

## STAFF REPORT

Approved and forwarded to City Council

Bryan H. Montgomery, City Manager

**Date:** March 10, 2015

**To:** City Council

**From:** Kevin Rohani, Public Works Director/City Engineer

**Subject:** Lease Agreement with Slow Foods Delta Diablo to establish a Community Garden on a portion of Creekside Park located at 3900 Creekside Way in Oakley.

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### Summary and Background

In May of last year the City Council approved a short-term lease agreement with Slow Foods Delta Diablo (SFDD) to establish a community garden on the Moura Property located at 1250 O'Hara Avenue. Some portions of the project moved forward, however, some complications accessing water and the short duration of the lease caused some concern.

An alternative location has been found that we believe establishes a "win-win" situation. The former BMX area at Creekside Park is rarely if ever used and has become a maintenance problem. It is an area that is already fenced and has close access to the Park's well water. There is also parking on site and on-site restrooms.

The proposal is for the Oakley Community Garden and Farm group (as an affiliate of SFDD) to relocate the garden effort from the Moura Property to the former BMX area at Creekside Park. Attached is a letter from SFDD outlining the proposal. Staff suggests a few clarifications, but recommends approval.

These changes include a charge for the well water and that the nearby pavilion be available to the group, but following the regular reservation process through the Recreation Division. (This provides free "drop-in" use, but a fee for a set reservation). There is a cost of the well water (electricity and pump maintenance) and much of the use of with the garden is for *private* plots and some charge, even a nominal one as is proposed in the Lease Agreement, should be charged.

### Fiscal Impact

The proposed lease agreement has Slow Foods Delta Diablo paying \$12 per year for rent and \$250 per year for water (this amount for water may need to be evaluated as usage is monitored over the next couple of years).

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**Recommendation**

Adopt the resolution approving the Lease Agreement with Slow Foods Delta Diablo to establish a community garden program on a portion of Creekside Park located at 3900 Creekside Way and authorize the City Manager to execute the Agreement.

**Attachments**

1. Letter from Slow Foods Delta Diablo
2. Resolution
3. Proposed new Lease Agreement
4. Existing Lease Agreement with Slow Foods Delta Diablo



February 26, 2015

To: Mayor and City Council  
City of Oakley

From: Shelley Somerset  
Chair Slow Food Delta Diablo

To Whom It May Concern:

Re: Oakley Community Garden/Farm

Slow Food Delta Diablo is pleased to continue to serve as Oakley Community Garden/Farm's (OCGF) fiscal sponsor.

Slow Food Delta Diablo (SFDD) is a local convivial subordinate organization of Slow Food U.S.A., a 501(c)(3) non profit organization.

On February 10, 2015, as fiscal sponsor, Slow Food Delta Diablo received notification that Paul Seger, the current Director, made the decision to step down from the Director position of Oakley Community Garden and Farm (OCGF). Shawn Horrocks, the Vice Director is taking on the responsibility of leading OCGF by unanimous vote at the OCGF Meeting held on February 17, 2015.

On February 19, 2015 Shelley Somerset of SFDD and Shawn Horrocks of OCGF met with Kevin Rohani, Oakley City Engineer, to discuss the status of the Moura Property Lease and the proposed lease of the Creekside Park site formerly known as the BMX Park. The OCGF is interested in accepting the City's offer of the Creekside Park site as the future home of OCGF. SFDD and OCGF have agreed to the following offers that will be submitted to the Oakley City Council for Council approval on March 10, 2015.

- ⊙ **The amended lease agreement would include the following from the City of Oakley:**
- ⊙ A ten year lease to OCGF
- ⊙ Clean up, grade, add top soil and till the site
- ⊙ Coordination of Installation of the irrigation piping and hose bibs supplied by OCGF to the garden and garden plots.
- ⊙ Irrigation system maintenance for the garden would thereafter be the responsibility of OCGF
- ⊙ Remove BMX signage
- ⊙ Coordination of installation of sign supplied by the Oakley Community Garden
- ⊙ Periodic use of the Pavilion for community educational events at no charge to OCGF
- ⊙ Allow access to well water
- ⊙ Water cost to be reflected in annual lease amount
- ⊙ Allow two picnic tables ( Eagle Scout Project), tool shed, small greenhouse, row covers, beehives, compost bins and an informational bulletin board (location of bulletin board to be approved by City's Parks and Landscape Manager
- ⊙ Continue the Moura Property Lease through April 30, 2015
- ⊙ Amend the existing lease agreement to reflect all approved changes

- Ⓞ **Oakley Community Garden/Farm a Project of SFDD will:**
- Ⓞ Upon City Council approval of the above offers:
- Ⓞ SFDD will approve an amendment provided by the City of Oakley to the existing lease agreement of the Moura Property dated May 29, 2014
- Ⓞ Accept termination of the Moura Property access as of April 30, 2015
- Ⓞ Dispose of palettes at Moura site
- Ⓞ Continue to tend and harvest plants through April 30, 2015
- Ⓞ No new planting at Moura site
- Ⓞ Complete move from Moura site to Creekside Park by April 30, 2015
- Ⓞ Leave Moura site in condition that City can re-grade and clean site
- Ⓞ Provide Certificate of Liability Insurance for Creekside Park site
- Ⓞ Maintain a beautiful garden at Creekside Park demonstrating how to grow good, clean and fair food for one's self and the community at large.

SFDD is eager to continue our support of the Oakley Community Garden and Farm. The commitment by these Oakley citizens to growing food not only for themselves, but their community as well, is impressive. As such SFDD will continue to partner with OCGF to protect, promote and preserve our agricultural and gastronomical heritage through education, action and advocacy for good, clean and fair food.

We look forward to continuing our relationship with the City of Oakley and formalizing the new offers and objectives listed above.

Respectfully submitted,

Shelley Somerset  
Slow Food Delta Diablo

cc: Shawn Horrocks  
Gail Wadsworth

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY  
AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT  
WITH SLOW FOODS DELTA DIABLO TO ESTABLISH A COMMUNITY  
GARDEN PROGRAM AT CREEKSIDE PARK, LOCATED AT 3900  
CREEKSIDE WAY IN OAKLEY.**

**BE IT RESOLVED** by the City Council of the City of Oakley that the attached Lease Agreement with Slow Foods Delta Diablo, is hereby approved, and the City Manager is authorized to execute it on its' behalf.

The foregoing resolution was introduced at a regular meeting of the Oakley City Council held on the 10th day of March 2015, by Councilmember \_\_\_\_\_, who moved its adoption, which motion being duly seconded by Councilmember \_\_\_\_\_, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

**APPROVED:**

\_\_\_\_\_  
Doug Hardcastle, Mayor

**ATTEST:**

\_\_\_\_\_  
Libby Vreonis, City Clerk

\_\_\_\_\_  
Date

## LEASE AGREEMENT

**City of Oakley/Slow Food Delta Diablo and Oakley Community Garden**  
**A portion of Creekside Park located at 3900 Creekside Way, Oakley, CA**

**THIS LEASE AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the City of Oakley, a municipal corporation ("CITY") and Slow Food Delta Diablo, a California nonprofit organization, acting as fiscal sponsor to Oakley Community Garden (collectively "LESSEE").

**Recitals**

- A. CITY owns Creekside Park located at 3900 Creekside, Oakley, California, a portion of which was formerly a BMX track area and the CITY has deemed this area surplus to the CITY's immediate needs (hereinafter called "the Site" or "the Property").
- B. LESSEE is currently leasing CITY property called the "Moura Property."
- C. LESSEE desires to develop and conduct community garden activities on the subject site.
- D. CITY is willing to make the site available to LESSEE upon various terms and conditions.

**Now, therefore, the parties agree as follows:**

1. **PROPERTY TO BE LEASED:** The property which is the subject of this Lease is generally depicted on the attached Exhibit "A", being a portion of Creekside Park located at 3900 Creekside Way, Oakley, California. The portion of the Property designated for LESSEE's use is limited to the area identified on Exhibit "A".
2. **LEASE TERM; DEFAULT:** The term of this Lease is 10 years, commencing on April 1, 2015 and terminating on March 31, 2025. If at any time the property is not being maintained to the CITY's satisfaction, or if LESSEE abandons its activities on the Property or fails to pay the rental rate and cost of water, the CITY shall provide a written notice of default. If the default is not cured within sixty (60) days, the CITY may terminate the lease.

Any extension of this Lease shall be subject to the sole discretion of CITY, which makes no representation that the Property will be available for LESSEE's continued operations following the termination date, the parties understanding that other governmental priorities for the Property may develop. CITY is under no obligation to provide relocation assistance in any form or amount.

3. **RENTAL RATE AND COST OF WATER:** Rent shall be the sum of twelve dollars (\$12) per year, payable prior to the commencement date established herein and payable by April 1<sup>st</sup> of each subsequent year of the lease term. Payable with the rental rate prior to the commencement date shall be two hundred and fifty dollars (\$250) to help cover the annual cost of the well water. LESSEE understands that the usage and overall cost of the provision of well water will be

reviewed within one (1) year of operations and an evaluation be conducted to determine if an adjusted cost of water rate is warranted (cost being eligible for increase or decrease). Any adjustment would be subject to City Council's approval.

4. **CITY'S RESPONSIBILITIES:** The CITY agrees to the following as terms of this lease:
- a. Clean up, grade, add soil amendments (if provided by LESSEE) and till the site.
  - b. Coordinate access to the Park well and installation of the irrigation piping and hose bibs (provided by LESSEE).
  - c. Remove existing BMX signage.
  - d. Coordinate the installation of a site sign supplied by the LESSEE and approved by the CITY's Planning Division.
  - e. Allow two picnic tables (Eagle Scout Project), tool shed, small greenhouse, compost bins, row covers and bulletin board (locations to be approved by the CITY's Parks and Landscape Manager).
  - f. Coordinate the location of a small number of beehives, with conditions approved by the CITY's Parks and Landscape Manager. (A condition to be included is the request that beehives be removed if they become a nuisance concern to other Park patrons).
  - g. To the termination of the LESSEE's existing lease of the Moura Property effective May 1, 2015.
5. **LESSEE'S RESPONSIBILITIES:** LESSEE agrees to the following as terms of this lease:
- a. To the termination of the LESSEE's existing lease of the Moura Property effective May 1, 2015.
  - b. Prior to May 1, 2015, dispose of palettes and any other LESSEE-placed materials at the Moura Property.
  - c. Leave Moura Property in good condition so that CITY can re-grade the site.
  - d. Continue to tend and harvest plants at the Moura Property through April 30, 2015.
  - e. Discontinue any new planting at Moura Property.
  - f. Maintain and keep in good repair the garden site at Creekside Park which shall include regular maintenance, weeding and debris clean up. Any mud or debris from the garden operations left in the restrooms or parking lot is LESSEE's responsibility to clean.
  - g. Use of the Property is limited to establishing community garden plots, which shall be available to members of the general public and Oakley community pursuant to

reasonable rules and regulations which LESSEE may adopt subject to the CITY's approval. Any cultivation of cannabis/marijuana or any crop/product prohibited or regulated by federal law is strictly prohibited, violation of which shall result in the immediate termination of this Lease. LESSEE is under an affirmative duty to patrol plots of community members to ensure compliance with this prohibition.

- h. Not sublet the Property without CITY's written approval. In the event of any unapproved subletting or assignment, this Lease shall be voidable by the CITY.
- i. Make no alterations to the Property without consent of the Parks and Landscape Manager.
- j. Maintain at all times during the term of this Lease, at its cost and expense, satisfactory liability and property damage insurance in amount of at least \$1,000,000. The CITY shall be named additional insured under such policy. LESSEE shall defend, hold harmless, and indemnify the CITY, its officers, agents and employees from any claim, damage or liability associated with its use and/or operations on the property. LESSEE shall notify CITY at least ten (10) days prior to the cancellation or expiration of such insurance policy.
- k. Provide to CITY executed copies of each individual gardener's signed Code of Conduct and Liability Waiver release.
- l. Not permit any public nuisance or violation of law, ordinance or regulation to occur on the property.
- m. Keep the subject property free from any and all liens or security arising from its operations and use of the property.
- n. Comply with all governmental regulations regarding operations on the property.
- o. Be responsible for any possessory interest tax which may be levied by Contra Costa County, as well as payment of any and all other taxes, liens or assessments which may be attributable to its operations.
- p. Not vacate or abandon the property. As stated herein, if the Property takes on the appearance of being abandoned or unkempt, the CITY shall notify LESSEE of his/her determination and upon LESSEE's failure to cure, CITY may thereafter declare this Lease to be cancelled and of no further force or effect.
- q. Upon termination, LESSEE shall return the property to CITY in a vacant, clean and presentable condition. If LESSEE violates this provision, the CITY may, without liability to LESSEE, remove and/or destroy any such property and may recover from LESSEE any and all costs of cleanup.

6. **VIOLATIONS:** Any violation of the terms and conditions of this Agreement shall be justification for the termination of this Lease.
7. **RIGHT TO ENTER:** CITY is hereby granted the right to enter the property and to inspect same from time to time to determine compliance with this Lease. If the property is secured, CITY shall be granted access at reasonable times.
8. **NOTICES:** Any notice, demand or communication from one party to the other shall be deemed to have been properly given if delivered by personal service upon, or by mailing the same, postage fully prepaid thereon, and addressed as follows:

To CITY :       City of Oakley c/o City Manager  
3231 Main Street  
Oakley, CA 94561

To LESSEE:     Slow Food Delta Diablo c/o Shelley Somersett  
3 Oak Knoll Loop  
Walnut Creek, CA. 94696

An emergency telephone number and email address for LESSEE shall be:  
Shawn Horrocks (925) 354-1783  
Email: [shawn@gardener.com](mailto:shawn@gardener.com)

9. **NO RELOCATION BENEFITS:** There shall be no relocation benefits, nor compensation for any improvements, interference with business or any other claim for reimbursement or damage upon the termination of this Lease or CITY's unwillingness to extend it.

**CITY OF OAKLEY, a municipal corporation**

**Slow Food Delta Diablo, a non-profit**

By: \_\_\_\_\_  
Bryan H. Montgomery, City Manager

By: \_\_\_\_\_  
Shelley Somersett, Chair

ATTEST:

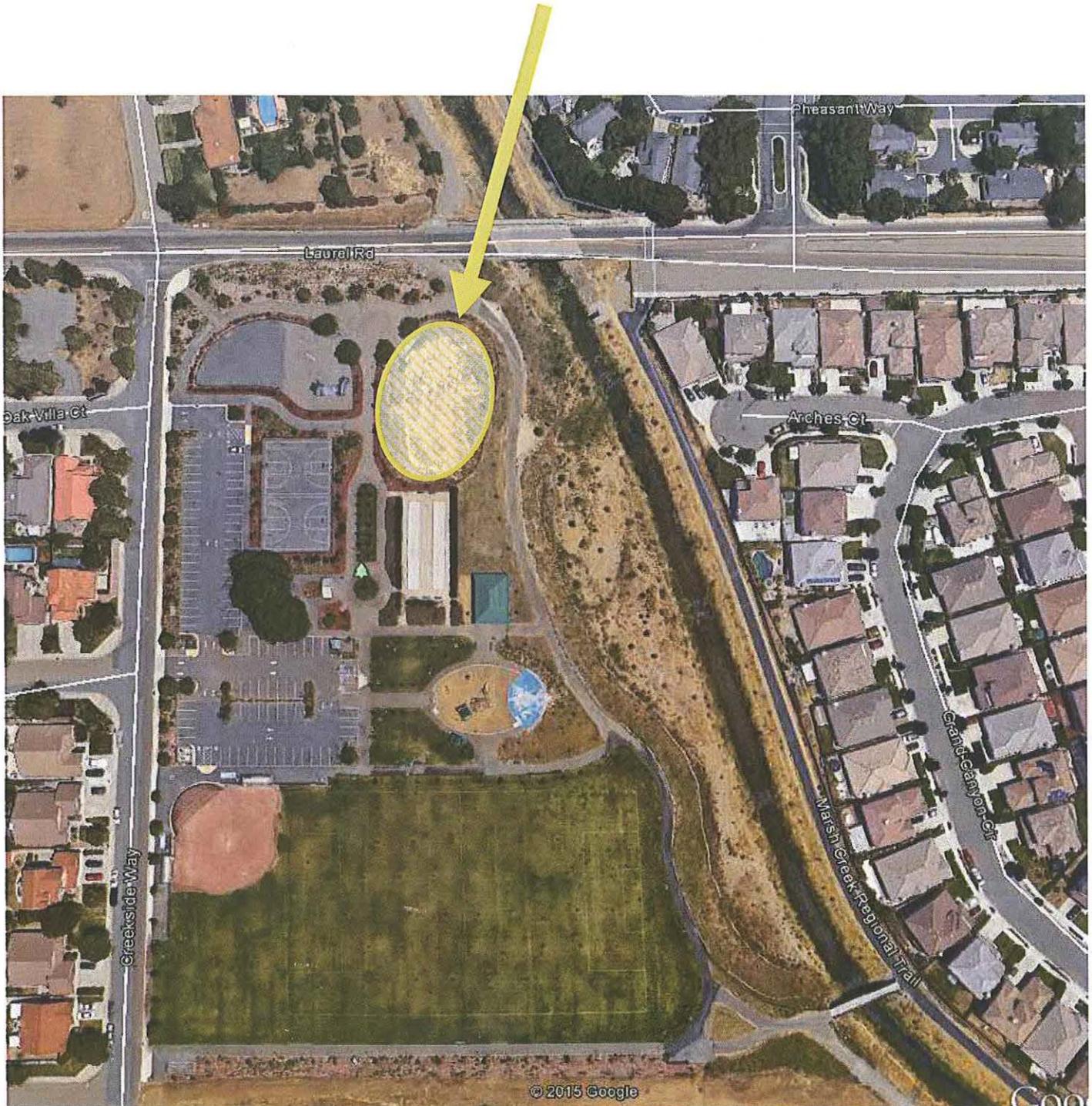
By: \_\_\_\_\_  
Libby Vreonis, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
William R. Galstan, Special Counsel

## EXHIBIT A

A portion of Creekside Park designated for  
community garden activities



## LEASE AGREEMENT

## City of Oakley/Slow Food and Oakley Community Gardens

Portions of 1250 O'Hara Avenue, Oakley, CA

THIS LEASE AGREEMENT is entered into this 29<sup>th</sup> day of May, 2014 by and between the City of Oakley, a municipal corporation ("CITY") and Slow Foods Delta Diablo, a California nonprofit organization, acting as fiscal sponsor to Oakley Community Gardens (collectively "LESSEE").

Recitals

- A. CITY owns real property at 1250 O'Hara Avenue, Oakley, California, portions of which are currently surplus to the CITY's immediate needs ("the site" or "the property").
- B. LESSEE desires to develop and conduct community garden activities on the subject site.
- C. CITY is willing to make the site available on a contingent and interim basis, depending upon variables including the intensity of uses desired by LESSEE and future governmental needs for the property.

**Now, therefore, the parties agree as follows:**

- 1. The property which is the subject of this Lease is generally depicted on the attached Exhibit "A", being a portion of 1250 O'Hara Avenue, Oakley, California, portion of APN 035-211-002. The portions designated for LESSEE's use are limited to the areas identified on Exhibit "A".
- 2. The term of this Lease is 36 months, commencing on June 15, 2014 and terminating on June 15, 2017. Any extension of this Lease shall be subject to the sole discretion of CITY, which makes no representation that the property will be available for LESSEE's continued operations following the termination date, the parties understanding that other governmental priorities for the property may develop. CITY is under no obligation to provide relocation assistance in any form or amount.
- 3. Rent shall be the sum of Twelve (\$12.00) Dollars per year, payable prior to the commencement date established herein and prior to the commencement of the second year of the term.
- 4. Because LESSEE's development plan and specific intended uses for the property are not fully established at this time, the City Council directs the City Manager to supervise and monitor the scope and operation of LESSEE's proposed activities. Prior to commencing

operations, LESSEE shall submit to the City Manager or his/her designee and receive his/her approval for the following:

- a) A site plan, showing location of proposed planting areas and any improvements, all of which shall be of a temporary nature;
- b) A financial plan, indicating fees or dues to be collected and anticipated expenses and revenues;
- c) An irrigation plan, indicating the source of water. CITY makes no representation that water is available from its sources.
- d) Access driveway and parking area plan.

The City Council grants the City Manager supervisory authority over any and all rules and regulations for the use of the site, and may promulgate directives to LESSEE from time to time regarding operations on the property. Such directives shall be aimed at preserving the integrity and appearance of the property, avoiding public or private nuisances, and protecting the CITY's other operations on the city-developed portions of the site. LESSEE shall comply with any and all such directives, subject to its right to appeal any such directive to the City Council for final determination.

5. The premises are leased for the purpose of establishing community garden plots, which shall be available to members of the general public and Oakley community pursuant to reasonable rules and regulations which LESSEE may adopt subject to the City's approval. Any cultivation of cannabis/marijuana or any crop/product prohibited or regulated by federal law is strictly prohibited, violation of which shall result in the immediate termination of this Lease. LESSEE is under an affirmative duty to patrol plots of community members to ensure compliance with this prohibition.
6. LESSEE acknowledges that the adjacent Oakley Recreation Buildings are rented to private parties and are also utilized by various independent and City instructors of recreation and community programs. These uses shall have priority for the utilization of the existing parking lot. Further, public restrooms are not available on an ongoing basis, but are only open for the use of these rental and recreational programs.
7. No utilities are provided as part of this Lease by the CITY unless the City determines to allow the provision of water, which would be at LESSEE's expense.
8. LESSEE shall make no alterations to the property without consent of the City Manager and, due to the potentially short term of this Lease, make no improvements of significant value for which it would seek compensation upon termination of this Lease.
9. LESSEE understands that some expansion of use of scope of the operations may require land use approvals and/or environmental review by the City of Oakley. CITY does not make any representations about whether such approvals would be granted.

10. Any violation of the terms and conditions of this Agreement shall be justification for the immediate termination of this Lease.
11. Upon termination, LESSEE shall return the property to CITY in a vacant, clean and presentable condition. If LESSEE violates this provision, the CITY may, without liability to LESSEE, remove and/or destroy and such property and may recover from LESSEE its costs of cleanup.
12. LESSEE shall keep the subject property free from any and all liens or security arising from its operations and use of the property.
13. LESSEE shall comply with all governmental regulations regarding operations on the property.
14. There shall be no subletting of this Lease without CITY approval. In the event of any unapproved subletting or assignment, this Lease shall be voidable by the CITY.
15. LESSEE shall be responsible for any possessory interest tax which may be levied by Contra Costa County, as well as payment of any and all other taxes, liens or assessments which may be attributable to its operations.
16. LESSEE shall at all times during the effectiveness of this Lease maintain at its cost and expense satisfactory liability and property damage insurance in amount of at least \$1,000,000. The CITY shall be named additional insured under such policy. LESSEE shall defend, hold harmless, and indemnify the CITY, its officers, agents and employees from any claim, damage or liability associated with its use and/or operations on the property. LESSEE shall notify CITY at least ten (10) days prior to the cancellation or expiration of such insurance policy.
17. LESSEE shall not permit any public nuisance or violation of law, ordinance or regulation to occur on the property.
18. CITY is hereby granted the right to enter the property and to inspect same from time to time to determine compliance with this Lease. If the property is secured, CITY shall be granted access as reasonable times.
19. Unless otherwise approved by the City Council, a disaffiliation between Slow Food Delta Diablo and Oakley Community Gardens shall be construed to be a material breach of this Lease.
20. Any notice, demand or communication from one party to the other shall be deemed to have been properly given if delivered by personal service upon, or by mailing the same, postage fully prepaid thereon, and addressed as follows:

To City:           City of Oakley  
                          c/o City Manager  
                          3231 Main Street  
                          Oakley, CA 94561

To Lessee: Slow Food Delta Diablo  
c/o Shelley Somerset  
3 Oak Knoll Loop  
Walnut Creek, CA. 94696

An emergency telephone number and email address for Lessee shall be:  
Paul Seger (714) 504-0838

21. LESSEE shall not vacate or abandon the property. If the property takes on the appearance of being abandoned, the City Manager shall notify LESSEE of his/her determination and may thereafter declare this Lease to be cancelled and of no further force or effect.
22. Given the temporary and interim nature of this Lease, there shall be no relocation benefits, nor compensation for any improvements, interference with business or any other claim for reimbursement or damage upon the termination of this Lease or CITY's unwillingness to extend it.

CITY OF OAKLEY, a municipal corporation

Slow Food Delta Diablo, a non-profit

By: Bryan H. Montgomery  
Bryan H. Montgomery, City Manager

By: Shelley Somerset  
Shelley Somerset, Chair

ATTEST:

By: Libby Vreonis  
Libby Vreonis, City Clerk

APPROVED AS TO FORM:

By: William R. Galstan  
William R. Galstan, Special Counsel