

**MEMORANDUM OF UNDERSTANDING REGARDING
FACILITIES USE BY AND BETWEEN GILROY GARLIC
FESTIVAL AND THE GILROY UNIFIED SCHOOL DISTRICT**

This Memorandum of Understanding Regarding Facilities Use ("MOU") is made between the Gilroy Garlic Festival ("GGF") and the Gilroy Unified School District (the "District"). GGF and the District shall sometimes be referred to herein as the "Parties" or individually a "Party."

WHEREAS, GGF will hold its annual garlic festival on July 26, 27 and 28, 2019;

WHEREAS, GGC desires to use certain areas of Gilroy High School (750 West Tenth Street, Gilroy, California), Ascencion Solorsano Middle School (7121 Grenache Way, Gilroy, California), and the Club Drive property known as "Olive Grove" for parking in connection with the festival;

WHEREAS, pursuant to the terms hereof, the District is willing to allow GGF to use certain areas of Gilroy High School, Ascencion Solorsano Middle School, and the Club Drive property known as "Olive Grove" for parking in connection with the festival;

WHEREAS, it is the desire of the Parties to enter into a this MOU pursuant to which GGF will utilize certain areas of Gilroy High School, Ascencion Solorsano Middle School, and the Club Drive property known as "Olive Grove" for parking in connection with the festival – the specific areas that will be used are designated on the maps which are attached hereto as Exhibit 1 (the "Space");

WHEREAS, the District believes that it is in the best interest of the District, GGF, the students and teachers of the District, the parents of the students of the District, and the public to allow GGF to utilize the Space for parking pursuant to the terms of this MOU; and

WHEREAS, the parties do not intend this MOU to constitute a lease of real property pursuant to Education Code section 17455, *et seq.*

NOW, THEREFORE, the Parties, in consideration of the mutual covenants, representations, and agreements contained herein, hereby agree as follows:

Article 1. Term

The term of this MOU shall be for seven days – July 24, 25, 26, 27, 28, 29 and 30, 2019.

Article 2. Use of the Space.

2.1 GGF shall use the Space solely for set-up (July 24 and 25, 2019), parking (July 26, 27 and 28, 2019), and breakdown/cleanup (July 29 and 30, 2019).

2.2 Prior to commencement of the Term, a representative of GGF shall walk the Space with the Manager of Maintenance of the District (or a designee) to determine the condition of the Space.

2.3 GGF acknowledges and agrees that: (i) except as otherwise specifically set forth in this MOU, GGF has not relied on any representation, statement, or warranty of the District or anyone acting for or on behalf of the District; (ii) GGF will utilize the Space based on its own inspection and examination thereof and on an "AS IS" basis; and (iii) the District makes no warranty or representation, express or implied, or arising by operation of law, with respect to the Space, including, but not limited to, any warranty of its suitability, condition, habitability, merchantability, fitness for a particular purpose or use with respect to the Space.

2.4 GGF may not perform any work, alterations or improvements on any portion of the Space without the prior written consent of the District. Without limiting the foregoing, GGF may not perform any grading and/or leveling operations on any portion of the Space unless and until GGF receives the written consent of the District to a written detailed scope of work to be performed by or on behalf of GGF, which, in the District's opinion, adequately protects the District.

2.5 The District shall ~~provide~~ not provide any custodial services for the Space.

2.6 NUISANCE, MISCELLANEOUS.

GGF shall not do or permit anything to be done, without the prior written consent of the District, in or about the Space nor bring or keep anything therein, that will in any way increase the existing rate of or affect any fire or other insurance upon the Space or its contents, or cause cancellation of any insurance policy covering the Space or any part thereof or any of its contents, nor shall GGF sell or permit to be kept, used, or sold in or about the Space any articles which may be prohibited by a standard form policy of fire insurance. GGF shall not use or allow the Space to be used for any improper or objectionable purpose, nor shall GGF cause, maintain, or permit any nuisance in, on, or about the Space. GGF shall not commit or suffer to be committed any waste in or upon the Space. GGF shall be responsible for the repair or replacement of any property of the District that may be lost, damaged, or stolen. Without limiting the foregoing, GGF shall be responsible for the cleanup and repair of any damages and/or contamination caused, in whole or in part, as a result of the use of the Space as set forth herein.

2.7 COMPLIANCE WITH LAWS, RULES AND REGULATIONS.

GGF shall not use the Space or permit anything to be done in or about the Space that will in any way conflict with any applicable law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. GGF shall promptly comply with all applicable laws, ordinances, regulations and governmental rules now in force or which may hereafter be in force relating to or affecting the use or occupancy of the Space. GGF shall not be responsible for any and all legal compliance or

environmental conditions that existed prior to GGF's occupancy of the Space. GGF shall assume responsibility for legal compliance to the extent that they are triggered by any modifications or improvements made by GGF.

2.8 FINGERPRINTING.

GGF shall ensure that any persons admitted by GGF to the Space, who are likely to have significant contact with pupils, will be cleared by a background check pursuant to Section 45125.1 of the California Education Code, at GGF's expense.

2.9 VACATING.

(a) Upon the termination of this MOU, GGF shall fully vacate the Space in a reasonably similar condition to that which existed at the commencement of the term of this MOU. Without limiting the foregoing, GGF shall be responsible for the cleanup and repair of any damages and/or contamination caused, in whole or in part, by GGF, its officers, employees, contractors and/or agents, as well by persons attending the garlic festival.

(b) Upon the termination of this MOU, a representative of GGF shall walk the Space with the Manager of Maintenance of the District (or a designee) to determine the condition of the Space. GGF shall clean the Space and bring the Space back to operational standards as determined by the Manager of Maintenance.

2.10 REQUIRED NOTICE – EMERGENCY.

GGF shall immediately inform the District or its designees of any health and/or safety emergency that may affect the safety of the Space, other schools within the District or any of the District's students, volunteers, employees or teachers. GGF shall cooperate with, and participate in, any lockdowns or exigent security procedures required by the District.

Article 3. Representations and Warranties of GGF

3.1 GGF represents and warrants to the District that:

(a) GGF is duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to enter into this MOU. GGF will maintain good standing and full power and authority at all times during the term of this MOU.

(b) GGF has full power, authority, and legal right to enter into and perform its obligations under this MOU, and the execution, delivery and performance of this MOU have been duly authorized by all necessary actions on the part of GGF and do not require any further approvals or consents.

(c) There is no pending or, to the best knowledge of GGF, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of GGF to perform its obligations under this MOU.

Article 4. Fees

4.1 GGF will pay to the District the sum of \$1.00 for use of the Space during the term of this MOU.

4.2 The District shall have no obligation whatsoever for costs incurred in the operation, maintenance and repair of the Space during the term of this MOU.

Article 5. Compliance with Laws

5.1 GGF shall not cause to occur, and shall take reasonable measures to prevent, any activity on the Space that might threaten the exterior or structural elements of the District's property.

5.2 GGF shall neither take, nor suffer to be taken, any action that would result in the violation of (or failure to remain in compliance with) any applicable codes, regulations, and/or laws, including, but not limited to, the Field Act, the Americans with Disabilities Act, and any applicable local fire marshal and zoning requirements and ordinances.

Article 6. Indemnification

6.1 GGF shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Space arising from GGF's use of the Space or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by GGF in or about the Space, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of the negligent or intentional acts of the District, its officers, employees, agents and invitees.

6.2 GGF shall further indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims arising from any breach or default in the performance of any obligation on GGF's part to be performed under the terms of this MOU (including, without limitation, any claim against the District by a lender or provider of funds to GGF), or arising from any act, omission or negligence of GGF, or any officer, agent, employee, volunteer, guest, or invitee of GGF, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of the negligent or intentional acts of the District, its officers, employees, agents and invitees. If any action or proceeding is brought against the District by reason of such claim (regardless of whether a claim is filed), GGF upon notice from the District shall defend the same at GGF's expense by counsel reasonably satisfactory to the District. GGF shall give prompt written notice to the District's Risk Manager in case of casualty or accidents in, on or about the Space.

Article 7. Insurance

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7.1 REQUIRED GGF INSURANCE.

GGF, at its sole cost and expense, shall obtain and maintain in full force, during the term of this MOU, the following insurance:

(a) Commercial General Liability "occurrence" coverage in the minimum amount of \$2,000,000 for bodily injury and property damage each occurrence and \$4,000,000 annual aggregate, including personal injury and advertising injury liability, \$1,000,000 aggregate, products/completed operations, and \$100,000 fire legal liability. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to this project/location.

(b) Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury and property damage, including owned (if any, which required symbol 1 coverage), non-owned and hired automobiles.

(c) Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of GGF and Employer's Liability in the minimum amount of \$1,000,000, and a waiver of subrogation in favor of the District.

(d) Professional Liability coverage in the minimum amount of \$1,000,000 for each claim and \$2,000,000 annual aggregate with a maximum deductible of \$2,500 per claim. Policy shall be maintained for two years after the end of this MOU, including any extensions.

(e) Abuse and Molestation coverage of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate.

7.2 INSURANCE REQUIREMENTS

(a) All the insurance companies providing coverage under this MOU must be A.M. Best rated A, with the exception of the workers compensation insurance if provided by the State Compensation Insurance Fund. Insurance coverage must be provided by California licensed and admitted carriers, with the exception of Professional Liability.

(b) The District is to be named as an additional on all insurance required by this MOU (other than professional liability coverage and workers' compensation coverage).

(c) All insurance required under this MOU shall be primary coverage as respect the District, and any insurance or self-insurance maintained by the District shall be in excess of GGF's insurance coverage and shall not contribute to GGF's coverage. The District is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased by GGF to meet the requirements.

(d) Policies shall not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the District.

7.3 COPIES.

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GGF shall provide to the District a copy of all Certificates of Insurance and additional insured endorsements, and 30 days Notice of Cancellation Clause endorsements belonging to GGF and that apply to GGF and its use of the Space.

Article 8. Access by the District

The District or its agent(s) shall have the right to enter and/or pass through the Space or any part thereof at any time for any purpose including, without limitation, (a) for the purpose of making repairs in or to the Space; (b) as required by law or emergency; and (c) to examine the Space.

Article 9. Miscellaneous

9.1 ENTIRE AGREEMENT.

This MOU reflects the sole and entire agreement between the Parties. Any and all prior writings, agreements, including, without limitation, oral communications, discussions, negotiations, commitments and understandings relating thereto, are hereby merged herein and superseded hereby.

9.2 MODIFICATION.

This MOU may only be changed, amended or modified by written agreement of the Parties expressing an intent to change, amend and/or modify this MOU.

9.3 GOVERNING LAW & VENUE.

This MOU shall be governed by and construed according to the laws of the State of California. Any action, suit or proceeding by or between GGF and the District shall be brought in the Superior Courts of the State of California, Santa Clara County.

9.4 FORCE MAJEURE

Neither party will be liable to the other for unanticipated delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communications or utility failures, or casualties; provided that the party: (i) gives the other party prompt written notice of such cause and (ii) uses its reasonable efforts to correct such failure or delay in its performance. The delayed party's time for performance or cure under this section will be extended for a period equal to the duration of the cause.

9.5 SEVERABILITY

If any term, covenant, condition or provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

9.6 COUNTERPARTS

This MOU may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and same MOU.

9.7 SUCCESSORS AND ASSIGNS

This MOU shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

9.8 ATTORNEYS' FEES

In the event that suit is brought for recovery of the Space or because of any act which may arise out of the possession of the Space, by either Party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees and fees for consultants and experts.

9.9 NOTICES.

All notices required to be given hereunder shall be in writing and served by government or commercial mail service or by facsimile. Either Party may provide updated contact information under this Section by mailing a copy of said change of address/contact information to the addresses noted below.

Notice to the District shall be addressed to:

Gilroy Unified School District
7810 Arroyo Circle
Gilroy, California 95020
Attn: Dr. Deborah A. Flores, Superintendent

With a copy to Mary Hernandez, Esq.

Garcia, Hernandez, Sawhney LLP
2490 Mariner Square Loop, Suite 140
Alameda, CA 94501

Notice shall be given to GGF at the following address:

Gilroy Garlic Festival Association, Inc.
5975 Rossi Lane, Suite 200
Gilroy, CA 95020
Attn: Brian M. Bowe, Executive Director

Article 10. Assignment and Subletting

GGF shall not assign its rights or delegate its duties under this MOU. GGF shall not sublet or permit the subletting of the Space, or any part thereof, without the prior written

consent from the District. In addition, GGF shall not allow any other person and/or entity to use the Space without the prior written consent from the District.

Article 11. Dispute Resolution

11.1 Disputes between GGF and the District regarding this MOU shall be resolved using the dispute resolution process described herein.

11.2 The Party initiating the dispute resolution process shall prepare and send to the other Party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the Party; (2) a statement of the facts of the dispute, including information regarding the attempts to resolve the dispute; (3) the specific sections of the MOU that are in dispute; and (4) the specific resolution sought by the Party. Within five business days from receipt of the notice of dispute, the representatives from GGF shall meet with representatives from the District in an informal setting to try to resolve the dispute.

11.3 If the informal meeting fails to resolve the dispute, the Party initiating the dispute resolution process shall notify the other Party (the responding party) in writing and the Parties shall agree on a mediator within seven business days. The nonbinding mediation procedure shall be entirely informal in nature; however, the Parties may submit mediation briefs regarding the dispute at the request of the mediator. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by GGF and the District. The Parties shall share equally the cost of the mediation.

12.4 Either party may seek equitable or injunctive relief prior to the mediation to preserve the status quo or prevent irreparable injury pending the completion of that process.

Article 12. Default

12.1 DEFAULT BY GGF.

The occurrence of any of the following shall constitute a material default and breach of this MOU by GGF:

(a) Any failure by GGF to make payments required to be paid hereunder where such failure continues for thirty (30) days after receipt of written notice of such failure to make payments.

(b) Any failure by GGF to utilize the Space for purposes consistent with this MOU where such failure continues for two (2) days after receipt of written notice thereof.

(c) A failure by GGF to observe and perform any of its obligations under this MOU or comply with any applicable law, rule, regulation, ordinances, or requirement, where such failure continues for two (2) days after receipt of written notice thereof, unless, however, the nature of the default is such that the same cannot reasonably be cured within said two (2) day period. GGF shall not be deemed to be in default if GGF shall within such two (2)

day period commence such cure and thereafter diligently prosecutes the same to completion.

(d) At any time prior to the expiration or termination of this MOU, GGF is unable to pay its debts in the ordinary course of business as they come due.

(f) An assignment for the benefit of creditors is made by, or any bankruptcy, reorganization (in connection with a debtor relief proceeding), receivership, moratorium or other debtor relief proceedings are commenced by or against GGF, and the same is not discharged within ninety (90) days of commencement.

(g) If GGF has made any material misrepresentation of any nature in or with respect to any information or data furnished to the District in connection with the Space.

12.2 WAIVER.

The waiver by the District of any breach of any term, covenant, or condition or any breach of the same shall not deem to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Article 13. Remedies for Default and Termination for Cause

13.1 THE DISTRICT REMEDIES.

If GGF commits any such material default and/or breach as defined in Article 12, then the District may, at any time thereafter without limiting the District in the exercise of any right or remedy at law or in equity which the District may have by reason or such default and/or breach:

Terminate GGF's right to possession by any lawful means, in which case this MOU shall terminate and GGF shall immediately surrender possession of the Space to the District. In such event the District shall be entitled to recover from GGF any unpaid invoices for all costs and expenses incurred by the District in connection with the termination of GGF's possession, including, without limitation, any and all consultant and attorney costs and fees.

GILROY GARLIC FESTIVAL

By: 

Name: Brian M. Bowe

Title: Executive Director

Date: 6/12/19

GILROY UNIFIED SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Date: _____