

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made and entered into as of the 27th day of February, 2012, by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California, hereinafter called Licensor, and CITY OF LAFAYETTE, hereinafter called Licensee.

WITNESSETH:

THAT Licensor, for a good and sufficient consideration as hereinafter specified, and in further consideration of the faithful performance by the Licensee of each and all of the covenants, agreements and conditions herein contained, does hereby give to Licensee a license for a period of five (5) years beginning on March 13, 2012 and ending on March 12, 2017 ("Term"), for community gardens uses and related educational events and workshops related to sustainable gardening practices upon the property of Licensor in the County of Contra Costa, State of California, as shown on Exhibit "A" ("Property") attached hereto and made part hereof.

This License is given by Licensor and accepted by Licensee upon the following terms and conditions:

1. **CONSIDERATION:** In consideration for the rights herein granted, Licensee shall pay to Licensor an annual license fee upon execution of this Agreement and yearly thereafter on the anniversary date of the Agreement. The annual license fee shall be \$2,000 the first year of this Agreement. Effective on the anniversary date in 2013, and for each one-year period thereafter during the Term, the annual license fee will be adjusted upward or downward in the same percentage that the Consumer Price Index (CPI) average for all Urban Consumers in the San Francisco-Oakland, California area has increased or decreased since publication of said CPI for the month of February. The license fee for each adjusted annual payment period becomes the base license fee for computing subsequent adjustments.

2. **TITLE:** Licensee hereby acknowledges the title of the Licensor in and to the real Property and agrees not to assail or to resist said title during the Term. Any and all rights granted or implied by this License shall be subordinate to the Licensor's use of the Property.

3. **INTERFERENCE WITH ONGOING OPERATIONS:** Licensee further agrees that its use of and all work upon or in connection with the Property shall at no time and in no way whatever interfere with the operations of Licensor, and that the construction, reconstruction, operation, maintenance, repair and use of said community garden and all work in connection therewith, together with the operation and supervision of said community garden, shall at all times be performed by Licensee to the reasonable satisfaction of Licensor. Licensee acknowledges and agrees that Licensor shall have the right to temporarily suspend or limit the use of Property by Licensee during such periods of time as Licensor determines that such suspension or limitation is necessary in the interest of public safety or for the construction, operation or maintenance of any Licensor facility, existing or planned. Should such suspension

or limitation be necessary, Licensor shall provide Licensee thirty (30) days prior written notice except in cases of emergency as declared by Licensor. During such time of suspension, Licensor shall make a good faith effort to provide Licensee access to the community garden for the sole purpose of conducting basic maintenance and watering of plants unless public safety would otherwise preclude such access. Upon completion of any work by Licensor within the Property, Licensor shall not be liable for the restoration of any facilities or improvements installed by Licensee. Licensee acknowledges and agrees that in the event, Licensor reasonably requires some permanent use of the Property for the construction, operation and maintenance of any Licensor facility which, by the nature thereof, precludes Licensee's use of the Property, Licensor may, upon ninety (90) days' prior written notice, revoke this License as to the area reasonably required for such permanent use. **Licensee further agrees to have Sustainable Lafayette provide a written acknowledgement of the revocation provisions by the commencement date of this License.**

4. **USE:** Licensee further agrees that the Property shall be used for non-profit community garden purposes only and for no other purpose whatsoever. In its operations on the Property, Licensee shall not discriminate against any person because of race, creed, color, sex or national origin.

5. **USAGE FEES:** Licensee agrees that said community garden uses on the Property shall be operated without profit to Licensee; however, Licensee may charge any reasonable fee deemed proper or necessary to recover the costs of the operation, maintenance and supervision of said community gardens and its appurtenant facilities and equipment; provided, however, that any such fee shall be uniform in its operation as to all persons allowed to use said community gardens.

6. **IMPROVEMENTS:** Licensor reserves the right to approve any changes to the Property and Licensee agrees not to construct or place any improvements or commence with any plantings upon the Property without first obtaining written consent from Licensor, which shall not be unreasonably withheld, conditioned, or delayed. Licensee shall submit detailed plans to Licensor for Licensor's review and approval. Licensee further agrees to maintain in safe operating condition the community garden facilities which may be constructed on the Property and to provide adequate supervision over said community garden uses all at the expense of Licensee. No permanent structure shall be placed, installed or constructed on the Property by the Licensee.

7. **OPERATIONAL COSTS:** Any fencing signs or guard patrols determined by Licensee to be necessary for protection of the community garden users on the Property will be installed at the expense of Licensee. Licensee further agrees to pay for all water, power, telephone, or other utilities or services required or used in connection with the operation of said community gardens and to pay the costs of any extensions required to provide same. Licensee acknowledges that Licensor will NOT provide water, power, telephone or other utilities or services to the Property from its neighboring treatment plant facility.

8. **MAINTENANCE:** Licensee hereby agrees at its expense promptly to provide and maintain all necessary sanitary facilities; said sanitary facilities and the plans therefore to be first approved in writing by Licensor, and to keep Property at all times in a clean, safe and sanitary condition free from waste and to permit no accumulation of waste waters, rubbish or garbage thereon, all to the reasonable satisfaction of Licensor. For the purposes of this License, manure, compost, and compost piles for community garden purposes do not constitute "waste".

9. **INDEMNITY:** Licensee expressly agrees to indemnify, defend and hold harmless Licensor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Licensee's operation or performance under this License, including discharges (planned or unplanned) into the adjacent Lafayette creek. It is understood and agreed that Licensee shall indemnify and hold harmless Licensor, its directors, officers and employees from any injury to the public and to individuals using the community gardens except to the extent such injuries are caused by Licensor's gross negligence or willful misconduct.

Licensee shall be responsible to Licensor for any damage to the Property and assumes all risk of damage to any property of Licensee or any property under the control or custody of Licensee while upon the Property or in proximity thereto, caused by or contributed to in any way by the operation, maintenance, repair or use of the Licensor's facilities or improvements, if any. Licensee further agrees to indemnify and hold harmless Licensor from any damage or loss to Licensor's facilities, if any directly or indirectly contributed to or caused by Licensee's operation or performance under this License. Licensee is responsible to report any discharges (planned or unplanned) into the adjacent Lafayette creek to Licensor and to all applicable regulatory agencies.

10. **INSURANCE:** Licensee shall take out and maintain during the term of this License all the insurance required by this section and shall submit certificates ("Certificates") for review and approval by Licensor. The Certificates shall be on the forms provided by Licensor. Acceptance of the Certificates shall not relieve Licensee of any of the insurance requirements, nor decrease the liability of Licensee. Licensor reserves the right to require Licensee to provide insurance policies for review by Licensor. In lieu of evidence of any insurance, Licensor will accept a Self-Insuring Certificate from the State of California.

10.1 Worker's Compensation Insurance: Licensee shall maintain Worker's Compensation and Employer's Liability Insurance during the term of this License for all of its employees on said community gardens. Such insurance shall be endorsed to provide that the insurance company or companies waive any right of subrogation against Licensor which might arise by reason of any payment under the policy or policies. In lieu of evidence of Worker's Compensation Insurance, Licensor will accept a Self-Insuring Certificate from the State of California. In the event of such self insurance by Licensee, Licensee agrees to waive any right of

subrogation against Licensor which might arise by reason of any payment under Licensee's self insurance program. Licensee shall require any contractor to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance with California State Laws.

10.2 **Public Liability Insurance:** Licensee will take out and maintain during the term of this License Comprehensive Automobile and Commercial General Liability Insurance that provides protection from claims which may arise from operations or performance under this License. Licensee shall require any contractor to provide it with evidence of the same liability insurance coverage. The amount of insurance shall be not less than \$1,000,000 for Single Limit Coverage applying to Bodily and Personal Injury Liability and Property Damage.

10.3 **Endorsements:** The following endorsements must be indicated on the certificate:

- a. Licensor, its Directors, officers and employees are named as Additional Insureds in the policy as to any operations performed under this License;
- b. The coverage is primary and non-contributory to any other insurance carried by Licensor;
- c. The policy(ies) cover(s) contractual liability;
- d. The policy(ies) is (are) written on an occurrence basis;
- e. The policy(ies) cover(s) Licensor's real property in the Licensee's care, custody and control;
- f. The policy(ies) cover(s) personal injury (libel, slander, unlawful entry and eviction) liability;
- g. The policy(ies) cover(s) products and completed operations;
- h. A policy to cover use of owned, *non-owned*, and *hired* automobiles and equipment;
- i. The policy(ies) shall not be canceled nor reduced unless 30 days' written notice is given to Licensor.

10.4 **Failure of Coverage:** Failure, inability or refusal of Licensee to take out and maintain during the entire term of terms of this License any or all of the insurance as foresaid shall at the option of Licensor constitute an immediate breach of this License.

10.5 **Revisions of Insurance:** As circumstances change during the life of this License, Licensor may from time to time request, and Licensee agree to provide, reasonable revisions in the foregoing insurance requirements sufficient in to provide adequate protection for both Licensor and Licensee.

11. **SUBORDINATION:** All rights herein given are subject to all existing rights, right of way, reservations and easement by whomsoever held in and to the said real property hereinabove described.

12. **ASSIGNMENT:** Neither this License nor any rights hereunder shall be transferred or assigned by the Licensee, voluntarily or involuntarily, without first obtaining the written consent of Licensor. Upon any such transfer or assignment without Licensor's written consent, Licensor may at its option terminate and end this License and all rights of the Licensee hereunder. Subject to the foregoing provision, the agreement shall be binding upon the successors and assigns of the respective parties hereto.

13. **REVOCAION:** Upon abandonment of all or a portion of the community garden facilities or upon failure by Licensee to perform any of the covenants, agreements or conditions herein contained ("Default"), Licensor will give notice to Licensee indicating Licensee's Default. Defaults would include such failures as but not be limited to: the non-payment of the annual license fee, the non-authorized use of the Property, non-compliance of the maintenance conditions of the Property, and the failure to provide the required insurance coverage. Upon Licensee's receipt of the Default notice, Licensee shall have thirty (30) days to cure such Default. If Licensee fails to cure or commence cure within thirty (30) days, Licensor may revoke the License granted in the Agreement upon giving sixty (60) days' prior written notice to Licensee of Licensor's intention to do so and upon expiration of said sixty (60) day period all rights herein given shall immediately cease and terminate and this Agreement shall terminate. Upon any termination or revocation of this Agreement or of any of the rights of Licensee hereunder, Licensee agrees to promptly remove all of its property and equipment from the Property and to restore the Property as nearly as possible to the condition it was in prior to the commencement of its use by Licensee, with the exception of the parking lot area, which can remain in the condition at the time of termination. .

14. **RENEWAL:** Upon expiration of the TERM of this License, it is the sole discretion of the Licensor that the License can be renewed for a yet to be determined amount of time.

15. **NOTICES:** All notices given under this Agreement shall be in writing and shall be transmitted wither by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office (postage prepaid, certified mail, return receipt requested). Any such notices shall be effective upon delivery. Notices of the respective parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

To Licensee: City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549
Attention : City Manager

To Licensor: East Bay Municipal Utility District
375 11th Street
Oakland, CA 94607
Attention: Manager of Real Estate Services

16. **ATTORNEY'S FEES:** In the event either party to this License shall bring suit to compel performance of or to recover for breach of any covenant, agreement or condition herein contained in this License, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit.

17. **ACKNOWLEDGEMENT:** Licensee shall install signs acknowledging Licensor's cooperation in providing the Property for a community garden. Licensee shall also install any appropriate informational signage and regulations governing the use of the Property.

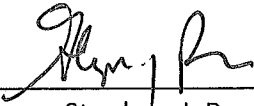
18. **ANNUAL REPORT:** Licensee agrees to provide Licensor with an annual report listing activities including construction, reconstruction, maintenance, removal and all work completed by Licensee on the Property during the previous 12-month period. Annual report will be due to Licensor on or before December 31 of each year this License is in effect.

19. **ENTIRE AGREEMENT:** It is understood that this agreement contains the entire agreement between the parties hereto and all prior understandings or agreements, oral or written, of whatsoever nature regarding the License hereby given or the said real property are superseded by this agreement and are hereby abrogated and nullified.


IN WITNESS WHEREOF, the parties hereto have executed this agreement, in duplicate, the day and year first above written.

EAST BAY MUNICIPAL UTILITY
DISTRICT

CITY OF LAFAYETTE

By: 

Stephen J. Boeri
Manager of Real Estate Services

By: 

Steven B. Falk
City Manager

LICENSOR

LICENSEE

Site Plan

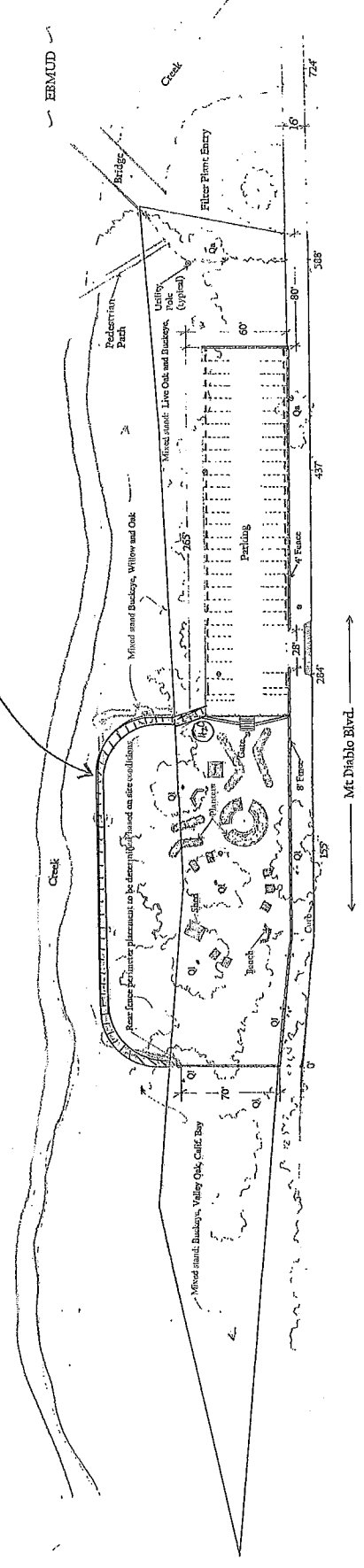
Trees on site:

- (AG) *Asclepias californica* - Buckeye
- (Qa) *Quercus agrifolia* - Coast Live Oak
- (Ql) *Quercus lobata* - Valley Oak
- (Ss) *Salix* sp. - Willow
- (Uc) *Umbellularia californica* - California Bay

NOTES:

- Overall parcel area 1.6 acres
- No trees greater than 6" diameter to be removed
- 50 parking spaces, inc. 2 universal access stalls
- Parking lot chain closure - Locked garden entry gate
- 8' Fence around garden space - 4' Fence across front and east sides parking
- 2 to 3 garden sheds may be added - each less than 120 sq. ft.
- Irrigator garden will be designed to suit the space, ground plane to be organic mulch material
- Street and East fence perimeters to be planted in California native plants
- Drip irrigation to be used throughout site

STRAW BATTLE BARRIER



0 25 50 100'

"This plan has been prepared in accordance with the Business and Professions Code section 5563 of the Landscape Architects Practice Act. Incidental "landscape" elements have been included as artistic representation only, to illustrate the conceptual floor plan and are subject to design by appropriate professional engineers and architects. The Engineer of Record and the Contractor of California Licensed Landscape Contractor whose required."

REVOCABLE SUBLICICENSE

This REVOCABLE SUBLICICENSE AGREEMENT ("Agreement") made and entered into this 27th day of February, 2012 ("Effective Date") by and between the CITY OF LAFAYETTE, a California municipal corporation, ("Licensee") and SUSTAINABLE LAFAYETTE ("Sublicensee"), a nonprofit 501(c)(3) organization which is the fiscal sponsor of the Lafayette Community Garden and Outdoor Learning Center. The parties may, from time to time, be referenced as "Party," individually, and collectively as "Parties."

RECITALS

WHEREAS, Licensee entered into that certain License Agreement dated March 13, 2012 ("License"), with East Bay Municipal Utility District ("Licensor"), attached hereto as Exhibit "A" and incorporated herein by reference, in order for Licensor to grant Licensee a license for a period of five (5) years beginning on March 13, 2012, and ending on March 12, 2017, to install and operate a community garden upon real property owned by the Licensor generally located at the intersection of Mt. Diablo Blvd. and El Nido Ranch Road, APN 252-060-003, in the City of Lafayette, County of Contra Costa, State of California ("Property"); and further described in Exhibit B ("Property");

WHEREAS, Sublicensee desires to install and operate the community garden on the Property; and

WHEREAS, for the general benefit of the public, Licensee desires to grant such responsibilities to Sublicensee.

NOW, THEREFORE, the Parties agree as follows:

1. Grant of Sublicense

1.1 Licensee, for good and valuable consideration does hereby give, subject to all the terms and conditions listed below, a revocable sublicense to install and maintain a community garden on the Property. Prior to any and all initial community garden installation work or modification thereof, performed by Sublicensee on any portion of the Property, Sublicensee shall submit detailed plans to Licensee and shall not proceed with such work without prior written consent of Licensee and upon the fulfillment of certain requirements set forth in paragraph 1.2, and the provision of verification of insurance coverage as required in Section 8, all to be approved, denied, or conditionally approved in the Licensee's sole and absolute discretion. All costs for landscaping installation, maintenance and operation shall be the responsibility of Sublicensee. Sublicensee shall maintain the Property as specified in Exhibit "B," attached to this Agreement and incorporated herein by reference, for the duration of the Sublicense. Maintenance responsibilities may be further defined should the City approve any community garden plans.

1.2 Sublicensee shall receive Licensee's written approval, in Licensee's sole and absolute discretion, of the following requirements prior to any and all initial community garden installation work or modification thereof: (1) a fiscal sponsor; (2) a detailed fundraising plan, the total amount to be raised, the amount collected and the amount remaining; and (3) a detailed funding plan for annual maintenance of the community garden.

1.3 Sublicensee agrees that its use of and all work upon or in connection with the Property shall at no time and in no way whatever interfere with the operations of Licensor, and that the construction, reconstruction, operation, maintenance, repair and use of said community garden and all work in connection therewith, together with the operation and supervision of said community garden, shall at all times be performed by Sublicensee to the reasonable satisfaction of Licensee and Licensor. Sublicensee acknowledges and agrees that Licensor shall have the right to temporarily suspend or limit the use of Property by Sublicensee during such periods of time as Licensor determines that such suspension or limitation is necessary in the interest of public safety or for the construction, operation or maintenance of any Licensor facility, existing or planned. Should such suspension or limitation be necessary, Licensee shall provide Sub licensee thirty (30) days prior written notice except in cases of emergency as declared by Licensor. During such time of suspension, Licensor shall make a good faith effort to provide Licensee and Sublicensee access to the community garden for the sole purpose of conducting basic maintenance and watering of plants unless public safety would otherwise preclude such access. Upon completion of any work by Licensor within the Property, Licensor and Licensee shall not be liable for the restoration of any facilities or improvements installed by Sublicensee. Sublicensee acknowledges and agrees that in the event Licensor reasonably requires some permanent use of the Property for the construction, operation and maintenance of any Licensor facility which, by the nature thereof, precludes Sublicensee's use of the Property, Licensee may, upon ninety (90) days' prior written notice, revoke this Agreement as to the area reasonably required for such permanent use. **Sublicensee further agrees to provide Licensee and Licensor a written acknowledgement of this Section 1.3 and Section 7 by the commencement date of the License from Sustainable Lafayette, Inc., a California non-profit corporation.**

2. License Terms Incorporated

Parties acknowledge and agree that the terms of the License entered into by Licensee and Licensor shall have full force and remain in effect and are hereby incorporated into this Agreement. Sublicensee acknowledges that it has read the License and agrees to its terms, and shall perform and abide by all obligations, covenants, or conditions required of the Licensee in the License.

3. Effective Date

The Effective Date, first hereinabove written, shall be the same date that the License is executed by the Licensor and Licensee.

4. Term

The term of this Agreement shall begin on March 1, 2012, and shall expire five (5) years later on February 28, 2017, or upon the expiration or early termination of the License, whichever comes first, unless earlier terminated as provided in this Agreement. The term of this Agreement may be extended by written notice to Sublicensee in the sole and absolute discretion of the Licensee so long as the License is still in effect, for a period of time not expiring after the expiration date of the License.

5. Annual Fee

5.1 Sublicensee shall pay Licensor as compensation for this Agreement a Base License Fee of Two Thousand Dollars (\$2,000.00) per annum. The Annual License Fee shall be due and payable upon the execution of this Agreement and yearly thereafter on the anniversary of the Effective Date for as long as this Agreement is in effect.

5.2 Effective on the anniversary of the Effective Date in 2013, and for each one-year period thereafter during the term of this Agreement, the Annual License Fee will be adjusted upward or downward in the same percentage that the Consumer Price Index ("CPI") average for all Urban Consumers in the San Francisco-Oakland, California area has increased or decreased since publication of said CPI for the month of February. The Annual License Fee for each adjusted annual payment period becomes the Annual License Fee for computing subsequent adjustments.

5.3 Licensor agrees to invoice Sublicensee each year prior to the anniversary of the Effective Date.

6. Maintenance

Sublicensee hereby agrees at its expense promptly to provide and maintain all necessary sanitary facilities; said sanitary facilities and the plans therefore to be first approved in writing by Licensee and Licensor, and to keep Property at all times in a clean, safe and sanitary condition free from waste and to permit no accumulation of waste waters, rubbish or garbage thereon, all to the reasonable satisfaction of Licensee and Licensor. For the purposes of this License, manure, compost, and compost piles for community garden purposes do not constitute "waste".

7. Termination

Upon abandonment of all or a portion of the community garden facilities or upon failure by Sublicensee to perform any of the covenants, agreements or conditions herein contained ("Default"), Licensee will give notice to Sublicensee indicating Sublicensee's Default. Defaults include such failures including, but not be limited to the following: the non-payment of the Annual License Fee, the non-authorized use of the Property, non-compliance of the maintenance conditions of the Property, and the failure to provide the required insurance

coverage. Upon Sublicensee's receipt of the Default notice, Sublicensee shall have thirty (30) days to cure such Default. If Sublicensee fails to cure or commence cure within thirty (30) days, Licensee may revoke the sublicense granted in this Agreement upon giving sixty (60) days' prior written notice to Sublicensee of Licensee's intention to do so and, upon expiration of said sixty (60) day period, all rights herein given shall immediately cease and terminate and this Agreement shall terminate. Upon any termination or revocation of this Agreement or of any of the rights of Sublicensee hereunder, Sublicensee agrees to promptly remove all of its property and equipment from the Property and to restore the Property as nearly as possible to the condition it was in prior to the commencement of its use by Sublicensee, with the exception of the parking lot area, which can remain in the condition it is in at the time of termination.

8. Insurance

Sublicensee shall take out and maintain during the term of this Agreement all the insurance required by this section and shall submit certificates ("Certificates") for review and approval by Licensee and Licensor, including the Certificate for General Liability Insurance, which is attached to this Agreement as Exhibit "C" and incorporated herein by reference, and the Certificate for Worker's Compensation Insurance, which is attached to this Agreement as Exhibit "D" and incorporated herein by reference. The Certificates shall be on the forms provided by Licensee or Licensor. Acceptance of the Certificates shall not relieve Sublicensee of any of the insurance requirements, nor decrease the liability of Sublicensee. Licensee reserves the right to require Sublicensee to provide insurance policies for review by Licensee or Licensor. In lieu of evidence of any insurance, Licensee will accept a Self-Insuring Certificate from the State of California.

8.1 Worker's Compensation Insurance. Sublicensee shall maintain Worker's Compensation and Employer's Liability Insurance during the term of this Agreement for all of its employees on the Property. Such insurance shall be endorsed to provide that the insurance company or companies waive any right of subrogation against Licensee or Licensor which might arise by reason of any payment under the policy or policies. In lieu of evidence of Worker's Compensation Insurance, Licensee will accept a Self-Insuring Certificate from the State of California. In the event of such self insurance by Sublicensee, Sublicensee agrees to waive any right of subrogation against Licensee and Licensor which might arise by reason of any payment under Sublicensee's self insurance program. Sublicensee shall require any contractor to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance with California State Laws.

8.2 Public Liability Insurance. Sublicensee will take out and maintain during the term of this Agreement Comprehensive Automobile and Commercial General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. Sublicensee shall require any contractor to provide it with evidence of the same liability insurance coverages. The amount of insurance shall be not less than \$1,000,000 for Single Limit Coverage applying to Bodily and Personal Injury Liability and Property Damage.

8.3 Endorsements. The following endorsements must be indicated on the certificate:

8.3.1 Licensee, Licensor, and their directors, officers and employees are named as Additional Insureds in the policy as to any operations performed under this Agreement;

8.3.2 The coverage is primary and non-contributory to any other insurance carried by Licensee or Licensor;

8.3.3 The policy(ies) cover(s) contractual liability;

8.3.4 The policy(ies) is (are) written on an occurrence basis;

8.3.5 The policy(ies) cover(s) Licensor's real property in the Sublicensee's care, custody and control;

8.3.6 The policy(ies) cover(s) personal injury (libel, slander, unlawful entry and eviction) liability;

8.3.7 The policy(ies) cover(s) products and completed operations;

8.3.8 A policy to cover use of owned, *non-owned*, and *hired* automobiles and equipment;

8.3.9 The policy(ies) shall not be canceled nor reduced unless thirty (30) days' written notice is given to Licensee and Licensor.

8.4 Failure of Coverage. Failure, inability or refusal of Sublicensee to take out and maintain during the entire term of terms of this Agreement any or all of the insurance as foresaid shall at the option of Licensee constitute an immediate breach of this Agreement.

8.5 Revisions of Insurance. As circumstances change during the life of this Agreement, Licensee may, from time to time, request, and Sublicensee agrees to provide, reasonable revisions in the foregoing insurance requirements sufficient in to provide adequate protection for Licensor, Licensee and Sublicensee.

9. Indemnity

Sublicensee expressly agrees to indemnify, defend and hold harmless Licensee and Licensor, their directors, officers, and employees, from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Sublicensee's operation or performance under this Agreement, including discharges (planned or unplanned) into the adjacent Lafayette creek. It is understood and agreed that Sublicensee shall indemnify and hold harmless Licensee and Licensor, their directors, officers and employees, from any injury to the public and to individuals using the community gardens

except to the extent such injuries are caused by Licensee or Licensor's gross negligence or willful misconduct.

Sublicensee shall be responsible to Licensee and Licensor for any damage to the demised premises and assumes all risk of damage to any property of Sublicensee or any property under the control or custody of Sublicensee while upon the demised premises or in proximity thereto, caused by or contributed to in any way by the operation, maintenance, repair or use of the Licensee or Licensor's facilities or improvements, if any. Sublicensee further agrees to indemnify and hold harmless Licensee and Licensor from any damage or loss to Licensee or Licensor's facilities, if any directly or indirectly contributed to or caused by Sublicensee's operation or performance under this Agreement. Sublicensee is responsible to report any discharges (planned or unplanned) into the adjacent Lafayette creek to Licensee and Licensor and to all applicable regulatory agencies.

10. Subordination

All rights herein given are subject to all existing rights, rights of way, reservations and easements by whomsoever held in and to the Property.

11. Annual Report

Sublicensee agrees to provide Licensee and Licensor with an annual report listing activities including construction, reconstruction, maintenance, removal and all work completed by Sublicensee on the Property during the previous twelve (12)-month period. The annual report shall be due to Licensee and Licensor on or before December 31 of each year this Agreement is in effect.

12. Miscellaneous Terms

12.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. No waiver of any term or condition of this Agreement shall be deemed a continuing waiver hereof. Except as otherwise provided herein, Sublicensee shall not assign, or transfer its interest in this Agreement or any part thereof without the prior written consent of the Licensee. Any such assignment shall, at the option of the Licensee, immediately void this Agreement.

12.2 Amendments. Any alternations, variations, modifications, or waivers of provisions of the Agreement, unless specifically allowed in the Agreement shall be valid only when they have been reduced to writing, duly signed and approved by authorized representatives of both Parties as an amendment to this Agreement. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.

12.3 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement,

the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

12.4 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

12.5 Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

12.6 Waiver. The waiver by Licensee of the performance of any covenant, condition, requirement or provision of this Agreement at any time shall not invalidate this Agreement nor shall it be considered a waiver by the Licensee of the same at a later time or of any other covenant, condition, requirement or provision.

12.7 Governing Law; Venue. The interpretation and enforcement of this Agreement shall be governed by the law of the State of California, the state in which this Agreement was signed. Venue shall be in a court of competent jurisdiction located in Contra Costa County.

12.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.9 Captions. The headings or captions contained in this Agreement are for identification purposes only and shall have no effect upon the construction or interpretation of this Agreement.

12.10 Ambiguities. The Parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity shall be presumed to be construed against either Party.

12.11 Notices. All notices given under this Agreement shall be in writing and shall be transmitted wither by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office (postage prepaid, certified mail, return receipt requested). Any such notices shall be effective upon delivery. Notices of the respective Parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

Licensee:	City of Lafayette
	3675 Mt. Diablo Blvd., Suite 210
	Lafayette, California 94549
	Attn: City Manager

Sublicensee:

Sustainable Lafayette
625 Lucas Drive
Lafayette, CA 94549
Attn: Steve Richard

Lafayette Community Garden & Outdoor Learning
Center
3206 Palomares Avenue
Lafayette, California 94549
Attn: Janet Thomas

12.12 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

[Signatures on the following page]