

**MAINTENANCE AGREEMENT BETWEEN THE CITY OF MANITOWOC
AND GROW IT FORWARD, INC. FOR USE OF CITY PARKLAND**

THIS MAINTENANCE AGREEMENT is made and entered into this ____ day of _____, 2020, by and between the City of Manitowoc, Wisconsin, a municipal corporation, (hereinafter “City”), located at 900 Quay Street, Manitowoc, Wisconsin 54220, and Grow It Forward Inc., a Wisconsin non-stock corporation, (hereinafter “GIF”), with its principal mailing address of P.O. Box 562, Manitowoc, WI, 54221 and main office at 1501 Marshall Street, Manitowoc, WI 54220.

WITNESSETH,

WHEREAS, the City is the owner of the premises known as the South 14th Street Parkland, a 8.09 acre undeveloped parcel located in the City of Manitowoc, Manitowoc County, Wisconsin; and

WHEREAS, GIF has operated a community garden on a portion of the land at the South 14th Street Parkland since 2015; and

WHEREAS, GIF wishes to continue operating a community garden on a portion of the land at the South 14th Street Parkland to increase awareness, availability, and accessibility to healthy, locally grown food; and

WHEREAS, substantial infrastructure improvements have been installed since the original agreement between the parties; and

WHEREAS, the parties agree that a revised agreement is necessary and appropriate.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. LICENSE TO USE LAND

- a.** GIF may use 1.79 acres of the South 14th Street Parkland for the purposes of continuing to operate a community garden, as depicted on Exhibit A, the SMI Land Description survey.
- b.** GIF, may, within those 1.79 acres, maintain the following site as shown on Exhibit B, the Community Garden Site Plan:
 - i.** Plant, garden, and harvest the 170’ x 80’ fenced-in raised-bed garden area located on the site.
 - ii.** Keep in good repair the City’s shed and greenhouse located on the site.
 - iii.** Plant fruit and nut trees and shrubs, flowers, and perennials from the City’s approved planting list.

- iv. Allow garden stewards to maintain raised-bed plots within the garden for the purpose of growing crops and other items from the City's approved planting list.
- v. Install a concrete pad on which the greenhouse will be placed.
- c. GIF may apply for electrical and water service from Manitowoc Public Utilities. Electric service will be run over ground.
- d. GIF understands that all alterations made to the property must be compliant with City's zoning and building ordinances and any applicable state or federal laws.
- e. GIF will seek approval of Curt Hall, Parks and Recreation Division Manager, prior to doing any and all work at the South 14th Street Parkland.
- f. GIF will also seek approval of Curt Hall, Parks and Recreation Division Manager for any and all new structures, additional raised beds, or proposals that may be considered during the term of this agreement. Curt will determine if these proposals require further approval by Committees or Council.
- g. GIF will have all garden stewards sign a hold harmless form approved by the City of Manitowoc.

2. **TERM**. The term of this Agreement shall be for a period commencing upon signing and ending March 31, 2025.

3. **INDEMNIFICATION AND INSURANCE**

- a. **Indemnification**. GIF hereby agrees to hold the City, its employees, officials, officers and agents harmless and to indemnify and defend the City, its employees, officials, officers, and agents against all claims, demands, liabilities, losses, damages and expense of any kind or nature, on account of any injury, damage to, or death of any person or on account of any damage to any property of any nature arising from, in connection with, caused by or resulting from GIF's use of the premises. Such indemnification shall not apply to acts of willful misconduct of the City.
- b. **Insurance**. GIF agrees that it shall provide to the City, at its own cost and expense, insurance as specified below with a company or companies authorized to do business in the State of Wisconsin. Each policy and certificate shall require a 30 calendar day advance written notice of cancellation, non-renewal or material change in the policy. All coverage required shall apply as primary with the City, its employees and agents named as additional insureds. A Certificate of Insurance for all required insurance shall be filed with the City annually by March 1st and within thirty days after a material change in the policy.
 - i. **General Liability**. Comprehensive general liability insurance including contractual liability, personal injury liability, products and completed operations with minimum limits of \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage. This insurance shall be required for the full term of the license and any renewal periods.

- ii. Statutory Insurance. GIF shall carry all insurance as required by Wisconsin Statutes. This includes, but is not limited to, workers' compensation.
- c. Waiver of Subrogation. GIF agrees to waive all rights against the City for damage caused by fire or other perils to the extent covered by insurance provided under the builder's risk and property insurance. GIF shall also require waivers by all contractors or subcontractors hired by GIF against the City for damage caused by fire or other perils to the extent covered by insurance provided under the builder's risk and property insurance. Waivers shall be for the term of the license and subsequent renewal periods. City agrees to waive all rights against GIF for damage caused by fire or other perils to the extent covered by City's insurance.

4. DEFAULT AND TERMINATION

- a. In the event GIF defaults in the observance of any of the covenants, agreements, commitments, or conditions herein contained, and if any such default continues uncorrected for a period of 15 calendar days after written notice thereof to GIF, or if GIF abandons the parkland, the City may, at its option and in addition to all other rights and remedies it may have at law or in equity against GIF, including the specific enforcement hereof, have the cumulative right to immediately terminate this License and all rights of GIF hereunder.
- b. Further, in the event of lapse of insurance policies or coverage and protection as required by this License, the City may, without notice of default, declare this License terminated. GIF shall have no access rights to or use of the premises unless all insurance policies required by this License are in full force and effect.
- c. Notwithstanding any of the other provisions of this License, the City may terminate this License without cause upon 30 calendar days written notice to GIF, as long as the effective date of termination does not fall within the April – October growing season.

5. PROPERTY CONDITIONS

- a. City makes no warranties or representations that the South 14th Street Parkland is free of environmental contamination or suitable for gardening. GIF agrees to garden at their own risk.
- b. The City shall bear no responsibility for the 1.79 acres assigned to GIF under this license with the exception of mowing the grass outside the fenced-in area and normal trash and recycling pickup. The City has no obligation to maintain that portion of the parkland during the term of this license agreement. City officials shall have access to the property at all times without notice.
- c. GIF agrees that if this agreement is terminated at any time, they shall bear the full cost of restoring the site to grade and reseeding the grass. City and GIF shall discuss what permanent plantings should remain. The storage shed and awning erected on the property will remain on the property, donated by GIF to the City. The greenhouse may be removed by the City and the concrete pad thereunder may remain at the City's option.

- d.** City will supply a portable toilet to the garden area and provide maintenance for the toilet during the time that all other City parks receive that service.
- e.** City will supply picnic tables to the garden area and ensure they remain in good condition.
- f.** City will post park rules near the garden area. GIF will ensure that all garden stewards and GIF volunteers follow the park rules.

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