




STAFF REPORT

Date: May 27, 2014
To: City Council
From: Bryan Montgomery, City Manager 
Subject: Lease Agreement with Slow Foods Delta Diablo to establish a Community Garden program on portions of City-owned property located at 1250 O'Hara Avenue (APN 035-211-002).

Summary and Background

Some months back, a group of local residents presented to the City Council the idea of establishing a community garden program on City-owned property (the Moura Property), as depicted in the attached aerial photo (Exhibit A). Slow Foods Delta Diablo has agreed to serve as the fiscal sponsor for this group of local residents and is the proposed signator to the lease agreement.

There are a number of elements of the program that have not yet finalized; however, the proposed lease agreement calls for that coordination to take place prior to operations commencing. The proposed agreement calls for a lease term of three years. Staff does not recommend a longer term, due to the other possible plans for the property (other plans could including ballfields, community center, recreation center, library, or other public uses.

Fiscal Impact

Slow Foods Delta Diablo is not asking for any financial participation from the City, other than a subsidized lease rate, proposed to be \$1 per month.

Recommendation

Adopt the resolution approving the Lease Agreement with Slow Foods Delta Diablo to establish a community garden program at 1250 O'Hara Avenue and authorize the City Manager to execute the Agreement.

Attachments

1. Resolution
2. Proposed Lease Agreement with Exhibit A
3. Agreement between Slow Foods Delta Diablo and Oakley Community Gardens

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 1250 O'HARA AVENUE 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 27th day of May 2014, 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:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

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 ____ day of _____, 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 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 or 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 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 \$250,000.00. 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 Manager
 City of Oakley
 3231 Main Street
 Oakley, CA 94561

To Lessee: _____

An emergency telephone number and email address for Lessee shall be:

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.

(signatures)

Exhibit A

Community Garden





Slow Food[®]

Delta Diablo

Memorandum of Understanding

Parties: Slow Food Delta Diablo and Oakley Community Gardens/Farm

Date: April 15, 2014

Purpose: Fiscal Sponsor for non-profit star-up

Slow Food Delta Diablo (SFDD) is excited to collaborate with Oakley Community Gardens/Farm (OCGF) as a project of SFDD/community partner to support community gardens, educational facility and future farm. SFDD believes OCGF will impact local food systems by providing and increasing the community of Oakley with good, clean and fair food. We are pleased to provide fiscal sponsorship while OCGF obtains its 501(c)(3) status. We look forward to a productive, dynamic and positive partnership.

Purpose: This Memorandum of Understanding (MOU) establishes that SFDD will act as fiscal sponsor for OCGF until OCGF obtains a 501(c)(3) tax status, or until expiration and non-renewal of the MOU,

Scope of Services: OCGF is a program of SFDD and will solicit funds to support the program budgetary needs. All funds donated and designated for OCGF will be deposited into the SFDD account, designated for the use of the OCGF program. The funds will be used to support OCGF programming and administration. Additional cost to administer the fiscal sponsorship will be requested as necessary by SFDD.

Oakley Community Gardens/Farm Responsibilities:

1. Paul Seger of OCGF will be the primary contact person to liaise with SFDD with regard to OCGF financial matters.
2. OCGF will be responsible for maintaining internal financial records, which may or may not duplicate those maintained by SFDD.
3. OCGF will provide a summary invoice and appropriate receipts for each expenditure request to SFDD. Including the vendor, date(s), amount and purpose of expenditure.
4. OCGF will maintain a summary record of all monetary donations including copies of all checks.
5. OCGF will make donors aware of the fiscal sponsor arrangement with SFDD and will inform the donors to make checks payable to Slow Food Delta Diablo and designate the donation as "Oakley Community Gardens/Farm".
6. OCGF will provide donor information for all donations to SFDD for follow up with appropriate acknowledgment for tax purposes.
7. OCGF will maintain open communication with SFDD, especially regarding sponsorships, financial matters and any messaging that includes SFDD.

8. OCGF will solicit advance approval for any use of the Slow Food Delta Diablo or Slow Food USA logos.

Slow Food Delta Diablo Responsibilities:

1. SFDD will accept OCGF designated contributions in the form of checks [or cash] made payable to Slow Food Delta Diablo. SFDD will deposit said contributions in the existing SFDD checking account.
2. As a program of SFDD, OCGF will enjoy SFDD's tax-exempt status, for all donations made to OCGF and deposited into the SFDD account.
3. SFDD will provide donors with appropriate correspondence and tax documentation for their charitable contributions.
4. Remaining funds at the termination of the agreement, along with any physical items purchased specifically for OCGF operations, will be transferred to OCGF at such time as OCGF is designated by the Internal Revenue Service as a charitable, 501(c)(3) organization.
5. SFDD will maintain open communication with OCGF, especially regarding financial matters and any messaging that includes OCGF.
6. SFDD will review in advance and if appropriate give consent for any communications involving SFDD or Slow Food Delta Diablo/Slow Food USA logo usage by OCGF.
7. SFDD will solicit advance approval for any use of the Oakley Community Gardens/Farm logo.

Duration:

MOU will commence on April 15, 2014 and terminate on ~~December 31, 2014~~ agreement of both parties.

MOU may be extended upon written request by OCGF and acceptance by SFDD.

The parties are in agreement this date, April 15 2014

Shelley Somerset, Chair Head Table

Slow Food Delta Diablo

Signature

Paul Seger, co-founder

Oakley Community Gardens/Farm

Signature