

# URBAN AGRICULTURE INCENTIVE ZONE CONTRACT

This URBAN AGRICULTURE INCENTIVE ZONE CONTRACT (“**Contract**” or “**UAIZ Contract**”), dated \_\_\_\_\_, for purposes of identification only, is by and between the City of Chula Vista, a California municipal corporation, (“**City**”) and [PROPERTY OWNER] (“**Property Owner**”). The City and Property Owner are sometimes each referred to as “**Party**” and collectively as the “**Parties.**”

## **Background**

In 2013, the State of California enacted the Urban Agriculture Incentive Zones Act (commencing with California Government Code section 51040) (“**UAIZ Act**”), which recognizes the public interest in promoting sustainable urban farming. The UAIZ Act authorizes cities and counties to establish Urban Agriculture Incentive Zones (“**UAIZ**”) for the purpose of entering into voluntary contracts with property owners of vacant, unimproved, or blighted lands within the zone. Through these contracts, property owners can agree to commit their land to urban agriculture for a minimum of five years in exchange for potential lower property taxes during the term of the contract.

To take advantage of the UAIZ Act, the City, in 2018, adopted Chula Vista Municipal Code Chapter 19.100 (the “**Ordinance**”). The Ordinance authorizes the City Manager or the City Manager’s designees to enter into UAIZ Contracts with eligible property owners who agree to restrict the use of eligible property to small-scale agriculture uses (“**Urban Agriculture**” or “**Agricultural Uses**”) for an initial term of no less than five years, subject to the terms of the Ordinance, in exchange for potential lower property taxes during the term of the contract.

The Property Owner owns the property located at [ADDRESS], in Chula Vista, California (the “**Property**”), and further described in Exhibit A, and has requested to enter into this Contract with the City.

**WITH THESE BACKGROUND FACTS IN MIND AND FOR VALUABLE AND SUFFICIENT CONSIDERATION, THE CITY AND THE PROPERTY OWNER AGREE AS FOLLOWS:**

**1. Term.** The term of this Contract (“**Term**”) will run for five (5) years beginning on the Effective Date, unless terminated earlier in accordance with Section 5 of this Contract.

**2. Property Owner Representations.** Property Owner represents and warrants the following:

**2.1 Property Size.** The Property is at least 0.10 of an acre, and not more than three (3) acres.

**2.2 Other Program Requirements.** The Property meets all other requirements of the UAIZ Act and the Ordinance to enter into this contract.

**2.3 Legal Description.** The legal description in Exhibit A is a true and accurate legal description of the Property.

**3. Property Owner Responsibilities.** The Property Owner agrees to the following:

**3.1 Use of the Property.** Throughout the Term of the Contract, the Property Owner shall dedicate and use the entire Property for Urban Agriculture purposes in accordance with Government Code section 51040.3(c), the Ordinance, and this Contract.

**3.2 Commencement of Urban Agriculture.** The Property Owner shall commence Urban Agriculture (also referred to as “Agriculture Use”) in accordance with Chula Vista Municipal Code section 19.100.060 on the Property within sixty (60) days of the execution and recordation of this Contract.

**3.3 Prohibition Against Dwellings.** Except as provided in Government Code section 51042(c), there shall be no dwellings on the Property throughout the Term of the Contract.

**3.4 Government Inspections.** The Property Owner consents to periodic inspections of the Property, upon 72-hours’ notice, by the City Manager, the City Manager’s designee, the San Diego County assessor, and the State Board of Equalization, as may be necessary for tax assessment purposes or to determine the Property Owner’s compliance with this Contract or the law, including the Ordinance.

**3.5 Pesticides and Fertilizers.** The Property Owner shall not use any pesticides or fertilizers on the Property, except for those pesticides or fertilizers allowed by the United States Department of Agriculture’s National Organic Program.

**3.6 Water Service.** The Property shall have a metered water service connection.

**3.7 Administration Fee.** The City, pursuant to Chula Vista Municipal Code section 19.100.120, may charge the Property Owner a fee for the reasonable costs of implementing and administering the Contract, including the costs related to inspections on the Property and determining compliance with the Contract. The Property Owner shall pay the fee within forty-five (45) days of the City’s request.

**3.8 Cessation or Change in Activity.**

(A) The Property Owner shall notify the City’s Development Services Department Director (“Director”), in writing, of the following:

- (1) Any cessation of Urban Agriculture for any reason, including cessation due to the loss of a tenant who was conducting Urban Agriculture on the Property; and
- (2) Any change in Urban Agriculture activity from that contemplated in the Urban Agricultural Plan (Exhibit B).

Notices under this section must be given within two (2) weeks of the cessation or change in activity.

(B) If the Property owner intends to continue to use the Property for Urban Agriculture,

the Property Owner must notify the Director of that fact in its notice and resume Urban Agricultural activity within three (3) months of its notice to the Director of any cessation or change in use.

**3.9 Additional terms.** Property Owner agrees to any additional terms set forth in Exhibit C, which are hereby incorporated into this Contract by reference.

**4. Property Tax.** This Contract is entered into under the authority of the UAIZ Act and the Ordinance. Accordingly, the Property shall be assessed pursuant to California Revenue and Taxation Code section 422.7. Property owner understands and agrees that the aforementioned property tax assessment (including attendant calculation) is the function of the San Diego County Assessor. Property owner agrees to hold City harmless and waives any claims against the City, including its Indemnified Parties (as defined below) regarding the aforementioned property tax assessment.

## **5. Termination.**

**5.1 Events of Default.** The following events, if not cured within ten (10) days of the City's written notice (unless the City's notice provides for a different date), are "Events of Default":

- (A) The Property Owner has failed to commence Urban Agriculture on the Property within sixty (60) days of the Effective Date of the Contract;
- (B) The Property Owner has failed to conduct Urban Agriculture on the Property in accordance with the UAIZ Act, the Ordinance, and this Contract;
- (C) The Property contains a dwelling, except as provided in Government Code section 51042(c);
- (D) The Property Owner has failed to resume Urban Agriculture on the Property after cessation in accordance with Section 3.8(B) of this Contract;
- (E) The Property Owner has failed to allow any inspection as provided in Section 3.5 of this Contract;
- (F) The Property Owner has failed to timely pay the Administration Fee in accordance with Section 3.7 of this Contract;
- (G) The Property Owner has failed to maintain adequate insurance for the Property in accordance with Section 7 of this Contract; or
- (H) The Property Owner has failed to comply with any other provision of this Contract, the Ordinance, or UAIZ Act.

Upon the occurrence of an Event of Default, the City may terminate the Contract, as set forth in the Chula Vista Municipal Code section 19.100.110. The City shall give the Property Owner and the San Diego County Assessor notice of the termination. Upon termination of the Contract, the City shall record a Notice of Termination with the San Diego County Recorder and provide a copy of the recorded notice to the San Diego County Assessor.

**5.2 Property Owner Termination.** Prior to the expiration of the Term, the Property Owner may terminate the Contract at any time by submitting written notice to the City's

Development Services Department Director and the county assessor and subject to the terms of Chula Vista Municipal Code section 19.100.110(A)(2) and (B). Upon termination of the Contract, the Property Owner shall record a notice of termination with the San Diego County Recorder and provide a copy of the recorded notice to the San Diego County Assessor.

**5.3 Termination Fee.** If the Contract is terminated by the City or the Property Owner prior to the expiration of the Term, the Property Owner must pay to the San Diego County Treasurer-Tax Collector a termination fee equal to the cumulative value of the tax benefit received during the duration of the Contract, as determined by the San Diego County Assessor. Interest will be determined by the City. The City Manager or the City Manager's designee may waive payment of all or a portion of the fee if he or she determines that the termination was caused by extenuating circumstances despite the good faith effort by the Property Owner.

## **6. Indemnity and Administrative Claims**

**6.1 Indemnity.** The Property Owner shall defend, hold harmless and indemnify the City, its elected and appointed officers, agents, employees and volunteers (collectively, "Indemnified Parties"), and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees or costs reasonably incurred by the City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Contract by the Property Owner, any sub-consultant, subcontractor or agent, volunteer, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Property Owner, its officers, employees, agents or officers, volunteers, or any third party.

**6.2 Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by

City, Property shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement. Compliance with this section shall not relieve Property Owner with any other claims requirements under state or federal law.

## **7. Miscellaneous Provisions.**

**7.1 Effective Date and Recordation.** Upon approval by the Office of the City Attorney, this Contract is effective on the date both Parties have signed it, as indicated by the dates in the signature blocks below. Within 20 days after the Effective Date of this Contract, the City shall record with the San Diego County Recorder a copy of the Contract which shall describe the land subject thereto, together with a map showing the location of the Property.

**7.2 Notices.** Any notice required under this Contract or by reason of the application of any law will be deemed to have been given by a Party on the business day immediately following the day of personal delivery to a recognized overnight courier or on the third business day after deposit in the U.S. mail, postage prepaid.

**7.3 Entire Contract.** This document, including all Exhibits, contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of the Contract. No alteration to this Contract is valid unless approved in writing by the Parties.

**7.4 Public Record.** The Property Owner understands that this Contract is a public record under the California Public Records Act and will be disclosed to the public upon request.

**7.5 Severability.** If any portion of this Contract or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Contract shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**7.6 No Waiver.** No failure by the City to insist on the strict performance of any obligation of the Property Owner under this Contract, or to exercise any right power or remedy arising out of a breach hereof, shall constitute a waiver of such breach or of the City's right to demand strict compliance with any terms of this Contract.

**7.7 Choice of Law; Venue.** The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Contract, without application of conflicts of laws, principles, or statutes. The Parties acknowledge and agree that this Contract is entered into, is to be fully performed in, and relates to real property located in the County of San Diego. All legal actions arising from this Contract shall be filed in the Superior Court of the State of California in and for the County of San Diego or in the United States District Court with jurisdiction in the County of San Diego.

**7.8 Binding on Successors and Assigns.** The covenants, benefits, restrictions, and obligations contained in this Contract shall run with the land and shall be binding upon and inure to the benefit of all successors and assigns in interest of the Property Owner.

**7.9 Further Assurances.** The Parties, at any time after the execution of this Contract will execute, acknowledge, and deliver any further assignments, conveyances, and other assurances, documents, and instruments reasonably requested by the other party for the purpose of performing the obligations created hereunder.

**7.10 Third Parties.** This Contract is made and entered into for the sole protection and benefit of the Parties and their successors and assigns, and no other person or entity is a third-party beneficiary of, or has any direct or indirect cause of action or claim in connection with the Contract or any other related document to which that person or entity is not a party.

**7.11 Attorney's Fees.** The Party prevailing in any litigation concerning this Contract or any documents related to it will be entitled to an award by the court of reasonable attorneys' fees and litigation costs through final resolution on appeal, in addition to any other relief that may be granted in the litigation. If the City is the prevailing party, then this section will apply whether the City is represented in the litigation by the Office of the City Attorney or by outside counsel.

**7.12 Relationship of the Parties.** Nothing in this Contract should be deemed or construed to create between the Parties a joint venture, partnership, or any other relationship of association other than that described herein.

**7.13 Authority to Sign.** The person signing the Contract on the Property Owner's behalf represents that he or she is the Property Owner of the Property or is authorized to sign on behalf of the Property Owner and that no further action beyond his or her signature is required to bind the Property Owner to this Contract.

**7.14 Insurance.** Property Owner agrees to acquire and maintain insurance as may be required by the City.

IN WITNESS WHEREOF, by executing this UAIZ Contract where indicated below, City and Property agree that they have read and understood all terms and conditions of the UAIZ Contract, that they fully agree and consent to bound by same, and that they are freely entering into this Contract as of the Effective Date.

PROPERTY OWNER:

CITY OF CHULA VISTA:

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Enter Name Of Signatory  
Enter Title Of Signatory

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
GARY HALBERT  
CITY MANAGER

ATTEST:

BY: \_\_\_\_\_  
Kerry K. Bigelow, MMC  
City Clerk

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Glen R. Googins  
City Attorney