

COMMUNITY GARDEN LICENSE AGREEMENT

This COMMUNITY GARDEN LICENSE AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2021 (the “Effective Date”) by and between the City of Shakopee, a Minnesota municipal corporation (the “City”), and the County of Scott, a political subdivision of the State of Minnesota (the “County”).

RECITALS

WHEREAS, the City and the County intend to enter into this Agreement in order for the County to install, operate, use, and maintain a community garden on real property owned by the City (the “Project”);

WHEREAS, the City desires to provide the County a non-exclusive license to install, operate, use, and maintain the community garden on a portion of the City’s real property, described and depicted in Exhibit A (the “License Area”);

WHEREAS, the County and the Shakopee Public Utilities Commission (“SPUC”) intend to enter into a separate license agreement in order for the County to also install, operate, and maintain the Project on a portion of the adjacent property owned by SPUC, identified as PID #279070240 (the “SPUC-County License Agreement”); and

WHEREAS, the County will install, operate, and maintain the Project on the License Area and meet all other related obligations and requirements under this Agreement.

AGREEMENT

NOW, THEREFORE, the City and the County do hereby agree as follows:

1. Term. This Agreement shall commence on the Effective Date and shall remain in effect for five (5) years thereafter (the “Term”), subject to the remaining provisions contained herein.
2. Contingency. This Agreement is contingent upon SPUC and the County entering into SPUC-County License Agreement within thirty (30) days of the Effective Date of this Agreement
3. Description of Community Garden. The equipment and materials to be installed, operated, and maintained by the County under the Project include: garden beds, a fence, bike racks, and signage compliant with City of Shakopee ordinances (the “Community Garden”).
4. Grant of License.
 - a. The City hereby grants and conveys a non-exclusive license to the County for the Term of this Agreement to install, operate, use, and maintain the Community Garden as the County may require for the Project within the License Area.
 - b. The City represents and warrants that it is the fee simple owner of the property on which the License Area is located and is authorized to grant a license pursuant to

this Agreement. The City does not warrant that the License Area is suitable for the purposes for which it is permitted to be used under this Agreement.

- c. The City reserves the right to occupy and use the License Area for all purposes not inconsistent with its obligations under this Agreement.
- d. This license includes the right of the County, its officials, contractors, agents, and employees to install, locate, construct, operate, maintain, alter, repair, improve, inspect, and replace the Community Garden within the License Area.
- e. This license includes the right to cut, trim, or remove any trees, shrubs, or other vegetation from the License Area that, in the County's judgement, unreasonably interfere with the Community Garden.
- f. The County acknowledges that the License Area is in good order, condition, and repair, and agrees that its use of the License Area will comply with all applicable laws, rules, and regulations and that the County shall not commit any nuisance or waste on the License Area.

5. The City's Obligations. For the Term of this Agreement, the City shall:

- a. Permit the County and its officials, employees, contractors, and agents to install, operate, and maintain the Community Garden within the License Area;
- b. Provide continuous freedom of access to the Community Garden located in the License Area, including, but not limited to, commercially reasonable ingress and egress to the License Area for installation, operation, maintenance, and use of the Community Garden by the County and other Community Garden users;
- c. Not take any action that could reasonably be expected to limit the County's use and operation of the Community Garden; and
- d. Keep the License Area free of any improvements or objects that would unreasonably interfere with the County's rights under this Agreement.

6. The County's Obligations. For the Term of this Agreement, the County shall:

- a. Install and provide the Community Garden within the License Area at its sole cost. The Community Garden is anticipated to be installed by the County within one (1) year of the Effective Date of this Agreement. The County agrees that, with the exception of the Community Garden, there shall be no storage, disposal, or placement of any materials, structures, or property of any kind within the License Area, except for in short duration and when reasonably necessary during installation and maintenance of the Community Garden;
- b. Use commercially reasonable efforts to maintain the Community Garden in working order and good repair;
- c. Provide the City with at least forty-eight (48) hours' notice of its intent to perform initial installation and work within the License Area; and
- d. Monitor and oversee the use of the Community Garden and provide periodic updates to the City regarding its use.
- e. Keep the License Area free of any hazards that would unreasonably interfere with the City's use of the License Area.

7. Termination; Responsibility.

- a. This Agreement terminates automatically upon the expiration of the Term.
- b. Either party may terminate this Agreement at any time for any reason by giving the other party sixty (60) days' prior written notice.
- c. The City may terminate this Agreement immediately by giving the County written notice if it determines, in its sole discretion, that the County has breached any of the provisions of this Agreement.
- d. The effective date of termination shall be the date on which one party provides the other party written notice at the address listed under paragraph 13.
- e. Upon termination of this Agreement for any reason, the County shall remove the Community Garden from the License Area and restore the License Area to its condition as of the Effective Date, at the County's sole expense, within 90 days of the effective date of termination.

8. Indemnification.

- a. The City shall not be responsible or liable for, and the County shall defend, indemnify, and hold harmless the City and any officers, officials, agents, and employees of the City, from any claim, demand, liability, judgment, award, fine, lien, loss, damage, expense, charge, or cost of any kind or character (including reasonable attorneys' fees and court costs) arising directly or indirectly from the County's use of the License Area, including, without limitation, claims arising from any injury or damage to the person or property of the County or any other person in or about the License Area. This section shall survive expiration or termination of the Agreement.
- b. This paragraph shall not be construed as waiver by either party of any statutory liability limitations or immunities set forth in Minnesota Statutes, Chapter 466.
- c. Neither party shall be liable to the other for punitive, indirect, exemplary, consequential, or incidental damages arising in connection with this Agreement, and each party hereby waives its right to claim any such damages.

9. Acknowledgments.

- a. The County acknowledges that its use of the License Area is with the City's permission and is not open, continuous, notorious, or in any other manner supportive of a claim of adverse possession, prescriptive easement, statutory user, or other entitlement to the License Area or the License Area.
- b. The parties acknowledge that this Agreement is a license for the County to use the License Area for the purposes described in this Agreement and does not confer any estate or interest in the License Area to the County.
- c. The parties acknowledge that this Agreement does not create the relationship of principal and agent or of partnership or joint venture or of any association between the City and the County and that the sole relationships of the parties is that of licensor and licensee under this Agreement.

19. Incorporation of Recitals. The Recitals set forth in the preamble to this Agreement are incorporated into this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

THE CITY OF SHAKOPEE:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

THE COUNTY OF SCOTT:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A: DESCRIPTION AND DEPICTION OF THE LICENSE AREA

That portion of PID #279070230 depicted below:

