

RESOLUTION NO. 2137

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING A LICENSE AGREEMENT WITH THE GOLDEN
COMMUNITY GARDEN STEERING COMMITTEE**

WHEREAS, the City of Golden is committed to meeting the sustainability goals established in Resolution 1793; and

WHEREAS, the City of Golden owns approximately two acres of land that was previously used for outdoor storage and for offices for the Parks Division ("the upper shops location"); and

WHEREAS, the Clear Creek Corridor Master Plan states that the preferred use for the upper shops location is a community garden; and

WHEREAS, a group of interested residents, led by the Golden Community Garden Steering Committee, have established a thriving community garden at the upper shops location; and

WHEREAS, in an urban setting, community gardens create sustainable uses of open space; and

WHEREAS, community gardens can strengthen community bonds, provide food and create recreational opportunities for a community; and

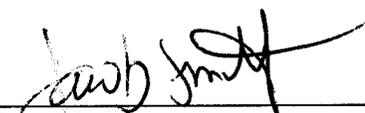
WHEREAS, community gardens can provide awareness and educational opportunities such as education on organic and efficient water use gardening techniques, and;

WHEREAS, City Council has considered the license agreement between the City and the Golden Community Garden Steering Committee.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF GOLDEN, COLORADO:**

City Council accepts the license agreement, substantially in the form attached hereto as Exhibit A. The Mayor is authorized to execute such agreement.

Adopted this 28th day of July, 2011.



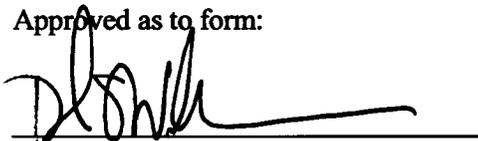
Jacob Smith
Mayor





Susan M. Brooks, MMC
City Clerk

Approved as to form:

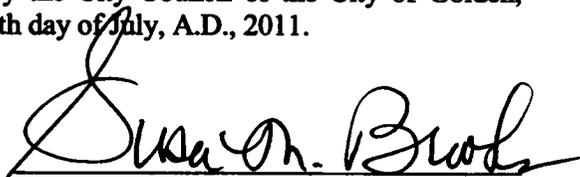


David S. Williamson
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular business meeting thereof held on the 28th day of July, A.D., 2011.



ATTEST:



Susan M. Brooks, City Clerk of the City of
Golden, Colorado

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is entered into by and between the CITY OF GOLDEN, COLORADO a Colorado home rule municipality (the "City"), and the GOLDEN COMMUNITY GARDEN STEERING COMMITTEE (the "Licensee").

RECITALS

WHEREAS, the City is the owner of certain property in Golden, Colorado, known as the "upper shops" location; and

WHEREAS, the Licensee desires to operate and maintain a community garden, known as the "Golden Community Garden," within the City in the "upper shops" location; and

WHEREAS, the Golden Community Garden will be accessible to the public and may be used by the Golden citizens upon application and as space permits; and

WHEREAS, since 2009, the Golden Community Garden has existed to provide a place for citizens of Golden to plant and harvest their own produce in a communal setting, to visibly enhance an underdeveloped area, and to educate participants and the community regarding efficient watering practices; and

WHEREAS, the City believes the grant of this License and the Golden Community Garden will benefit the citizens of Golden.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Grant of License. Subject to the terms and conditions set forth herein, the City grants to the Licensee a non-exclusive revocable license to operate and maintain a community garden (the "Golden Community Garden") within City property known as the "upper shops" location (the "Property"). The exact location and boundaries of the Property to which this Agreement applies is shown on **Exhibit A**.

2. Term. The term of the Agreement granted herein shall be from the date last signed below, through December 31, 2011. If, before the start of the 2012 growing season, the Licensee either incorporates as a nonprofit entity or partners with a separate nonprofit organization, the City may, in good faith and subject to City Council approval, enter into a new agreement with that organization for a term and under conditions to be determined.

3. Improvements and Alterations. Licensee shall be responsible for the installation, construction and maintenance of all improvements necessary for the Golden Community Garden. All general improvements common to gardens must be approved in writing by the City prior to installation and construction. Licensee is responsible for acquisition of all permits and payments of all fees associated with such installation and construction. No permanent improvements shall be authorized without the express written consent of the City of Golden Parks and Recreation Director.

4. Roles and Responsibilities.

a. Licensee. The Licensee shall be responsible for general management of the Garden, including plot reservations, plot revenue and fund management, and organizing volunteers. Licensee shall maintain memberships of the Garden open to all City of Golden members of the public and shall not discriminate on the basis of race, religion, national origin, color, sex, age, veteran status, or disability.

b. City. From time to time, at the discretion of the Parks and Recreation Director, city Parks personnel may work with the Licensee to perform seasonal clean-up or other work to maintain City accreditation and best management practices for maintenance of the Garden.

5. Utilities and tap fees. Licensee shall be responsible for obtaining and paying all water, electricity, drainage, or any other utility service used on the Property during the license term. Licensee shall pay all water consumption costs through the City's water billing system. The applicable rate charged shall be the current City non-potable irrigation rate. A 1-1/2" irrigation tap shall be provided and retained by the City.

6. Eighth Street Access Road. If the City requires the construction of a new public access road identified in the Clear Creek Corridor Master Plan to connect Eighth Street and the Community Center, the Licensee shall assist in the removal of all Garden improvements for the road area and relocate said improvements to an approved area. If Licensee wishes to preserve the Garden infrastructure removed through City demolition of the road area, costs for the removal of the infrastructure, beyond basic demolition, shall be borne by the Licensee.

7. Operation Requirements. The Licensee shall operate and maintain the Property as a community garden. The Licensee has submitted an annual operating plan to the City prior to the growing season and will submit an end-of-year summary. Licensee's operation on the Property shall not conflict with City operations that require unfettered access to the Church Ditch turn-out and continuous access by truck on the north side of the Property to the water plant ponds. Licensee will operate the Garden in accordance with a set of garden rules substantially in the form attached as **Exhibit B**. Licensee will require all persons to whom it leases plots to enter into a gardener agreement and waiver of liability substantially in the form attached as **Exhibit C**. Licensee shall require all participants in the Golden Community Garden to sign an "Advisement of Risk, Release of Liability, and Indemnification Agreement" as to the City of Golden, in substantially the form attached hereto as **Exhibit C**, and shall collect, maintain, and provide the same to the City upon request.

8. By executing this Agreement, the City is not assuming any liability for acts or omissions of the Licensee, its contractors, invitees, guests, or leasees, or any damages to person or property caused by Licensee's acts or omissions occurring on or off of the Property. The City expressly reserves the right to assert all defenses and liability limitations provided by law, including, without limitation, the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., or any successor acts or provisions.

Nothing herein is intended to waive any of the rights and protections afforded the City by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et. seq., or otherwise provided by law.

9. Compliance with Laws. This Agreement relates only to permission to encroach onto City property under the terms and conditions set forth herein. The execution of this Agreement shall not relieve the Licensee from complying with any provision of the Golden Municipal Code, including compliance with zoning ordinances and use restrictions, or building codes, nor shall this Agreement be

construed as approval by the City to construct the improvements contemplated by Licensee, to the extent that City approvals or permits are otherwise required by the Golden Municipal Code or Colorado statute.

10. Notice. Any notice or communication between the Licensee and the City which may be required or which may be given under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given, when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

City of Golden
Attn: Theresa Worsham
Sustainability Coordinator
1445 10th Street
Golden, CO 80401
Tel:(303) 384-8117

Golden Community Garden
Attn: Matt Burde
Steering Committee Chair
P.O. Box 17481
Golden, CO 80402
Tel:(720) 381-2420

11. Police Power Reserved. The rights granted herein shall not limit or otherwise restrict the right of the City to exercise its police power with respect to its control of the City property.

12. Termination. The "Term" of this Agreement in paragraph 2 notwithstanding, either party may terminate this Agreement, with or without cause, by providing the other party with 30 days written notice. Upon termination by either party, and at the request of the City, Licensee shall remove at its expense all structural improvements located on City property pursuant to this Agreement if the City determines, in its sole discretion, that such improvements may, now or in the future, constitute a hazardous condition or otherwise interfere with a public use of the property. Removal of its structural improvements, if required, shall be completed within 30 days after termination.

13. Non-Assignability. Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

This Agreement shall be effective on the date last signed below:

FOR THE CITY OF GOLDEN:

Jacob Smith, Mayor

Date: _____

ATTEST:

Susan M. Brooks, MMC, City Clerk

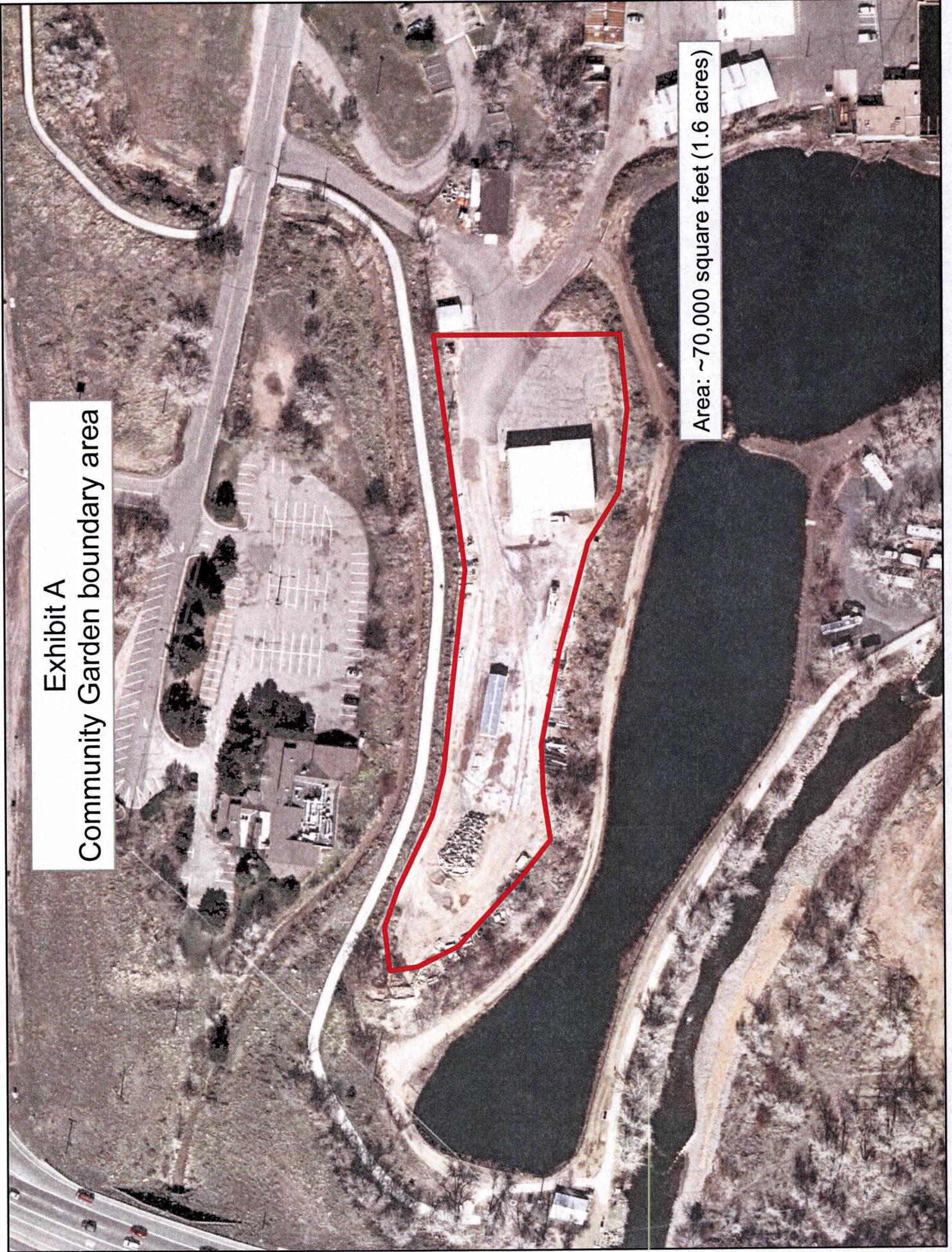
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FOR THE LICENSEE:

Matt Burde, Golden Community Garden Steering Committee

Date: _____

Exhibit A
Community Garden boundary area



Area: ~70,000 square feet (1.6 acres)

Exhibit B

Community Garden Rules and Regulations

GARDENER RESPONSIBILITIES

The following guidelines outline the management of the Community Garden and its site property. These guidelines have been established by Golden Community Garden Steering Committee as a basis for a use agreement between the two parties. In turn, Golden Community Garden provides gardeners with the authority and permission to use the garden site. We, as a community, have a responsibility to keep our garden managed effectively. The garden is a privilege and everything works more smoothly when people are involved in its overall upkeep. Please also remember to treat your fellow gardeners as you would like to be treated.

Golden Community Garden has a volunteer Steering Committee to collect the plot fees, assign plots, organize maintenance, and coordinate garden related activities. With your signature below, you acknowledge as a participating gardener responsibility for the following:

1. **Providing an average of four hours per month per plot** (or approximately 16 hours over the season) to the community garden above and beyond your own garden plot. (Failure to contribute your hours can result in the loss of gardening privileges.) Hours can be tracked here: <http://www.goldencommunitygarden.org/hours.html>
2. Submitting dues for the 2011 gardening season.
3. If for any reason you find that you cannot care for your garden, you are required to notify the Steering Committee and make arrangements with other gardeners to water and maintain your plot during your absence. **If a garden appears neglected/abandoned (unwatered and/or overrun with weeds) you will be given ten (10) days notice to maintain your plot. After this time your plot will be re-assigned.**
4. The Golden Community Garden requires water restrictions and conservation measures be followed. A gardener MUST remain on the premises while his/her garden is being watered, unless they have installed drip irrigation. With or without drip systems, the garden cannot allow excess water to drain onto adjacent property.
5. It is Golden Community Garden policy to prohibit use of non-organic pesticides, herbicides and fertilizers.
6. The maintenance of Common areas and furnishings, fencing, trees, trash receptacles, compost bins, street right-of-way, and water lines are the shared responsibility of all gardeners.
7. All pathways must be kept clear for all to use. If you're plot encroaches on the pathway (mulch paths are generally 3', and gravel pathways are 5' wide), you may find that maintenance will be done to return the area to a pathway.
8. Gardeners must have their plot planted within two weeks after opening day or the plot could be forfeited and reassigned.
9. Each gardener is responsible for clearing and tilling his/her plot before the close of the season. All dead plants, weeds, trash, tools, sticks and cages are to be removed or stored by November 1st (Unless arrangements are made for late season gardening.)
10. The Garden Steering Committee shall not discriminate on the basis of race, creed, color, national or ethnic origin, religion, marital status, age, sex, sexual orientation, or disability, in its garden membership and the administration of its programs.
11. In the event that a dispute arises between gardeners, or between a gardener (s) and the designated garden steering committee, and a resolution of the dispute cannot be reached by these parties, I agree to have Golden Community Garden act as the arbitrator of the dispute, and I further agree to adhere to Golden Community Garden's decision as final.

Mail to: P.O. Box 17481 Golden, CO 80402

More information, including answers to frequently asked questions can be found on our website:

<http://www.goldencommunitygarden.org>

Exhibit C

CITY OF GOLDEN ~ COMMUNITY GARDEN PROGRAM

ADVISEMENT OF RISK, RELEASE OF LIABILITY AND INDEMNIFICATION AGREEMENT:

Please read this form carefully and be aware that by your participation in this Community Garden Program you are advised of and assume the risks that you may experience as a result of participating in this Program.

The Community Garden Program is an activity in which, despite preparation, instruction, medical advice, conditioning, and equipment, there is still a risk of personal and bodily injury, sickness, disease, death, property loss or damage, such as the following. This list is by no means exhaustive, but includes:

1. Muscle strain and other muscle or soft tissue injuries.
2. Foot problems or foot injury.
3. Heat stroke or heat exhaustion.
4. Other bodily injury.

I do hereby assume all such risks and further waive, exempt and release the City of Golden, its officers and employees from any and all claims, actions or demands for any injury, loss or damage arising out of my participation in the Community Garden Program, whether or not caused by the act, omission, negligence or fault of the City or its officers and employees

I further agree to indemnify, hold harmless, and defend the City of Golden and its officers and employees from any and all claims, demands or actions resulting from injuries, damages, or losses arising out of, connected with, or in any way associated with the activities of the Community Garden Program.

I understand and acknowledge that the City of Golden, its officers, and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as amended, or otherwise available to the City of Golden, its officers, or its employees.

I understand and agree that this Agreement shall be governed by the laws of the State of Colorado, and that jurisdiction and venue for any suit or cause of action under this Agreement shall lie in the courts of Jefferson County, Colorado. I further agree that if any portion of this Agreement is held invalid that the remainder shall continue in full force and effect and that this Agreement shall be binding upon me, my successors, representatives, heirs, executors, assigns and transferees.

Photographs, digital images, or videotape of program participants and spectators may be used for future promotional or marketing material.

I have read and fully understand the above. I understand this agreement may not be amended except upon written agreement of the parties.

Participant's Signature: _____ **Date:** _____

Participant's Name (please print): _____

Birth Date: _____ **Age:** _____ **Sex:** M ___ F ___ **Phone #:** _____

Address: _____

Photo Release (please initial): ___ Yes ___ No

IF PARTICIPANT IS UNDER 18 YEARS OLD, PARENT SIGNATURE AND DATE:

By initialing above and signing below, I acknowledge that I am the parent of the above-named participant, as such term is defined in C.R.S. § 13-22-107 (2)(b), and I hereby waive and release any prospective claim of the participant against the City of Golden, its officers, and its employees, for negligence, to the extent provided by Colorado law, in connection with the above-described activities.

Parent's Signature: _____ **Date:** _____

Parent - Print Name: _____