USE AGREEMENT BETWEEN CITY AND BOROUGH OF JUNEAU AND JUNEAU COMMUNITY GARDEN ASSOCIATION
2013-2018

THIS AGREEMENT is made by and between the City and Borough of Juneau, Alaska, a municipal corporation organized and existing under the laws of the State of Alaska, hereinafter referred to as "CBJ" or "City" and the Juneau Community Garden Association, an unincorporated association, P.O. Box 33395, Juneau, AK 99803, hereinafter referred to as "JCGA."

WITNESSETH

WHEREAS, City owns property on the Montana Creek Road which JCGA has used and would like to continue to use as a community garden, and

WHEREAS, City will allow JCGA to use the property for the purpose of operating and maintaining a community garden site;

WHEREAS, JCGA and City desire to improve recreation opportunities for residents of Juneau; and

NOW, THEREFORE, in consideration of the following terms, covenants, conditions, and agreements, the parties agree as follows:

Section 1. Juneau Community Garden Association. The Juneau Community Garden Association is an unincorporated association consisting of members including the Cooperative Extension Service of the University of Alaska, Fairbanks, and the Juneau Master Gardeners Association each as non-voting members of the Board of Trustees.

Section 2. Relationship with City. The JCGA is an independent association; it is not considered to be an agent or employee of City for any purpose, and the employees and members of JCGA are not entitled to any benefits that City provides for City’s employees. City has no involvement in the internal affairs of the association nor any responsibility to third parties conducting transactions with the association.

Section 3. Purpose. The purpose of this use agreement is to provide to all members of the public the opportunity to participate in a community garden under the supervision of the JCGA according to the Operating Rules it has adopted, which are attached as Attachment A.

Section 4. Term. The effective date of this agreement is October 1, 2013 and shall remain in effect until September 30, 2018. If JCGA fails to use the community garden for a year, this agreement is automatically terminated. This agreement may be

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renewed thereafter for one additional five-year term until September 30, 2018, by written request from JCGA to City and written approval from City.

Section 5. Location. The property is located at 5669 Montana Creek Road in Juneau, Alaska, and is more specifically described as:

A site located on a fraction of U. S. Survey 3920 in the Juneau Recording District, Alaska (CBJ Parcel Number 4-B29-0-115-003-0)

And as shown in Attachment B, attached and incorporated into this agreement.

Section 6. Operation

(a) JCGA will secure at its own expense all personnel, equipment, and supplies required for the community garden. JCGA shall pay all expenses such as utilities and other services to the property.

(b) JCGA may establish fees for public use of the property that do not exceed those considered usual and reasonable for like premises, establish reasonable rules and guidelines for the use of the property and penalties for violations, and acquire property for the operation, convenience and safety of the property, its users and the public.

(c) JCGA is the only authorized user of the property, and it may not allow use by any other group or individual except as according to its guidelines and by-laws.

(d) JCGA shall not assign, transfer, convey, subcontract, or otherwise dispose of or encumber the property subject to this agreement, or the rights thereunder, nor shall JCGA delegate any of its duties hereunder.

(e) JCGA shall obtain prior written approval from City before significant improvements are made to the property, existing fixtures, or improvements. The cutting of trees, or mining of gravel on the property is prohibited unless prior written approval is received from City.

(f) JCGA will provide a yearly work plan by March 15 of each year to the City. The work plan shall include plans for activities, programs, as well as maintenance and improvements proposed for the upcoming year.

(g) JCGA may allow a caretaker for the garden to reside on the property with prior written approval from City, however this shall not be considered to create any relationship between City and any caretaker, nor shall a caretaker be considered a third party beneficiary to this contract. If the use of the property by JCGA is terminated for any
reason, JCGA shall insure that there is no holding over by its caretaker. Any such use shall be in accordance with city and state laws including zoning, and health and sanitation requirements.

(h) JCGA will maintain and keep the property in good repair and immediately upon termination of the agreement, will deliver possession of the property, together with all improvements to City.

(i) JCGA shall not discriminate or permit discrimination on the basis of race, color, religion, national origin, age, sex or ability.

(j) City will not authorize the dumping of material at the garden without approval from JCGA.

Section 7. Insurance. JCGA shall, during the entire term of this lease, keep in full force and effect insurance policies of the type and amount set forth below:

(a) Commercial General Liability Insurance – JCGA shall obtain and maintain in effect commercial general liability coverage with coverage form CG0001 or equivalent, on an occurrence basis, with respect to JCGA’s use of and operations on the property. Coverage will include bodily injury and property damage liability, premises and operations, contractual liability, completed operations, personal injury liability and “broad form” property damage, in an amount of not less than $1,000,000 per occurrence / $2,000,000 aggregate. The policy shall include fire legal liability coverage in the amount of $300,000 per occurrence. The insurance policy shall name the CBJ an “Additional Insured” and shall contain a clause that the insurer will not cancel or change the insurance without the first giving the CBJ prior written notice consistent with the terms of the policy. Lessee will provide evidence of this insurance to City in a form acceptable to the City’s Risk Management Officer.

(b) Property Insurance – JCGA acknowledges that although the CBJ carries property insurance on the Lease Premises, it is JCGA’s obligation to obtain adequate insurance for protection of JCGA’s fixtures or other improvements or personal property located on the Lease Premises.

(c) General Conditions:

1. Insurance must be placed with commercial insurance companies licensed to do business in the State of Alaska, and which possess minimum financial standards, of AM Best Company, of A-VI or better.

2. Evidence of insurance shall be filed with the City’s Risk Manager naming the City and Borough of Juneau as an Additional Insured, using Additional Insured Endorsement Form CG2010 (Form B) or
equivalent. The filing of such evidence of insurance is required; however, acceptance of such evidence or oversight in obtaining such evidence by the CBJ shall not be considered a waiver of any of these insurance requirements.

3. All insurance policies shall provide (1) that the policies shall not be canceled or the amount thereof reduced, without prior written notice consistent with the terms of the policy to the CBJ, and (2) that thirty (30) days prior written notice shall also be given if the policy is not to be renewed at the scheduled expiration date.

4. All notices concerning insurance must be addressed to “Attention – Risk Manager” at the CBJ’s address.

5. Any deductibles or self-insured retentions must be declared to and approved by the CBJ. The CBJ reserves the right to periodically secure audited financial statements for review.

6. It is the Lessee’s obligation to obtain adequate insurance for protection of Lessee’s fixtures or other improvements or personal property located on the Lease premises.

JCGA’s certificates of insurance consistent with the above are attached as Attachment C to this contract.

Section 8. Hold Harmless and Indemnify. JCGA agrees to defend, indemnify, and hold harmless CBJ, its employees, volunteers, consultants, and insurers, with respect to any action, claim, or lawsuit arising out of or related to the Contractor’s performance of this contract without limitation as to the amount of fees, and without limitation as to any damages, cost or expense resulting from settlement, judgment, or verdict, and includes the award of any attorneys’ fees even if in excess of Alaska Civil Rule 82. This indemnification agreement applies to the fullest extent permitted by law and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against CBJ relating to this contract. The obligations of JCGA arise immediately upon actual or constructive notice of any action, claim, or lawsuit. CBJ shall notify JCGA in a timely manner of the need for indemnification, but such notice is not a condition precedent to Contractor’s obligations and may be waived where the Contractor has actual notice.

Section 9. Termination of Agreement. Either party, at their sole discretion, may terminate this agreement at any time upon the giving of six months written notice to the other party. At the termination of this agreement, JCGA shall peaceably surrender the premises and shall leave the buildings, improvements, and property in a clean and safe condition.

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Section 10. Notice. Any notice required to be given under this Agreement shall be given to the other party in writing to the person and at the address, as follows:

CBJ:
Brent Fischer, Director
Parks & Recreation
City and Borough of Juneau, Alaska
155 South Seward Street
Juneau, AK 99801
Phone: 586-5226
Fax: 586-4589

JCGA:
John Thedinga, President
Juneau Community Garden Assn.
P.O Box 3395
Juneau, AK 99803

JCGA shall not be liable for City’s reliance on directions received from any other person. Any notice required to be given under this contract shall be given to the other party in writing to the person and at the address above stated. Any change in the designation of representative or address shall be made to the other party in writing.

Section 11. Inspection. The Director of the City Parks and Recreation Department or the Director’s designee shall be permitted to enter upon and inspect the property at all reasonable times.

Section 12. Warranties. JCGA acknowledges that City has not made any representations or warranties concerning its fitness for any purpose concerning the property, or any rights or obligations relative to the property created except as are stated or referred to in this writing.

Section 13. Compliance with Laws and Regulations. JCGA shall conduct all activities in compliance with all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force, which may be applicable to such activities.

In witness thereof the parties have signed and dated this agreement below:

City and Borough of Juneau:  
Date: 3/12/17  
By:  
Authorized Representative  
Kimberly A. Kiefer  
City and Borough Manager

Juneau Community Garden Association:  
Date: 1/28/14  
By:  
Authorized Representative  
John Thedinga  
President, Juneau Community Garden Association

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ACKNOWLEDGMENT

STATE OF ALASKA

First Judicial District

This is to certify that on the 12th day of March, 2014, before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, appeared Kimberly A. Kiefer, to me known to be the City Manager of the City and Borough of Juneau, Alaska, a municipal corporation, which executed the above and foregoing instrument; who on oath stated that she was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that she signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal on the day and year in this certificate first above written.

Notary Public in and for the State of Alaska

My Commission Expires: 5/10/14

ACKNOWLEDGMENT

STATE OF ALASKA

First Judicial District

This is to certify that on the 28th day of January, 2014, before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, appeared John Thedinga, to me known to be the President of the Juneau Community Garden Association which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said unincorporated association for the uses and purposes therein mentioned.

WITNESS my hand and official seal on the day and year in this certificate first above written.

Notary Public in and for the State of Alaska

My Commission Expires: 1/14/16
1. Membership

Gardeners may join JCGA as plots become available, and may retain their plots from year to year if they are paying their fees and conform to the rules of the garden. Each gardener must plant his or her plot by June 15. The Board of Directors has the right to revoke a gardener's plot if the gardener does not meet the requirements set forth in these rules or if the gardener fails to maintain the plot in a manner consistent with the objectives of the JCGA. The fee for a plot is $250 per year. Additional fees may be required for special events or projects. The JCGA reserves the right to change the fee structure at any time.

2. Plots

Gardeners may have up to two plots. The maximum size of a plot is 10x10 feet (100 square feet). Additional plots may be available for a fee. Plots must be contiguous and must be located on the property of the JCGA. The JCGA will provide necessary infrastructure such as water and electricity. Gardeners are responsible for all other aspects of their plot, including soil preparation, planting, and maintenance.

3. Bedding Plants

One (1) bed of seasonal bedding plants will be required per gardener. The Board of Directors has the right to revoke a gardener's plot if the gardener fails to maintain the plot in a manner consistent with the objectives of the JCGA. The fee for a plot is $250 per year. Additional fees may be required for special events or projects. The JCGA reserves the right to change the fee structure at any time.

4. Community Garden Policy

Gardeners are responsible for maintaining the plots and the garden grounds in a clean and safe condition. Precautions to prevent spread of plant pathogens are encouraged. JCGA equipment should never leave the garden. Gardeners should not remove any plants or debris from the garden unless they are approved by the Board of Directors. Gardeners are responsible for all other aspects of their plot, including soil preparation, planting, and maintenance.

5. Water

Gardeners must water their plots and the garden grounds in a clean and safe condition. Precautions to prevent spread of plant pathogens are encouraged. JCGA equipment should never leave the garden. Gardeners are responsible for all other aspects of their plot, including soil preparation, planting, and maintenance.

6. Pest Control

Gardeners are responsible for maintaining the plots and the garden grounds in a clean and safe condition. Precautions to prevent spread of plant pathogens are encouraged. JCGA equipment should never leave the garden. Gardeners are responsible for all other aspects of their plot, including soil preparation, planting, and maintenance.

7. Commercial Use

No portion of the Community Garden may be used for commercial purposes. No produce or vegetables grown in the garden may be sold except as part of a JCGA-sponsored fund-raiser.

8. Checklist

Gardeners are responsible for maintaining the plots and the garden grounds in a clean and safe condition. Precautions to prevent spread of plant pathogens are encouraged. JCGA equipment should never leave the garden. Gardeners are responsible for all other aspects of their plot, including soil preparation, planting, and maintenance.

9. City and Borough of Juneau

The JCGA operates under the auspices of the City and Borough of Juneau Parks and Recreation Department and is subject to all the rules and regulations of the City and Borough of Juneau. The JCGA operates under the auspices of the City and Borough of Juneau Parks and Recreation Department and is subject to all the rules and regulations of the City and Borough of Juneau.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATEIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURERS, AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(s) must be endorsed. IF SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Shattuck and Grummett Insurance
301 Seward St.
Juneau AK 99801

INSURED
Juneau Community Garden Association
PO Box 33395
Juneau AK 99803

COVERAGE

COVERAGES

CERTIFICATE NUMBER: CL31212124610
REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

This Certificate is a representation of the named insured's coverage as of the date shown. Shattuck & Grummett Insurance makes no representation that these coverage's comply with or fully satisfy any insurance or indemnity requirements in any contract, written, oral, or implied.

CERTIFICATE HOLDER

City and Borough of Juneau
Lindsey Brown
155 S. Seward St.
Juneau, AK 99801

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISION.

AUTHORIZED REPRESENTATIVE

Kenneth Grummett/IZY

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