



-- CORRECTED --

**Item:** Sunburst Unlimited Use of City Park Land Agreement

**From:** Sunburst Unlimited

**Initiated By:** Joseph Petrella, Park & Recreation Director

**Presented By:** Joseph Petrella, Park & Recreation Director

**Action Requested:** Set Public Hearing

---

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission set a public hearing for the Sunburst Unlimited Use Agreement for ~~June 16~~ July 7, 2015.”

2. Mayor calls for a second, discussion, public comment, and calls the vote.

---

**Staff Recommendation:** Staff recommends the City Commission set a public hearing for ~~June 16~~ July 7, 2015 for the Sunburst Unlimited Use Agreement.

**Background:** The City of Great Falls Park and Recreation Department has held an agreement with Sunburst Unlimited, a 501(c)3 program, for use of Community Hall Park in developing a network of vegetable gardens and fruit orchards called FRESH Food Farms since 2012.

Items that are grown are dedicated to local groups such as the Boys & Girls Club, Meals on Wheels, Head Start and LMI families. In 2014 they harvested 4,000 pounds of produce.

Sunburst Unlimited has increased the garden each year to include fruit trees, bees for pollinating, barrel plantings, raised gardens and pot plantings. They have built an area to conduct informative classes on gardening and are looking at adding a greenhouse in 2015. They work with numerous growers and organizations in Great Falls, and have a manager to oversee the entire garden.

The proposed Use Agreement with Sunburst Unlimited would be for five (5) years. The fee for use is \$1 per year and will be due May 1 of each year.

As required by Title 3, Chapter 4, OCCGF, before final consideration of a Use Agreement for City property, the City Commission shall hold a public hearing. Bids were not solicited for this use since City ordinance provides an exception “Where the use is to continue for a public purpose and the same is subject to a revision to the City, until said use ever be changed to any other purpose”.

**Concurrences:**

The Park and Recreation Advisory Board will consider recommending approval of the Use Agreement at their June 8<sup>th</sup> Park Board meeting.

**Fiscal Impact:**

There is no fiscal impact.

**Alternatives:**

The alternative would be to deny the Use Agreement to Sunburst Unlimited.

**Attachments/Exhibits:**

Sunburst Unlimited Use Agreement

## **USE AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between Sunburst Unlimited Incorporated, whose business address is, 1917 1<sup>st</sup> Avenue North, Great Falls, Montana (here-in-after referred to as "User"), and the City of Great Falls, a municipal entity in the State of Montana, whose address is P. O. Box 5021, Great Falls, MT 59403 (hereinafter referred to as "City"), and collectively referred to as "The Parties."

### **RECITALS**

**WHEREAS**, User desires to enter into a Use Agreement (hereinafter, the "Agreement") for use of the City-owned property described as Community Hall Park, located in the City of Great Falls at 410 16<sup>th</sup> Street SW, Great Falls Montana, (hereinafter referred to as the "Property"), for the purpose of conducting a community garden program (hereinafter referred to as the "Use"), the Conditions and Provisions regarding such Use are set forth in the Attached Exhibit A; and

**WHEREAS**, User desires to develop, install and operate raised garden beds, surface composting garden beds, non-permanent greenhouses, storage facility sheds and composting containers to be used to grow fruits and vegetables for the community; and

**WHEREAS**, User has extensive experience in the development and operations of community gardens; and

**WHEREAS**, User will donate and deliver fresh produce to community kitchens in Great Falls; and

**WHEREAS**, User will provide community outreach programs and provide a "*growing place*" for kids and adults to learn about gardening, healthy eating, composting, and playing in the dirt; and

**WHEREAS**, the City deems it to be in the public interest to provide its citizens and the general public with services contemplated by User's Use of City Property as stated herein.

**NOW THEREFORE**, The Parties do hereby covenant and agree as follows:

### **GRANT AND CONDITIONS OF USE**

The City, for and in consideration of the mutual agreements and covenants herein, does hereby grant unto User the Use of the City Property and adjoining Property abutments for the purpose stated above. User agrees to use the Property during the term of this Agreement only for such Use. User further agrees that it will not make or suffer any unlawful, improper or offensive use of the Property, or in any way use or occupy the same contrary to any law of the United

States, State of Montana or any ordinance of the City, now or hereafter made. User agrees that it will not conduct activities in which flames, flammable or hazardous materials are involved without the prior approval of the Great Falls Fire Department. User shall not commit, or suffer to be committed, any nuisance or any waste on the Property. User agrees that no use shall be made or permitted to be made of the Property, or acts done, which will cause a cancellation of any insurance policy covering the Property or any part thereof.

User shall not injure, mar or in any way deface or alter the Property and shall not cause or permit anything to be done whereby said Property shall be in any manner injured, marred, defaced or altered without prior written permission from the City. User agrees that no fixture, building, structure, or other permanent installation will be constructed or placed upon the property except as herein provided or otherwise authorized by the City, as set forth in Exhibit A attached hereto. User is responsible for the development, construction, repair, maintenance and operation of the Use, at its sole cost, during the term of this Agreement. The City reserves the right to enter upon the property and remove, after notification, any obstacles or structures that may be hazardous to the public at cost of user. User shall have first chance to remove. User shall refrain from depositing or discharging any hazardous materials upon the Property or in the Use Area, either intentionally or negligently. User agrees to pay the City, separate from the Use Fee for any special maintenance, damage and repairs caused by User's Use.

### **CONDITION OF PROPERTY**

User acknowledges familiarity with the Property's condition and acknowledges no representation, statement or warranty, expressed or implied, has been made by or on behalf of City as to such condition. In no event shall City be liable for any defect in such property or for any limitation on its use. The taking of possession of the Property shall be conclusive evidence that User accepts the same "as is" and that the Property was in good condition at the time possession took place. User agrees to accept the Property in the condition in which it exists at the date of taking possession, without representation or warranty, express or implied, in fact or by law, by City, and without recourse to the City as to the nature, condition or unsuitability thereof, or as to the Use to which the Property may be put.

At the expiration of this Agreement, User shall quit and surrender the Property in as good condition as when received, reasonable wear and tear and damage excepted.

### **TERM**

The Term of this Agreement is for five years effective May 1, 2015 and expiring April 30, 2020. Upon expiration of this Agreement, User, or its successors or assigns, may request an extension of this Agreement; if extension is granted, the City reserves the right to negotiate any conditions and covenants of the extension of this Agreement, including but not limited to the Use Fee.

## **USE FEE**

The Fee for Use of the City-owned Property is \$1 annually to be paid on or before May 1st.

## **LIASON**

For this Agreement, the contact for User is Mike Dalton, 1917 1<sup>st</sup> Avenue North, Great Falls, Montana; and the contact for the City is Park & Recreation Director, P.O. Box 5021, Great Falls, Montana.

## **LIENS, INDEMNITY & INSURANCE**

City's Property shall not be subject to or permitted to become subject to any lien or claims from or arising out of the use and occupation of the leased premises by User. If and in the event such liens or claims arise or occur, User shall promptly and forthwith cause the same to be released or discharged to the extent that the interest of City is encumbered thereby.

User agrees to protect, indemnify, defend, and save harmless the City against and from any and all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), attorney's fees, and losses to the City arising in favor of or asserted by any person or entity on account of personal injury, death or damage to property arising out of, in connection with, or incidental to the negligence or willful misconduct of User, or its agents or employees.

For this purpose, User shall provide City with proof of User's liability insurance issued for personal injury and property damage in amounts not less than as follows:

- Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate

Each coverage shall be obtained from an insurance company that is duly licensed and authorized to transact insurance business and write insurance within the state of Montana, with a minimum of "A.M. Best Rating" of A-, VI, as will protect the User, the City and its officers, employees, agents, and representatives from claims for bodily injury and/or property damage which may arise from the Use under this Agreement. An Additional Insured Endorsement shall also be provided as evidence that the City is included or named as an additional or named insured on the Commercial General policy.

## **MISCELLANEOUS PROVISIONS**

The Use of the Property herein is subordinate to the right of any private or public use now lawfully occupying the Property, and the City retains all rights to grant additional use of the Property to others at its sole discretion.

User understands and agrees that during the term of this Agreement other events may be held on the Property, and User shall so conduct its activities so as not to interfere with other such activities.

User may not assign, rent, permit the Use of or otherwise transfer User's rights in this Use Agreement without the prior written consent of City.

User agrees to maintain all trees and shrubs planted in 2013 and after including, but not limited to (Apple, Cherry, Choke Cherry, Plum, Pear Vines). City will maintain all trees planted prior to 2013 (Cottonwoods, Ash, Russian Olives and Oak).

This Agreement does not vest User with any compensable interest in the Property or property underlying or adjoining the Use Area. This Agreement is a personal license for User to utilize the Property for the Use stated herein and within the Use Area and does not create any real property right to the benefit of User.

User, either as an individual or on behalf of a group or organization, hereby agrees that this permit shall not be used in any manner that would discriminate against any person or persons on the basis of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin.

User shall not assign or transfer this Use Permit or sublet any portion thereof without the written consent of the City.

User agrees that the City and/or its designated representatives may enter upon the used facilities as herein before described at all reasonable times to make inspection in conformity with this Use Permit.

Users must provide portable toilet facilities at their expense for use by their participants. No portable toilet shall be placed within a park without prior approval from the City.

**APPLICABLE LAW**

This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

**IN WITNESS WHEREOF**, the parties hereto have caused their hands and seals to be fixed the day and year first hereinabove written.

CITY OF GREAT FALLS

SUNBURST UNLIMITED, INC.

\_\_\_\_\_  
Gregory T. Doyon, Manager

\_\_\_\_\_  
\_\_\_\_\_  
Print Name

ATTEST

---

Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT

---

Sara R. Sexe, City Attorney