

## **MEMORANDUM OF UNDERSTANDING THE SOUTH LINCOLN STREET COMMUNITY GARDEN**

This Memorandum of Understanding shall represent a mutual understanding of a legal agreement between the City of Fort Bragg (“City”) and Garden Friendly Community Fort Bragg, a nonprofit corporation (“GFCFB”).

SCOPE – The scope of this project involves GFCFB’s coordinating the construction, operation and maintenance of a community garden, bearing the name The South Lincoln Street Community Garden (Garden), on the grounds of the C.V. Starr Community Center facility located at 300 S. Lincoln Street, Fort Bragg, CA 95437 through the use of community volunteers. The portion of the C.V. Starr Community Center Facility that may be used under this MOU for a Garden is depicted in the map attached as Exhibit A. The portion of the C.V. Starr Community Center Facility that may be used under this All work and actions shall meet all requirements of local, state and federal regulation and laws.

1. Communication – Both the City and GFCFB shall designate a single contact person to act as their representatives throughout the project. All documents, communications and actions shall be coordinated through these individuals.
2. Plans – the size of the Garden is approximately 2,500 square feet with up to thirty (30) individual plots.
  - a. At no expense to City, GFCFB shall produce plans and specifications including but not limited to:
    - i. A site plan identifying and locating all project components, existing facility amenities related to or in the proximity of project, property lines and limits of construction.
    - ii. Sufficient details and specifications to fully illustrate method of construction, the location of the toolshed and all component materials of fencing and grading.
  - b. City shall review and approve all plans and specifications produced by GFCFB.
    - i. GFCFB shall provide all plan information, product and performance specifications requested by the City.
    - ii. City shall review documents for compliance with departmental standards and provide written approval or a request for corrections/additional data within 10 working days of receipt of plans and specifications.
3. Permits
  - a. City shall inform GFCFB which improvements, if any, require permits.

- b. If City determines that permits are required, GFCFB shall be solely responsible for obtaining all required permits necessary for construction, demolition, or reconstruction.
- c. GFCFB shall submit copies of all approved permits and stamped approved drawings to the City prior to construction or demolition.

4. Construction

- a. Prior to construction, GFCFB shall present the following items to the City:
    - i. A project schedule identifying all major phases of construction. No work may begin until the City has authorized access to the work area.
    - ii. Construction coordinator contact information including name, address, and phone number.
    - iii. Pre-construction conference – a pre-construction conference shall be held with GFCFB, City and C.V. Starr Community Center staff.
    - iv. Utilities – the City is not responsible for the provision of electricity to the community gardens. GFCFB will make arrangements for electricity necessary for construction, operations or maintenance of the Garden.
    - v. With respect to water, the City and C.V. Starr Community Center will coordinate and work cooperatively to provide water for irrigation to the Garden. The City agrees to provide up to \$1,500 annually towards water used in the Garden. Any charges incurred above \$1,500 for water supplied to the Garden will be the responsibility of GFCFB who will be billed for those amounts.
    - vi. GFCFB will provide the Garden all irrigation lines, timers, fencing, security and a secured tool shed.
    - vii. Inspections – if required by the City or Mendocino County Building Department, GFCFB is responsible for ensuring that all permits inspections are performed as required by the City.
      - 1. Both the City and GFCFB reserve the right to access the work area at any time for inspection purposes.
      - 2. No work shall be considered complete until proper approvals have been obtained from the City or Mendocino County Building Department.
      - 3. Failure to comply with project requirements shall constitute cause for termination of this Agreement.
5. Final Acceptance – If required by the City, upon completion of the work, a final inspection shall be performed with GFCFB and the City. Upon written approval of the work from City, the project shall be considered complete.

6. Project Closeout – Prior to final acceptance of the work, GFCFB shall provide the City with as-built drawings of the project if the project substantially deviates from the proposed plan, and, if required by the City, a copy of the completed inspection from Mendocino County Building Department with final approval.
7. Ownership/Maintenance
  - a. GFCFB is solely responsible for all operations and maintenance for the Garden.
  - b. The City reserves the right to periodically inspect the Garden to ensure proper maintenance practices are being followed. City shall notify GFCFB immediately of any discrepancies in maintenance practices. This right does not impose any duty on the City to inspect the garden or assume any liability of any kind arising from inspecting or not inspecting the Garden.
  - c. GFCFB will operate the Garden in accordance with a set of garden rules substantially in the form attached as Exhibit B. GFCFB will require all persons to whom it licenses plots or provides services in or to the Garden to enter into a gardener agreement and waiver of liability substantially in the form attached as Exhibit C.
  - d. GFCFB will install and maintain a system, where practicable, to prevent entrance to the Garden outside of operating hours and when the Garden is unattended, such as a system of fences and locks, or other reasonable security measures.
  - e. GFCFB may not assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any rights under this Agreement, sublet or allow any part of the Garden to be used or occupied by others, except those persons maintaining the Garden under agreement with GFCFB.
  - f. GFCFB will not incur, create, assume or permit the creation of any lien on any portion of the Garden.
  - g. GFCFB will use and operate the Garden in compliance with all applicable zoning, environmental, and other laws and regulations.
8. Indemnity and Waiver of Liability
  - a. Indemnification - GFCFB will defend, indemnify, and hold City and City's directors, officers, employees, agents, and assigns (City and such persons are referred to collectively as "City Parties"), harmless against all claims, liabilities, losses, damages, expenses, and attorneys' fees (together, "Losses"), including, without limitation, losses arising from any death, property damage, or injury of any nature whatsoever that may be suffered or sustained by GFCFB or any of GFCFB's licensed gardeners, volunteers, employees, contractors, guests, or any other person in a relationship with GFCFB (GFCFB and such persons are referred to collectively as "GFCFB Parties"), which may arise directly or indirectly

from (a) GFCFB Parties' use or operation of or presence on the Garden, or (b) any breach by GFCFB of this Agreement, including, without limitation, GFCFB's failure to enforce garden rules and regulations, except to the extent the loss is caused by the gross negligence or willful misconduct of City.

- b. Waiver of Liability - GFCFB releases and waives all claims against the City with respect to or arising out of (a) any death or any injury of any nature whatsoever that may be suffered or sustained by GFCFB from any causes whatsoever, except to the extent that such injury or death is caused by the gross negligence or willful misconduct of such City; (b) any loss or damage or injury to any property on or about the Garden belonging to GFCFB, except to the extent such injury or damage is to property not covered by insurance carried (or required to be carried) by GFCFB and is caused by gross negligence or willful misconduct of such City; or (c) the condition of the Garden and suitability of the Garden for use as a community garden. Subject to the prior provisions, City shall not be liable for any damage or damages of any nature whatsoever to GFCFB caused by explosion, fire, theft, crime, or negligent behavior, by sprinkler, drainage, plumbing, or irrigation systems, by failure for any cause to supply adequate drainage, by the interruption of any public utility or service, by steam, gas, water, rain, or other substances leaking, issuing, or flowing into any part of the Garden, by natural occurrence, riot, court order, requisition, or order of governmental body or authority, or for any damage or inconvenience which may arise through repair, maintenance, or alteration of any part of the garden, or by anything done or omitted to be done by GFCFB Parties or any other person on the Garden. In addition, City shall not be liable for any losses for which Garden is required to insure. This Section will survive any termination of this Agreement.

## 9. Insurance

- a. Insurance. GFCFB will, at its own cost, take out and maintain without interruption during the term of this Agreement comprehensive general liability insurance naming City as an additional insured, affording coverage for bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million Dollars (\$1,000,000). Coverage shall be made on an "occurrence" basis and not a "claims made" basis.
- b. Evidence of Insurance. On or before City delivers possession of the Garden to GFCFB, GFCFB will provide City with a copy of the insurance policies required by Section 9a. GFCFB will deliver to City evidence of each renewal or replacement of any required insurance policy at least 10 days prior to the expiration of such policy. In lieu of the actual policies,

GFCFB may deliver to City a certificate of insurance evidencing GFCFB's insurance policies, provided that City also receives a copy of the endorsement naming City as an additional insured. The insurance policies or certificates of insurance required by this section shall be attached to this MOU as Exhibit D.

10. Termination – Both GFCFB and the City reserve the right to terminate this agreement at any time.

- a. Termination Request – Request for termination shall be submitted in writing to the other party involved in this NOU.
- b. Termination During Construction
  - i. If the City terminates this MOU during construction, GFCFB shall remove all improvements made up to the point of termination and completely restore the project area to its original condition. GFCFB shall be responsible for all expenses associated with the removal of all improvements and such removal shall be completed within thirty (30) days from the date of the request for termination.
  - ii. The City reserves the right to consider all Improvements to Real Property up to the point of termination as its own property and may complete the project at its own expense.
- c. Termination Post Construction
  - i. Should either party terminate this MOU after construction is complete, GFCFB will decommission the Garden and shall remove all equipment, supplies and structures from the Garden. The subject property will be returned to the same condition as existed prior to construction.
    1. The City reserves the right to consider all Improvements to Real Property after construction as its own property and may waive the requirement that the subject property will be returned to the same condition as existed prior to construction. Improvements to Real Property do not include any tool or Garden sheds, water tanks purchased by or donated to GFCFB or other personal property such as tools and gardening equipment. Notice that the City has invoked this right shall be provided in writing to GFCFB as soon as practical after termination of the Agreement.

11. Entire Agreement -This MOU represents the entire agreement between City and GFCFB and supersedes all prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between City and GFCFB relating to the same subject matter.

12. Modification and Severability - This Lease may be modified only as stated in a writing signed by both City and GFCFB which states that it is an amendment to this Agreement. If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY

GFCFB

By: \_\_\_\_\_  
Tabatha Miller  
Its: City Manager

By: \_\_\_\_\_  
Matthew Drewno  
Its: Board President

ATTEST:

By: \_\_\_\_\_  
June Lemos, CMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Keith F. Collins  
City Attorney