

RESOLUTION NO. 1, SERIES 2018

A RESOLUTION AUTHORIZING A MEMORANDUM OF AGREEMENT FOR LICENSING ONE (1) PARCEL OF REAL PROPERTY TO THE JEFFERSON COUNTY COOPERATIVE EXTENSION SERVICE FOR A COMMUNITY GARDEN

WHEREAS, The Urban Renewal and Community Development Agency of Louisville (“Agency”) owns the vacant parcel of real property located at 1221 South 28th Street (Tax Parcel ID: 06-046K-0120-0000) (the “Property”), which is located in the Parkland Urban Renewal Plan Area (the “Plan”); and

WHEREAS, the Agency has previously licensed the Property to the Jefferson County Cooperative Extension Service, a division of the University of Kentucky College of Agriculture, as the licensee (“Licensee”) for use solely as a community garden for the benefit of the public and the citizens living in the surrounding neighborhood; and

WHEREAS, the license has expired by its terms and the Agency and Licensee desire to continue the license of the Property as a community garden for the benefit of the public and the citizens living in the surrounding neighborhood;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY OF LOUISVILLE

SECTION 1. That the Commissioners of the Urban Renewal and Community Development Agency of Louisville find that the statements contained in the above recitals are true and correct.

SECTION 2. That the Commissioners of the Urban Renewal and Community Development Agency of Louisville hereby authorize the issuance of a Memorandum of Agreement to Licensee for the licensing of the Property, substantially in form and substance as the draft Memorandum of Agreement attached hereto as Attachment A.

SECTION 3. That this Resolution shall become effective upon its passage.

BY: _____ **DATE APPROVED:** _____
James R. Frazier, Chairman
Urban Renewal and Community Development Agency of Louisville

APPROVED AS TO FORM:
MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

Edward S. Carle
Assistant County Attorney
Counsel for Urban Renewal and Community
Development Agency of Louisville
531 Court Place, Suite 900
Louisville, KY 40202
(502) 574- 3349

DATE APPROVED: _____

ATTACHMENT A

MEMORANDUM OF AGREEMENT

This Agreement made and entered into this ____ day of April, 2018, by and between **THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY OF LOUISVILLE**, a public body corporate and politic, hereafter referred to as “**Urban Renewal**”, whose address is 444 South Fifth Street, Suite 500, Louisville, Kentucky 40202, and **JEFFERSON COUNTY COOPERATIVE EXTENSION SERVICE**, a division of the University of Kentucky College of Agriculture, hereafter referred to as “**Licensee**”, whose address is 200 Juneau Drive, Suite 400, Louisville KY 40243.

RECITALS

WHEREAS, Urban Renewal holds fee simple title to the property located on the Northeast corner of 28th and Dumesnil Streets, Louisville, Kentucky (Tax Parcel: 046K-0120-0000) which property is hereafter referred to as the “Premises” and is more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Licensee has been operating a community garden since April of 2013 on the Premises pursuant to a prior Memorandum of Agreement with Urban Renewal and wishes to continue such license whose term has expired; and

WHEREAS, Urban Renewal is willing to grant Licensee a temporary license for calendar year 2018 to have the exclusive use and possession of the Premises for operating a community garden upon the terms and conditions in this Agreement;

Now, therefore, in consideration of the Recitals and the mutual promises contained in this Agreement, the parties hereto agree as follows:

1. The Recitals are hereby made a part of this Agreement.
2. The initial term of this Agreement shall be for the balance of calendar year 2018 beginning on April 15, 2018, and terminating on December 31, 2018, and shall continue thereafter for successive terms of one (1) year each, up to a maximum of three (3) years, unless sooner terminated pursuant to the terms of this Agreement. Each annual successive term shall be automatically extended for another year subject to either party’s right at any time to elect to terminate this Agreement for any reason whatsoever, with or without cause, by giving the other party thirty days (30) days written notice in accordance with Paragraph 20 of this Agreement.
3. Licensee shall be solely responsible for all site preparation necessary to make the Premises usable for the purposes permitted by this License. Licensee accepts the Premises AS IS WITH ALL FAULTS.

4. Licensee shall use the Premises solely for the purpose of operating a community garden for the benefit of the public.

5. Licensee, at its sole expense, shall maintain the Premises in good order and condition and state of repair and shall keep the Premises as described in Exhibit A and surrounding property, including public streets and sidewalks which provide ingress and egress to the Premises, free of debris and litter at all times during the term of this License.

6. At all times during the term of this License, Licensee shall conduct operations on the Premises in a safe, prudent, orderly, lawful and business-like manner in full compliance with all laws, ordinances and regulations which may be applicable to the Premises or Licensee's use thereof. Further, Licensee shall not commit or suffer waste upon the Premises or allow any part thereof to become a nuisance.

7. Licensee shall provide at its sole expense, any utility service hookups and their installation by the appropriate licensed contractors.

8. Licensee shall obtain and be solely responsible for obtaining all required permits and licenses necessary for its operation of the community garden at the Premises from the appropriate governmental authorities.

9. Licensee, prior to the end of the term of the License, shall return the Premises to its original condition, to the satisfaction of Urban Renewal.

10. Licensee shall at all times be responsible for the actions of its employees, contractors, subcontractors, sub-licensees or other persons using any portion of the Premises with the approval or authority of Licensee and Licensee shall insure that all such persons adhere to the requirements of this License.

11. Licensee agrees that any maintenance work it does on the subject property under this Agreement shall be done in such a manner as to promote and preserve public safety and welfare and with a minimum of disruption and interference with the free flow of vehicular and/or pedestrian traffic over public rights of ways adjacent to the Premises.

12. Licensee shall, at its expense, keep in good order, condition and state of repair the above-mentioned Premises during the period of this Agreement. Licensee shall make no alterations to, nor make any improvements on, the Premises without the prior written approval of Urban Renewal. The parties agree that Urban Renewal may waive the performance of any items, conditions and covenants herein, provided that such waiver shall not be construed or deemed a continuing waiver of the same or any subsequent conduct which may constitute a default of any

provision. Any amendments or modifications to this Agreement must be in writing and signed by both parties.

13. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

14. The covenants, conditions, warranties and agreements made and entered into by the parties hereto are declared binding on, and shall inure to the benefits of their respective successors and assigns.

15. This Agreement represents the entire understanding and agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations and agreements relative thereto. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Urban Renewal or Licensee.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

17. Licensee, as an agency of the Commonwealth of Kentucky, although vested with sovereign immunity, is subject to the Board of Claims Act, KRS 44.070-44.160. Claims made against Licensee relating to personal injury or property damage may be filed and decided under the provisions of the Act. To the extent permitted by said Act and other applicable law, Licensee will defend, indemnify, and hold harmless Urban Renewal and Louisville/Jefferson County Metro Government from and against any and all claims which may result from any error or omission arising out of its performance under this Agreement.

18. Licensee shall provide Urban Renewal and/or Louisville/Jefferson County Metro Government with Insurance coverage in accordance with Exhibit B attached hereto and made a part hereof.

19. If, through any cause, Licensee shall fail to fulfill its obligations under this Agreement, or, if it shall violate any of the covenants, terms or conditions herein, and if such failure or violations should continue for a period of thirty (30) days after written notice of such is given by Urban Renewal to Licensee, Urban Renewal shall thereupon have the right to terminate

this License and specify the effective date thereof. Upon such termination, Licensee shall not be entitled to any compensation from Urban Renewal, including but not limited to, replacement value or fair market value of any improvements placed on the Premises.

20. All notices provided for in this Agreement shall be sent to the following addresses:

IF TO URBAN RENEWAL:

Urban Renewal and Community Development Agency of Louisville
444 South Fifth Street, 5th Floor
Louisville, Kentucky 40202
Attention: Director
Email Address: _____
Facsimile No. _____

IF TO LICENSEE:

Jefferson County Cooperative Extension Service
200 Juneau Drive, Suite 400
Louisville KY 40243
Attention: Director
Email Address: _____
Facsimile No. _____

21. Time shall be of the essence with respect to the duties and obligations imposed on the parties hereto. With respect to any duty or obligation imposed upon a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of performance thereof.

22. This Agreement does not convey a permanent interest in the Premises or lands and does not run with the land. Accordingly, Licensee shall not transfer or assign any right or interest in the Agreement. Any attempt to assign or transfer the Agreement shall be considered a substantial breach and shall render the Agreement a nullity.

23. It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Licensee to be an agent, partner, joint venturer, officer or official of the Urban Renewal. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

24. Licensee agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. Licensee also agrees to notify the Urban Renewal in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Urban Renewal owned Premises where Licensee performs work under this Agreement.

25. Licensee shall keep the Premises free from any liens or claims of lien arising out of work performed, materials furnished or obligations incurred by, for or at the instance of Licensee. In the event that any liens are filed arising out of work performed, materials furnished or obligations incurred by, for or at the insistence of Licensee and Licensee fails to bond, pay or otherwise extinguish such liens within thirty (30) days after Urban Renewal notifies Licensee of the existence thereof, Urban Renewal may, without waiver of any other rights or remedies, bond, pay or otherwise extinguish such liens and any expenses incurred by Urban Renewal in connection therewith and shall be reimbursed by Licensee upon demand as additional rent hereunder.

26. Each of the parties hereto covenant and warrant to the other that their respective entities have the full right, power and authority to enter into this Agreement and that the person executing this Agreement on its behalf has been duly authorized by the party to sign and execute this Agreement on its behalf and the Agreement is a valid and binding obligation on the party and enforceable in accordance with its terms.

(Signature Page Follows)

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

**URBAN RENEWAL AND COMMUNITY
DEVELOPMENT AGENCY OF LOUISVILLE**

By: _____
Edward S. Carle
Assistant Jefferson County Attorney

Chairman

Date: _____

Date: _____

LICENSEE

By: _____

Title: _____

Date: _____

EXHIBIT A

Tax Parcel: 046K-0120-0000

BEING all of Tract 1 as shown on a plat of record in Deed Book 6691, Page 857 and more particularly described as follows:

BEGINNING at the Northeast corner of Dumesnil and 28th Streets; thence Eastwardly along the North side of Dumesnil Street, 150 feet; thence North 2 degrees 14 minutes 00 seconds West 110 feet; thence South 86 degrees 13 minutes 00 seconds West 150 feet to the East line of 28th Street; thence South along the East line of 28th Street 110 feet to the point of beginning.

Being a part of Tract 1 of the property conveyed to The Urban Renewal and Community Development Agency of Louisville by deed dated May 24, 1989 and recorded in Deed Book 5866, Page 867 in the Office of the County Clerk of Jefferson County, Kentucky.

EXHIBIT B

INSURANCE REQUIREMENTS

A. Prior to commencing work, Licensee shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Licensee shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to Metro Government and approved by the Metro Government's Risk Management Division. The Licensee shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Licensee evidencing proof of coverages.

Without limiting Licensee's indemnification requirements, it is agreed that Licensee shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Metro Government. Metro Government may require Licensee to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro Government's option, actual copies of policies.

B. The following clause shall be added to the Licensee's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

C. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the Licensees or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY:** via the Occurrence Form, primary and non-contributory, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

D. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A-VI", unless proper financial information relating to the Company is submitted to and approved by Metro Government's Risk Management Division.

E. MISCELLANEOUS

1. The Licensee shall procure and maintain insurance policies and shall furnish Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).

2. Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government
[Urban Renewal and Community Development Agency of Louisville]

3. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

4. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE:** Licensee shall notify Metro Government's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Licensee shall notify Metro Government's Risk Management Division within two business days. If Licensee fails to notify Metro Government as required by this Agreement, Licensee agrees

that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.

5. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of the Licensee hereunder. It is expressly understood that Metro Government does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Licensee.