

MEMORANDUM OF UNDERSTANDING

BETWEEN

SAN MATEO-FOSTER CITY ELEMENTARY SCHOOL DISTRICT/  
AUDUBON SCHOOL

AND

CITY OF FOSTER CITY/ESTERO MUNICIPAL IMPROVEMENT  
DISTRICT

FOR THE YEARS

MARCH 1, 2020 – FEBRUARY 28, 2021

AND

MARCH 1, 2021 – FEBRUARY 28, 2022

AND

MARCH 1, 2022 – FEBRUARY 29, 2023

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THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the CITY OF FOSTER CITY/ESTERO MUNICIPAL IMPROVEMENT DISTRICT, hereinafter called "CITY/EMID," and SAN MATEO-FOSTER CITY SCHOOL DISTRICT/AUDUBON SCHOOL, hereinafter called "SCHOOL" (collectively hereafter called "PARTIES") with a goal to work together to provide a space in Killdeer Park for outdoor learning for Foster City school children attending SCHOOL. A diagram of the School Garden, hereinafter called "GARDEN" is included in Exhibit A.

## ARTICLE I ALLOCATION OF SPACE

1. The purpose of GARDEN is to provide a space for outdoor learning to be used by SCHOOL. GARDEN shall be maintained for educational use only.
2. SCHOOL shall be responsible for scheduling and coordinating the use of space in GARDEN.
3. At such time as space allocations are made, and not less than once per year, the Parks and Recreation Department Enrichment Program shall be consulted and considered for an allocation of the GARDEN space.
4. SCHOOL may allocate GARDEN space to other groups for educational purposes, such as classes from other schools, with the prior approval of CITY/EMID.
5. Under no circumstances may SCHOOL receive payment from outside groups for use of GARDEN space.
6. SCHOOL may not allocate GARDEN space to individuals or groups for non-educational uses.
7. SCHOOL is responsible for ensuring that GARDEN is maintained through the term of this MOU. SCHOOL may engage non-school volunteers to assist with maintaining the garden.

## ARTICLE II ACCESS

1. GARDEN shall be reserved for the educational use of those to whom authority has been given under the terms of this MOU.
2. SCHOOL shall have access to GARDEN during open hours of Killdeer Park while this MOU is in effect. Access shall be immediately revoked upon the termination or expiration of this MOU.

3. With adequate notice, CITY reserves the right to modify GARDEN access hours if a special event impacts Killdeer Park.
4. Nothing in this MOU shall change the accessibility of Killdeer Park, which shall remain open and accessible to park users outside of the boundaries of GARDEN.

### ARTICLE III RESPONSIBILITIES OF PARTIES

1. CITY/EMID shall create GARDEN facility at its own expense to include the following components:
  - a. Perimeter fencing with gate that has locking capability (lock(s) to be supplied by SCHOOL under terms found in section 5)
  - b. Drip irrigation system connected to water source
  - c. Raised planting beds with garden soil; trellises may be included in some planting beds
  - d. Wooden compost bin (empty)
  - e. Instructional seating area (benches)
  - f. Tool shed
2. CITY/EMID shall maintain and repair the fence and watering system. Excessive cost of maintenance as determined by CITY/EMID may be grounds for termination of this MOU.
3. SCHOOL is responsible for maintenance and repair of all garden components other than the fence and watering system that may become damaged through routine use.
4. CITY/EMID shall provide water to GARDEN beds at no cost by way of drip irrigation and hose bib installed by CITY/EMID in GARDEN. CITY/EMID reserves the right to shut off water to GARDEN in order to maintain the Park watering system and/or for other maintenance work and emergencies.
5. SCHOOL representative must be present at all times while watering GARDEN. CITY/EMID may periodically assess water usage and advise if excess usage is identified. SCHOOL shall make every effort to conserve water in GARDEN operations and shall expeditiously notify CITY/EMID of the need to repair any leaks to the watering system and cease usage of the system until leaks are repaired.
6. CITY/EMID shall not be liable for loss or damage suffered by SCHOOL or its officers, agents, employees, invitees, or parties authorized by SCHOOL to utilize GARDEN. CITY/EMID shall not be liable for loss, damage, or destruction of crops for any reason. In the event that any of the components listed in Article III, Section 1 of this MOU are rendered unusable due to vandalism or catastrophic event, CITY/EMID will repair or replace the component.

7. SCHOOL is responsible to provide tools, seeds, seedlings, soil amendments and all other materials necessary for gardening. Amended soil will be part of initial GARDEN supply from CITY but will not be resupplied over the term of this MOU.
8. Upon the request of SCHOOL, CITY/EMID personnel may provide advice/instruction to SCHOOL personnel or students on horticultural matters.
9. SCHOOL shall make all reasonable efforts not to attract wildlife to the garden, including properly disposing of organic waste and securing the lid on compost and garbage bins when GARDEN is not actively being tended.
10. SCHOOL shall at all times maintain GARDEN in an active, weed free and reasonably clean condition. If SCHOOL fails to maintain GARDEN such that complaints are received from neighbors, urban wildlife is attracted or harbored, offensive odors are detectable or CITY/EMID staff requires it for any other reason, CITY/EMID will notify SCHOOL of the need to bring GARDEN into an acceptable state of maintenance. If the problem persists, CITY/EMID may revoke access/use of the space by SCHOOL.
11. SCHOOL and CITY/EMID will meet twice per year, around the beginning of the school year, typically in September, and around the end of the school year, typically in April, to ensure proper plan is in place to maintain garden throughout the school year and address any issues or items such as current contact information; planting plan; maintenance plan; educational session needs; signage, water, security and usage, etc.

#### ARTICLE IV SUPERVISION, SECURITY AND EMERGENCIES

1. SCHOOL shall provide for the safety, supervision and control of all users within GARDEN facility and the park.
2. SCHOOL is responsible for securing the GARDEN area and any facilities, tools, equipment or other items in GARDEN. Loose items shall be securely stored in tool shed or removed from GARDEN when not in use.
3. In the event the SCHOOL utilizes a lock, the SCHOOL shall issue keys and/or entry codes to CITY/EMID for access to GARDEN and shall provide access to CITY/EMID upon request.
4. CITY/EMID shall have the right, at any time, to inspect GARDEN.

#### ARTICLE V USE OF SPACE

1. No smoking is allowed on any City property, including the GARDEN, Killdeer Park and the sidewalk adjacent to the Killdeer Park.
2. No illegal crops or controlled substances shall be grown in the GARDEN.
3. No trees, vines, woody perennials (including roses), cane or bamboo may be planted in the ground or in planter boxes in the GARDEN. These plants may be planted in containers within the perimeter fencing only with prior approval of CITY/EMID.
4. Use of inorganic pesticides, fertilizers and soil amendments is prohibited in GARDEN.
5. SCHOOL is responsible for proper disposal of waste material.
6. No animals are allowed in GARDEN with the exception of service animals.
7. Only CITY/EMID vehicles are authorized within Killdeer Park. No other vehicles are allowed on Killdeer Park property including in and around GARDEN.
8. All signage, both temporary and permanent, must be approved by CITY/EMID prior to being posted.

#### ARTICLE VI INSURANCE AND INDEMNIFICATION

1. SCHOOL shall maintain property damage insurance of at least \$15,000, which is the estimated cost to replace the facilities within GARDEN and shall provide CITY/EMID with proof of property and liability insurance on an annual basis.
2. To the fullest extent of the law, SCHOOL shall defend, indemnify, save and hold harmless CITY/EMID, its officers, Board members, agents and employees against any and all claims, causes of action, suits or judgments, including expenses incurred therewith for death or injury to persons, or loss of or damage to property, resulting from SCHOOL's use of GARDEN, including but not limited to the negligence or actions taken or omitted by SCHOOL's officers, agents, employees, invitees, or parties authorized by SCHOOL to utilize GARDEN pursuant to this MOU. In the event of any such claims made, or suits filed, CITY/EMID shall give SCHOOL prompt written notice thereof, and SCHOOL shall have the right to defend or settle the same to the extent of its interest hereunder. The defense and indemnification obligations of this MOU are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this MOU.
3. SCHOOL shall maintain liability insurance of not less than \$1,000,000 per person

and \$1,000,000 per occurrence and aggregate coverage of \$2,000,000 insuring against all liability of CITY/EMID and SCHOOL and their authorized representatives arising out of and in connection with SCHOOL's use of GARDEN.

4. SCHOOL shall name CITY/EMID as a primary and non-contributory additional insured on its insurance policies.

## ARTICLE VII CONTACTS

1. SCHOOL and CITY/EMID shall provide at least two contacts for notification in the event of an emergency. Contacts shall be appropriate for year-round contact.
2. All notices, payments, reports, requests, demands and other communications to be made or given under this MOU shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the second day after mailing if mailed by first class mail, registered or certified, postage prepaid and properly addressed as follows:

CITY/EMID	Frank Fanara, Parks Manager City of Foster City 100 Lincoln Centre Drive Foster City, CA 94404-2299
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AUDUBON SCHOOL	Jaime Soria, Principal Audubon Elementary School 841 Gull Avenue Foster City, CA 94404
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3. PARTIES may change any of the above contacts at any time by providing notice in writing.

## ARTICLE VIII PROVISIONS OF LAW

1. Except as expressly limited by this Memorandum of Understanding (MOU), and as thereafter amended or modified, it is understood and agreed by the PARTIES that the City/EMID retains all of its powers to control the use of the property in Killdeer Park known as the School Garden to the full extent of the law.
2. Termination: Either party may terminate this MOU without cause by giving written notice not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice.

3. Non-Assignment. Neither party may assign, either in whole or in part, its duty to perform or its right to receive performance of any obligation created by this MOU.
4. Amendments. This MOU may be amended or modified only by written agreement signed by both PARTIES.
5. Validity. The invalidity in whole or in part of any provision of this MOU shall not void or affect the validity of any other provision of this MOU.
6. Governing Law. This MOU shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the PARTIES hereto to enforce any provision of the MOU, the unsuccessful party will pay the reasonable attorney's fees, costs, and expenses of litigation of the successful party.
7. Mediation. Should any dispute arise out of this MOU, the PARTIES shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the PARTIES. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs.
8. Entire Agreement. This MOU, including Exhibit A, comprises the entire agreement of the parties.



ARTICLE IX  
TERM OF THIS MEMORANDUM OF UNDERSTANDING

The City/EMID and the SCHOOL agree by signatures hereto that the terms contained herein shall be continued in full force and effect during the term of this MEMORANDUM OF UNDERSTANDING except as otherwise provided herein. The term shall commence on March 1, 2020 and shall expire on February 29, 2023.

Staff Representatives of the City of  
Foster City/Estero Municipal  
Improvement District

Staff Representatives of Audubon  
School

\_\_\_\_\_  
Jeff Moneda, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joan Rosas, Superintendent

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Priscilla Tam, City Clerk

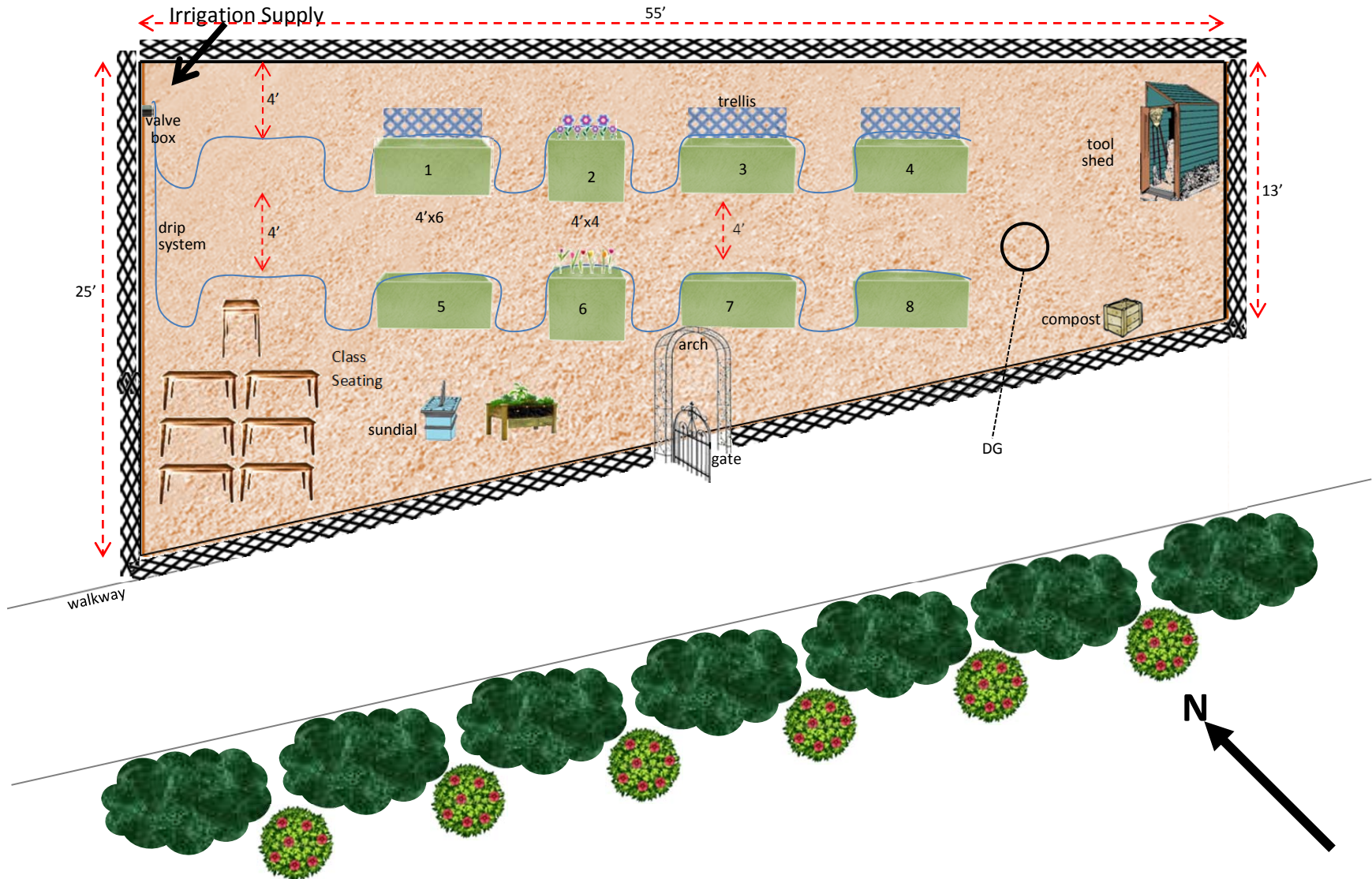
Approved as to Form

\_\_\_\_\_  
Jean Savaree, City Attorney

## Exhibit A

1. Diagram of Killdeer Park School Garden
2. Aerial View of Killdeer Parks School Garden in Context

## Proposed Concept – Killdeer Park





## SCHOOL GARDEN OVERVIEW IN CONTEXT TO KILLDEER PARK



School  
Garden  
(~1,045 ft.²)

School  
Entrance





School