RESOLUTION NO. 2435

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH BONNEY LAKE COMMUNITY RESOURCES FOR OPERATION OF THE BONNEY LAKE COMMUNITY GARDEN.

WHEREAS, the City of Bonney Lake wishes to make a community garden available to the public on city-owned property; and

WHEREAS, Bonney Lake Community Resources successfully operated the community garden on behalf of the City of Bonney Lake since 2010; and

WHEREAS, Bonney Lake Community Resources is willing to operate such community garden in 2014 on the same terms and conditions as 2010-2014;

NOW THEREFORE, the City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign the Agreement between the City of Bonney Lake and Bonney Lake Community Resources, attached hereto and incorporated herein by this reference.

PASSED BY THE CITY COUNCIL this 24th day of February, 2015.

Neil Johnson, Jr., Mayor

AUTHENTICATED:

Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:

Kathleen Haggard, City Attorney
LEASE AGREEMENT
FOR A COMMUNITY GARDEN
ON DOWNTOWN PROPERTY

This Agreement, by the City of Bonney Lake, Pierce County, Washington, hereinafter called the City, and Bonney Lake Community Resources, hereinafter called BLCR, is made on the following terms and conditions:

BLCR has the necessary experience and personnel, and is willing to enter into this Agreement to operate said community garden; and

The City desires to partner with BLCR to successfully provide a community garden for community benefit and mutual benefits for BLCR patrons and the Bonney Lake Senior Center;

Witnesseth, that in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

I. Grant, Term, and Operation of Concession

1.1 The City, acting pursuant to its vested authority, grants to BLCR, for the term and upon the conditions and provisions hereafter specified the right and privilege to operate and maintain a community garden on City property located at 18417-18421 89th Street East. This grant is expressly conditioned on operation of a community garden that is consistent with and in furtherance of the public’s use.

1.2 The term of this agreement shall be from January 1, 2015, to December 31, 2015. This contract may be renewed annually upon mutual consent of the City and BLCR. BLCR shall notify the City, in writing, at least 90 days prior to expiration of the term of this agreement, its desire to continue or cancel this contract for the next year. Renewal will be at the City’s discretion. In the event of termination of this Agreement, for any reason, prior to the termination date specified in this section, no refund shall be made of any payment(s) already made pursuant to section 1.5 of this Agreement.

1.3 BLCR will maintain its 501(c)3 status for the duration of this agreement.
1.4 BLCR shall coordinate all volunteer efforts. The Mayor and/or his designee shall provide ongoing, general guidance and input to the City’s need for a successful community garden, but such guidance shall not be construed to create an employment relationship between the parties. BLCR will administer the project as an independent contractor, and its employees, agents, and volunteers will not be under the control or supervision of Bonney Lake, or its employees, agents or volunteers.

1.5 A lease payment of $1.00 shall be remitted to the City of Bonney Lake upon signing of this Agreement.

1.6 The community garden will be located on three City owned lots located at 18417-18429 89th Street East, Bonney Lake.

1.7 The City shall provide irrigation for the community garden with garden hoses hooked up from the adjacent City-owned parcel to the east. BLCR shall remove solid waste from the site.

1.8 BLCR may collect voluntary, charitable donations while running the community garden. There shall be no mandatory fee. BLCR shall leave at least 50% of the available space to the general public. Plot size will be listed on an application form. The City will provide to BLCR request forms in a timely manner. The City shall oversee and approve the selection list for plots available for public use.

1.9 BLCR agrees to purchase and maintain a Liability insurance policy from an insurance company licensed in Washington and rated with AM Best no lower than a B+ in the amount of $1,000,000.00, and to hold the City harmless, defend, and indemnify it from any accidents, injuries or claims of any kind resulting from BLCR’s operations. BLCR agrees to name the City as an additional insured on the insurance policy required above in this paragraph. BLCR shall provide a certificate of insurance to the City.

1.8 BLCR shall not erect any sign on the City property or in the vicinity thereof without obtaining the advance approval of the City.
1.9 BLCR shall strictly obey all laws of the State of Washington and all Ordinances of the City of Bonney Lake, and will not allow the violation of any of these laws, or ordinances by any other party on or adjacent to the premises in which this concession is operated.

II. Non-Discrimination Policy

2.1 Concessionaire agrees that in all hiring or employment made possible or resulting from this Agreement:

(1) There shall be no discrimination against any employee or volunteer because of sex, age, race color, creed, national origin, marital status, veteran status, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment (including , advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) No person shall be denied, or subjected to discrimination in receipt of, the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age (except minimum age and retirement provisions), veteran status, marital status, or the presence of any sensory, mental or physical handicap.

(3) Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the Agreement by the parties and may result in ineligibility for further agreements.

III Termination by City

3.1 If, in the judgment of the Mayor, the manner of operation of the community garden does not meet the requirements of this Agreement, or if BLCR is in default of any other term of this Agreement, City shall give BLCR a written notice specifying the particulars of the unsatisfactory performance.
3.2 If BLCR fails or refuses to remedy such unsatisfactory performance or default within five (5) calendar days after receipt of such notice, the City may terminate this Agreement immediately. The decision of the Mayor on any such matter shall be final.

3.3 Notwithstanding the above, nonpayment of the lease amount or of any installment thereof five (5) calendar days after said fee is due shall be full justification for the City to take immediate possession of the concession and premises, and for immediate cancellation of this Agreement.

IV. Termination by BLCR

4.1 BLCR may terminate this Agreement by giving thirty (30) days written notice to City of such intention to terminate.

V. No Assignment

5.1 Neither this Agreement nor any rights or privileges hereunder shall be assigned or sublet without the consent of the City. Consent to assignment shall not be unreasonably withheld by the City.

VI. Interpretive Provisions

6.1 The terms and conditions of this Agreement shall be binding on the parties hereto, their heirs, successors, administrators, and assigns, and shall be construed in accordance with the laws of the State of Washington.

6.2 TIME IS OF THE ESSENCE of this Agreement, and of each and every term, condition and provision herein.

6.3 The waiver by the City of any breach of any term contained in this Agreement shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term.
6.4 Each term of this Agreement is material and breach by BLCR of any one of the terms herein shall be a material breach of the entire Agreement and shall be grounds for the termination of the entire Agreement by the City.

6.5 If any term or provision of this Agreement or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Agreement, or the application of the term or provision or persons or circumstances other than those as to which it is held invalid, or unenforceable, will not be affected and will continue in full force.

6.6 This Agreement contains the entire agreement between BLCR and the City of Bonney Lake and there are no promises, conditions, terms, obligations, statements, or guarantees other than those contained herein. No modifications or amendments shall be valid unless in writing and fully executed by all parties.

6.7 This Agreement shall be governed by the laws of the State of Washington. Venue for any lawsuit arising out of this Agreement shall be in Pierce County, Washington. The prevailing party in any such action shall be entitled to an award of reasonable attorney’s fees and costs.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

ATTEST:
Harwood T. Edvalson
City Clerk

CITY OF BONNEY LAKE
Neil Johnson Jr.
Mayor

APPROVED AS TO FORM:
Kathleen Haggard,
City Attorney

BLCR
CEO
City of Bonney Lake, Washington
City Council Agenda Bill (AB)

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<td>Executive / Gary Leaf</td>
<td>24 February 2015</td>
<td>AB15-23</td>
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<td>Dan Swatman</td>
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**Agenda Subject:** Community Garden

**Full Title/Motion:** A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign An Agreement With Bonney Lake Community Resources For Operation Of The Bonney Lake Community Garden.

**Administrative Recommendation:** Approve

**Background Summary:** Bonney Lake Community Resources (AKA Bonney Lake Food Bank) has managed since 2010 Bonney Lake's annual community garden on behalf of the City of Bonney Lake on city-owned downtown property. Staff recommends renewing this agreement for 2015 and adding a clause that allows for its renewability similar to the concession stand agreement. The City's expenditures this year will again be approximately $2,000 for irrigation. As in previous years, there will be no fee associated with community members who want a plot. Voluntary donations will be accepted.

**Attachments:** Yes - resolution and agreement

**BUDGET INFORMATION**

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**Budget Explanation:** Irrigation costs are included in the 2015 Facilities budget

**COMMITTEE, BOARD & COMMISSION REVIEW**

**Council Committee Review:** Finance Committee
Date: 10 February 2015
Chair/Councilmember: Dan Swatman
Councilmember: Donn Lewis
Councilmember: Katrina Minton-Davis

**Forward to:**
Consent Agenda: Yes No

**Commission/Board Review:**
Hearing Examiner Review:

**COUNCIL ACTION**

**Workshop Date(s):**
**Meeting Date(s):**
**Public Hearing Date(s):**
**Tabled to Date:**

**APPROVALS**

**Director:**
**Mayor:**
**Date Reviewed by City Attorney:** N/A
(if applicable):

Version Oct. 2010