

PB E5 Community Gardens & Nutrition Education Grant Agreement

NOTE: This is a sample contract and is not final. It is subject to changes.

This Agreement ("Agreement") is made at Vallejo, California, dated for reference this ## day of March 2014, by and between the City of Vallejo, a municipal corporation ("CITY"), and Healthy Vallejo Farms, a tax exempt nonprofit organization, ("GRANTEE"), who agree as follows:

A. Project Description

Attached hereto in Exhibit "A": A is a plan for how monies will be spent, including an itemized list of materials to be purchased and activities to be undertaken with the grant monies. Herein, Exhibit "A" is referred to as 'Action Plan.'

Attached hereto as Exhibit "B": Resolution No. 13-117 N.C. approving the Project and naming Loma Vista Farms as a project proponent, setting forth project conditions, and authorizing the City Manager to take any all required actions to implement the project.

B. Project Implementation

1. The CITY hereby grants to the GRANTEE an amount not to exceed \$30,000.00, on condition that the Grant Funds be expended for the eligible costs and purposes of the Project as described in Exhibits "A," "B," and "C" of this Agreement and pursuant to all other terms and conditions set forth herein.

Once the GRANTEE completed the Action Plan, the GRANTEE can request written approval from the CITY to expend any remaining Grant Funds on additional materials and activities. This shall be considered a change or deviation from the original Project Scope, per B.7. Approval may be granted at the CITY's discretion.

2. The GRANTEE shall complete the Project by December 31, 2014. The GRANTEE shall begin the Project by March 2014.

3. The GRANTEE shall require a liability waiver from any person receiving produce from the garden.

4. The GRANTEE certifies that the Project does and will continue to comply with all laws and regulations which apply to the Project, including, but not limited to building codes, environmental laws (including but not limited to the California Environmental Quality Act), health and safety codes, and disabled access laws.

5. Prior to commencing any work under this agreement, the GRANTEE shall obtain the necessary permits from the CITY.

4. The GRANTEE shall obtain CITY's written approval of any change or deviation from the original Action Plan set forth in both Exhibits "A" and "B." Any modification to the Action Plan must also comply with all current laws and regulations and all other requirements of this

Agreement and the Action Plan must still be completed with available funding from the GRANTEE and funds provided under this Agreement.

The GRANTEE requests for changes or deviations to the Action Plan shall be presented through Section 6 of the Progress Reports (Exhibit D) required for submittal by the dates identified in F.1 or through a Change Order Form (Exhibit E). The CITY shall review the Progress Reports and Change Order Forms for any request for changes or deviations presented therein and promptly notify the GRANTEE of the CITY's decision.

8. All actions and approvals, required to be taken by the CITY under this Agreement, may be taken by its City Manager or his/her designee.

C. Acknowledgment of Funding Source

Unless otherwise agreed upon between the parties, the GRANTEE agrees that any publications, studies, or reports which are made possible by or derived in whole or in part from this Project, and any news articles, brochures, seminars, or other promotional materials or media through which it publicizes the Project will acknowledge the CITY's support in the following manner: "Funding for this project has been provided by a community supported Participatory Budgeting Project using City of Vallejo Measure B Funds."

D. Project Costs, Requests for Payment, Advances

1. The GRANTEE agrees to use all Grant Funds provided by the CITY under the terms of this Agreement solely for the Project herein described.

2. Grant Funds provided to the GRANTEE under this Agreement shall be disbursed to reimburse grantee for eligible costs within 30 days of the GRANTEE submitting monthly invoices for costs associated with the project to CITY.

4. Grant Funds under this Agreement must be expended within the time frame of the Project Performance Period as set forth in Section B of this Agreement.

5. Except as otherwise provided herein, the GRANTEE shall expend Grant Funds in the manner described in the Exhibits approved by the CITY.

E. Payment Process and Documentation

1. All Requests for Payments must be submitted using a completed Request for Payment Form attached as Exhibit C. This form must be accompanied by 1) an itemized list of all expenditures that clearly identify the expenditure(s) in relation to the Exhibit "A" of this Agreement, and 2) supporting documentation, such as receipts, invoices or purchase orders. Payment requests may not be submitted more often than monthly.

2. If the Request for Payment Form is incomplete, inadequate or inaccurate, the CITY will

dispute the invoice for reasonable cause and hold all or a portion of the payment request until all required information is received or corrected. Any penalties imposed on the GRANTEE by a contractor, or other consequence, because of delays in payment or other breach of the agreement between the GRANTEE and the contractor are the responsibility of the GRANTEE and are not reimbursable under this Agreement.

3. Final payment of remaining Grant Funds, including amounts withheld from previous payments, shall be paid up to the total amount of the Grant award or the actual Project cost, whichever is less, upon final purchase, receipt of the final progress report and final Request for Payment from the GRANTEE in form and content satisfactory to the CITY.

4. Final payment is contingent upon CITY verification that the Project, as implemented, is consistent with the Project Scope as described in Exhibits “A” and “B”, together with any CITY-approved amendments to the Project Scope.

F. Project Review, Inspection and Documentation

1. The GRANTEE shall promptly submit written progress reports with photographs by July 1, 2014, October 1, 2014, and January 1, 2015 or upon final purchase, and upon request by the CITY or as otherwise specified in this agreement. Progress reports must be submitted using the Progress Report Form attached as Exhibit D.

3. Unless otherwise authorized by the CITY in writing, the GRANTEE shall submit all documentation of completion of the Action Plan, including, a final Request for Payment and Project Completion Report in the form of a Progress Report Form within thirty (30) days of Project completion.

G. Project Termination

1. Prior to the completion of the Action Plan, either party may terminate this Agreement by providing the other party with thirty (30) days' written notice of termination.

2. If the CITY terminates this Agreement prior to the end of the Project Performance Period, the GRANTEE shall take all reasonable measures to prevent further costs to the CITY hereunder. The CITY shall be responsible for any reasonable and non-cancelable obligations incurred by the GRANTEE under this Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.

3. If the GRANTEE fails to complete the Project or the Agreement is terminated pursuant to subsection 1, the GRANTEE shall be reimbursed for expenses up to project termination.

H. Financial Records

1. The GRANTEE shall establish an official file for the Project. The file shall contain adequate documentation of all actions that are taken with respect to the Project.

2. The GRANTEE shall keep separate and complete accounting records for receipt, deposit, and payment of all Project funds, including interest. All funds received by the GRANTEE shall be deposited in separate fund accounts that identify the funds and clearly show the manner of their disposition.
3. The GRANTEE agrees that adequate supporting documentation shall be maintained in sufficient detail to provide an audit trail which will permit tracing transactions from support documentation to the accounting records to the financial reports and billings.
4. The GRANTEE shall maintain books, records, documents, and other evidence sufficient to reflect properly the amount, receipt, and disposition of all Project funds, including non-City funds, interest earned, and any matching funds by the GRANTEE. The maintenance requirements extend to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all awards, applications, and required financial and narrative reports.
5. The GRANTEE shall use applicable Generally Accepted Accounting Principles, unless otherwise agreed to by the CITY.

I. Audit Requirements

1. The CITY reserves the right to call for a program audit or a financial audit at any time between the execution of this Agreement and the Completion Date or, in case of early termination, the termination of the Project. Within ten (10) working days of a request by the CITY, the GRANTEE shall furnish, at its own expense, legible copies of all materials deemed pertinent to the request. At any time, the CITY may disallow all or part of the cost of any activity or action which it determines to be out of compliance with the terms and conditions of this Agreement.

J. Assignment

Except as expressly provided by written agreement between the CITY and the GRANTEE, this Agreement is not assignable by the GRANTEE either in whole or in part.

K. No Agency Agreement

In carrying out this Agreement, the GRANTEE and its agents and employees shall be deemed to be acting in an independent capacity with respect to the CITY, and not as the officers, employees, or agents of the CITY or the State.

L. Liability and Insurance

1. GRANTEE shall defend, indemnify, and save harmless CITY (including its inspectors, project managers, trustees, officers, agents, members, employees, affiliates, consultants, subconsultants, and representatives), and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees, losses, or liability,

in law or in equity, of every kind and nature whatsoever arising out of, or in connection with, GRANTEE's operations to be performed under this Agreement, including, but not limited to:

- A. Personal injury (including, but not limited to, bodily injury, emotional injury or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of GRANTEE, CITY, or any subcontractor, or damage to property of anyone including the work itself (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of GRANTEE, CITY, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;
- B. Penalties threatened, sought, or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of GRANTEE;
- C. Alleged infringement of any patent rights which may be brought arising out of GRANTEE's work;
- D. Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages from such claims or liens;
- E. GRANTEE's failure to fulfill any of the covenants set forth in the Agreement;
- F. Failure of GRANTEE to comply with the provisions of the Agreement relating to insurance; and,
- G. Any violation or infraction by GRANTEE of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupational, health, or safety of employees.

The indemnities set forth in this section shall not be limited by the insurance requirements set forth in this Agreement.

GRANTEE's indemnification of CITY will not include indemnification for claims which arise as the result of the active negligence of CITY, or the sole negligence or willful misconduct of CITY, its agents, servants or independent contractors who are directly responsible to CITY, or for defects in design furnished by such persons.

2. The GRANTEE shall have the charge and care of the work and of the materials to be used therein. The GRANTEE shall bear the risk of injury, loss or damage to materials or work.

NOTE: This section will only be required of gardens on City-owned property.

3. Insurance shall conform to the following requirements:

GRANTEE shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the GRANTEE, his/her agents, representatives,

employees or subcontractors. Such insurance shall not be construed to relieve the GRANTEE of any liability in excess of such coverage.

A. Minimum Scope of Insurance Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

GRANTEE shall maintain limits no less than:

a. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

c. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and accepted by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the GRANTEE shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverage

i. The CITY, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the GRANTEE, including the insured's general supervision of the GRANTEE; products and completed operations of the GRANTEE, premises owned, occupied or used by the GRANTEE. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers and the Engineer, its officers, directors, employees and subconsultants.

ii. The GRANTEE's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self- insurance maintained by the CITY, its officers, officials, employees or volunteers and the Engineer, its officers, directors, employees and subconsultants shall be excess of the GRANTEE's insurance and shall not contribute with it.

iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers and the Engineer, its officers, directors, employees and subconsultants.

iv. The GRANTEE's coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the GRANTEE for the CITY and the Engineer, its officers, directors, employees and subconsultants.

3. All Coverage

The GRANTEE shall provide written to the City at least 30 days prior to any suspension, cancelation or voiding of insurance.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

F. Verification of Coverage

The GRANTEE shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and accepted by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors

GRANTEE shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

M. Nondiscrimination

The GRANTEE shall not discriminate against any person on the basis of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, sexual orientation, and denial of family care leave in the use of any property or facility acquired or developed pursuant to this Agreement.

N. Severability

If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

O. Waiver

No term or provision hereof will be considered waived by either party, and no breach is excused or consented to by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No express or implied consent by either party to, waiver of, or failure of a party to enforce its rights with respect to a breach by the other party shall constitute consent to or, waiver of any subsequent or other breach by the other party.

P. Time of the Essence

Time is of the essence with respect to the Completion Date as set forth in Section B of this Agreement. With respect to all other dates set forth therein, GRANTEE shall use best efforts to accomplish the tasks by the specified dates.

Q. Amendment

This Agreement may be amended by mutual agreement in writing between GRANTEE and

CITY. Any request by the GRANTEE for amendments must be in writing stating the amendment request and reason for the request. The GRANTEE shall make requests in a timely manner and in no event less than sixty (30) days before the effective date of the proposed amendment.

R. Notices

All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to the CITY: Alea Gage
Administrative Analyst I
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
707 648 4041
agage@ci.vallejo.ca.us

If to the GRANTEE: Farmer Joe
Healthy Vallejo Farms
555 Santa Clara Street
Vallejo, CA 94590
707 648 4041

S. List of Exhibits

Exhibit A – Action Plan
Exhibit B - Resolution No. 13-117 N.C.
Exhibit C - Request for Payment Form
Exhibit D - Progress Report Form
Exhibit E - Change Order Form

T. Entire Agreement

This Agreement, and the attached exhibit, constitute the entire Agreement between the parties hereto relating to the Project and may not be modified except by an instrument in writing signed by the parties hereto.

(signatures on next page)

HEALTHY VALLEJO FARMS

CITY OF VALLEJO,
a municipal corporation

By: _____
Farmer Joe,
Director

By: _____
Daniel E. Keen
City Manager

DATE: _____

DATE: _____

ATTEST:

(City Seal)

By: _____
Dawn Abrahamson
City Clerk

APPROVED AS TO CONTENT:

Daniel E. Keen
City Manager

APPROVED AS TO FORM:

Claudia Quintana
City Attorney