement in the form attached as Exhibit A to this Permit shall be allowed to enter the Property or use the Property for gardening purposes. The Project Manager shall enforce the Community Agriculture Rules and Guidelines and shall be responsible for the collection of a nominal fee to cover the actual costs for water, maintenance, site development, and insurance. The Project Manager shall not charge a fee in excess of the actual costs of water, maintenance, site development, and insurance related to the Community Agriculture Project. All sub-permittees shall be bound by the terms and conditions of this Permit.

2.6 Recreational Agriculture Only: The Community Agriculture Project is intended to provide the public with opportunities for recreational agriculture only. In no event will produce from Community Agriculture efforts be sold.

2.7 Duration: The Permit for this Community Agriculture Project shall be for the 2010 Flagstaff summer growing season, beginning on _____, 2010, and terminating on _____, 2010 and subject to renewal for a total of three (3) years for one (1) year periods and upon agreement by both parties.

2.8 Water: The Project Manager understands and agrees that it and its sub-permittees shall be responsible for the actual cost of using water for the Community Agriculture Project.

2.8.1 Water Usage: \$5.60 per 1000 gallons + 6.00 monthly fee

The Beautification and Public Art Commission will be providing BBB monies to pay for the one time installation of permanent and temporary water service infrastructure to the Izabel Community Agriculture Site.

2.9 Site Preparation: The Project Manager understands and agrees that it is responsible for site development and maintenance of the Property.

2.10 Persons with Disabilities: The Project Manager shall be responsible for any alteration, improvement, or addition to the Property mandated by the Americans with Disabilities Act of 1990,

as amended, and applicable rules and regulations as promulgated from time to time, and shall be responsible for determining what improvements are necessary as well as the cost of such improvements. Plans for such improvements shall be submitted to the City's Planning and Development Services Department and a copy to the City's Sustainability Manager for review and permitting approval.

2.11 Structural and Other Improvements: No permanent structures shall be allowed on site. All temporary structure requests shall be submitted to the City's Sustainability Manager or Designee for review and approval. All alterations, improvements and additions (i) shall be performed at the sole cost and expense of the Project Manager in compliance with all applicable laws and regulations of any federal, state or local governmental body or agency, and (ii) shall be removed at the end of the Permit term. The cost of removal of structures, material, or personal property, including trash and debris, left on the Property following the end of the Permit term shall be billed to the Project Manager. Failure to remove improvements or pay such amounts the City incurs for removal shall be reason to disqualify the Project Manager from being selected to manage any future gardens on City property and may disqualify the Project Manager from additional rights of this permit agreement.

2.12 Prohibition of Chemicals and/or Hazardous Materials: The Project Manager shall ensure that no pesticides, insecticides, chemicals, hazardous materials, or chemical fertilizers shall be allowed or used on the Property. Violation of this provision will result in immediate revocation of a sub-permittee's permit to garden, and may result in a request for removal of all treated plants. In the event the Project Manager is unable to enforce this provision, this Permit shall be revoked.

2.13 Maintenance of the Community Agriculture Property: The Property shall be maintained in a manner that makes it reasonably safe for the public, visitors, volunteers and employees. The Project Manager will provide sufficient trash/recycling receptacles for the Property and provide for the disposal of trash/recyclables. In the event the Project Manager fails to maintain the Property in a safe and healthful manner, including, but not limited to, the control of odor, maintenance of safe and accessible walkways, and trash/recyclables removal, the City shall have the right to promptly notify the Project Manager of such failure and request that the Project Manager take action to correct such failure. If the Project Manager fails to take appropriate action within seven (7) days from the time such notice is provided, the city may, at its option, take such action as is reasonably necessary to correct the failure and charge the cost to the Project Manager.

2.14 Improper Conduct: The Project Manager shall not sell or permit to be sold, used or brought on the Property any intoxicating or alcoholic substance. The Project Manager shall not permit improper or immoral conduct on the parts of its authorized representatives or sub-permittees, and shall not permit sales or commercial activity of any kind on the Property or any noise or disturbance designed to solicit trade. The Project Manager shall not permit excessive noise that disrupts the peace and enjoyment of the Property's neighbors, and shall not permit any activities on the Property after 10 p.m. each evening.

2.15 Corrective Actions: Timely and full performance of all terms and conditions of this Permit is made the essence hereof. If any corrective action shall be necessary, the following process will be utilized sequentially until resolution:

- 2.15.1 The matter shall be brought to the attention of the City's Sustainability Manager or Designee for resolution.
- 2.15.2 The City's Sustainability Manager or Designee will review the matter and work with the Project Manager to make every reasonable attempt at resolution.

III. GENERAL CONDITIONS

3.1 Anti-Discrimination: The Project Manager shall not discriminate against any person or persons because of race, religion, color, sex, age, sexual orientation, or national origin in the conduct of its operation hereunder.

3.2 Liability and Insurance: The Project Manager shall procure and maintain for the duration of this Permit insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Permit by the Project Manager, its authorized representative, the sub-permittees, and all agents, representatives, employees or contractors of the Project Manager. The insurance requirements herein are minimum requirements for this Permit, and in no way limit the indemnity covenants contained herein. The City does not represent or warrant that the minimum limits set forth herein are sufficient to protect the Project Manager from liabilities that might arise out of this Permit, and the Project Manager is free to purchase such additional insurance as the Project Manager may determine is necessary.

3.2.1 The Project Manager shall provide General Liability coverage with a minimum amount of \$1,000,000 for the Project Manager and all sub-permittees.

3.2.2 Any self-insured retentions and deductibles must be declared to and approved by the City.

3.2.3 The policies shall contain, or be endorsed to contain, the following provisions:

3.2.3.1 The City of Flagstaff, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Property subject to this Permit and activities performed by or on behalf of the Permittee and Sub-permittees.

3.2.3.2 The policy shall contain broad form contractual liability coverage.

3.2.3.3 The City of Flagstaff, its officers, officials, agents, employees, and volunteers shall be named as additional insureds to the full limits of liability of the policy, even if those limits of liability are in excess of those required by this Permit.

3.2.3.4 The Project Manager's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess to the coverage of the Project Manager's insurance and shall not contribute to it.

3.2.3.5 The Project Manager's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2.3.6 Coverage provided by the Project Manager shall not be limited to the liability assumed under the indemnification provisions of this Permit.

3.2.3.7 The policies shall contain a waiver of subrogation against the City, its

officers, officials, agents and employees for losses arising from the operations, occupancy, and use of the Premises subject to this Permit.

- 3.2.4 Workers' Compensation and Employee's Liability Coverage. If the organization does not have employees this coverage does not apply. If the organization does have any paid employees then the insurer agrees to waive all rights of subrogation against the City, its officials, officers, agents, employees and volunteers for losses arising from the Project Manager's operations, occupancy and use of the Property subject to this Permit.
- 3.2.5 Property Insurance. The City of Flagstaff shall be named as loss payee as its interests may appear. The Project Manager may carry any insurance required to be maintained under this Section 3.2 under a "blanket policy" covering other properties of the Project Manager.
- 3.2.6 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Permit shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. Such notice shall be sent directly to the City of Flagstaff's Risk Manager, at the address provided in Section 3.7 herein.
- 3.2.7 Acceptability of Insurers. The Project Manager shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to provide the Project Manager from potential insurer insolvency.
- 3.2.8 Verification of Coverage. The Project Manager shall furnish the City with certificates of insurance (*ACORD form*). The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City must receive and approve all certificates of insurance before the Project Manager takes possession of the Property. The Project Manager's failure to maintain the insurance policies as required by this Permit or to provide timely evidence of renewal will be considered a material breach of this Permit. All certificates of insurance shall be sent directly to the City of Flagstaff's Risk Manager. A description of the Property shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Permit at any time.
- 3.2.9 Approval. Any modification or variation from the insurance requirements in this Permit must have the prior approval of the City's Risk Manager. Such action will not require a formal Permit amendment but may be made by administrative action.
- 3.2.10 Failure to Maintain Insurance. If the Project Manager fails or refuses to provide copies of the insurance policies, together with evidence of payment of premiums

therefore, or otherwise fails or refuses to procure or maintain insurance as required by this Permit, the City shall have the right, at the City's election, and upon five (5) days' notice to the Project Manager, to procure and maintain such insurance. Any premiums paid by the City hereunder shall be due and payable by the Project Manager to the City on the first day of the month following the date on which the premiums were paid. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

3.3 Indemnification. The Project Manager shall defend, indemnify and hold harmless the City and its agents and employees from any and all liability, litigation, damage, loss, injury, expense or cost arising out of the acts or omissions of the Project Manager and its sub-permittees in relation to the use and occupation of the Property. It is the specific intention of the parties that the Project Manager shall indemnify the City from and against any and all claims, except for claims arising solely from the negligent or willful acts or omissions of the City. This indemnity shall survive the expiration or earlier termination of this Permit to the extent the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

3.4 Laws, Licenses and Permits: The laws of the State of Arizona shall govern this agreement. The Project Manager shall comply with all Federal, State and City laws and regulations with regard to construction, licenses or permits, and all other matters.

3.4.1 Conflict of Interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

3.4.2 Compliance with Federal Immigration Laws and Regulations. Project Manager understands that if it or any of its sub-permittees construct a structure on or otherwise improve the Property that the terms of A.R.S. § 41-4401 apply to this activity. In the event that such improvements are made, Project Manager hereby warrants to the City that the Project Manager and each of its contractors, subcontractors, and permittees will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter "Provider Immigration Warranty").

3.5 Severability. If any provision of this Permit or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Permit which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Permit, and to this end the provisions of this Permit are declared to be severable.

3.6 Entire Agreement. This Permit contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Permit shall be deemed to exist or to bind any of the parties.

3.7 Notification: Any written communication to the City or the Project Manager shall be mailed postage prepaid, addressed to:

IF TO CITY:

CITY of FLAGSTAFF
ATTN: Sustainability Manager
211 West Aspen Avenue
Flagstaff, Arizona 86001

IF TO PROJECT MANAGER:

or such other address as the parties may establish by written notice to each other.

3.8 Records Maintenance: The Project Manager shall maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended on the Community Agriculture Project. These records shall be subject to inspection, review or audit by City staff, and are subject to State laws related to Public Records.

3.9 No Liens. The Project Manager understands that this Permit does not convey any property interest in the Property, and agrees not to suffer or permit any lien (including, but not limited to, tax liens, mechanics' liens and materialmen's liens) to be placed against the Property.

3.10 Independent Contractor. The parties agree that the Project Manager enters into this Permit with the City as an independent contractor. Nothing in this Permit shall be construed to constitute Project Manager or any of Project Manager's agents, employees, or sub-permittees as an agent, employee or representative of the City. As an independent contractor, Project Manager is solely responsible for all labor and expenses in connection with this Permit and for any and all damages arising out of Project Manager's performance under this Permit.

3.11 Default. Project Manager's failure to provide the consideration established by this Permit, or to comply with any of the specific or general conditions of this Permit shall be a breach and a default.

3.12 Termination. This Permit shall terminate upon expiration of the term identified herein, or the City's revocation of the Permit. Upon termination, Project Manager and its sub-permittees shall immediately surrender possession of the Property to the City. Upon termination, the Project Manager shall immediately remove all personal property and all structural improvements to the property, except that property and improvements the City agrees, in writing, may remain.

IV. SIGNATURES

Each party represents and warrants that all necessary approvals for this agreement have been obtained, and the persons whose signatures appear below have the authority necessary to execute this agreement on behalf of the parties indicated.

CITY OF FLAGSTAFF

PROJECT MANAGER

City Manager

Date

Date

ATTEST:

City Clerk

Date

APPROVED AS TO FORM:

City Attorney

Date