

**JOINT USE AGREEMENT  
FOR USE OF A PORTION OF THE FORMER ADAMS MIDDLE SCHOOL SITE  
FOR COMMUNITY GARDEN AND FARM PURPOSES BETWEEN  
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT AND URBAN TILTH**

THIS JOINT USE AGREEMENT ("Agreement") is made and entered into on this 15th day of November, 2017 ("Effective Date") by and between the West Contra Costa Unified School District, a California public school district located in the County of Contra Costa, California ("District"), and the Urban Tilth, a nonprofit organization ("Urban Tilth"). District and Urban Tilth may be referred to herein individually as "Party" and collectively as "Parties."

**BACKGROUND TO AND PURPOSE OF AGREEMENT**

- A. District is owner, in fee, of the real property located at 5000 Patterson Circle, Richmond, CA and commonly known as the former Adams Middle School site ("District Property" or "School Site").
- B. Urban Tilth has established, maintains and operates a public community garden and farm on and the use therefor of the District Property, as depicted in Exhibit "A" attached hereto ("Community Garden"). The Parties agree that for purposes of this Agreement, references herein to the "District Property" and "School Site" shall mean and include the location of the "Community Garden" located thereon.
- C. In connection with its use of the District Property, Urban Tilth provides a multi-modal education, employment and empowerment elective course to the District pupils located on the School Site and as further described in Exhibit "A."
- D. Pursuant to California Education Code section 17527(a), the District is authorized to "enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours if the school is in session."
- E. Pursuant to California Education Code section 17529, the District has determined that by approving this Agreement, that allowing Urban Tilth to use the District Property will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site;
- F. Urban Tilth agrees that the District's fee interest in the Site School shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Urban Tilth's interest hereunder or upon the improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien.

**NOW THEREFORE**, the District and Urban Tilth hereby agree as follows:

**1. RESPONSIBILITIES AND OBLIGATIONS**

- 1.1 **Right of Entry.** District hereby provides Urban Tilth with reasonable non-exclusive access to and use of the District Property, as depicted in Exhibit "A" attached hereto, subject to the following provisions:

- 1.1.1 Urban Tilth's operation and maintenance of the Community Garden shall not interfere

with any District's educational program or activities that may be conducted on the School Site.

- 1.1.2 Reasonable precautions and all due care will be exercised to avoid damage and protect persons and property. Urban Tilth shall undertake all measures reasonably necessary to ensure that its volunteers, employees, guests, agents, members, and invitees who use the Community Garden or enter the District Property for purposes related to the Community Garden shall do so in a safe manner and solely for purposes directly related to establishing, maintaining and operating the Community Garden, pursuant to the terms herein this Agreement.
- 1.1.3 District assumes no liability for loss or damage to property or injuries to or deaths of volunteers, employees, guests, agents, members, or invitees of Urban Tilth using, accessing, or otherwise related to the Community Garden by reason of the exercise of privileges given in this Agreement.
- 1.1.4 Urban Tilth acknowledges that the District Property is provided in an "AS IS" condition. The District shall not be obligated to repair, improve, or maintain in any way the District Property for any purpose related to Urban Tilth, the Community Garden or this Agreement.
- 1.1.5 Urban Tilth shall perform or provide regular and reasonable cleaning and maintenance of, and removal of litter and debris during its use of the District Property. The failure of Urban Tilth to regularly clean, maintain, or remove litter and debris from the District Property shall be a basis for terminating this Agreement.
- 1.1.6 The rights granted herein this Agreement in no way permit Urban Tilth, or its volunteers, employees, guests, agents, members, or invitees, any right of entry or access to the District Property outside of the Community Garden as described herein.
- 1.1.7 Urban Tilth, and its volunteers, employees, guests, agents, members, or invitees, shall use the District Property only for the purposes of establishing and maintaining the Community Garden, pursuant to the terms herein this Agreement, and for no other purposes whatsoever without the District's prior written consent, which shall be granted or withheld in District's sole discretion.
- 1.1.8 Urban Tilth, and its volunteers, employees, guests, agents, members, or invitees, shall not collect any rate or charge for the use of or access to the District Property. In the event Urban Tilth conducts any business, sales, or transactions for profit of any kind at or in conjunction with the Community Garden, on the District Property, it must first obtain the District's specific, written consent to do so, which shall be granted or withheld in District's sole discretion. Urban Tilth shall obtain all licenses necessary or required by applicable law for its maintenance or operation of the Community Garden at the District Property. The failure of Urban Tilth to obtain and maintain the required licensing during the term of this Agreement, shall be a basis for terminating this Agreement.
- 1.1.9 Urban Tilth shall exercise the rights granted by this Agreement in accordance with all applicable State and Federal laws and regulations.

- 1.2 **Rules of Conduct.** Urban Tilth and its volunteers, employees, guests, agents, members, and invitees that enter upon or access the District Property and/or the Community Garden (collectively the "Community Garden Users") shall abide by the following rules of conduct:

- 1.2.1 Hours of Operations. The Community Garden shall be accessible to the Community Garden Users between the hours of sundown and sunset, seven days per week, unless otherwise notified by District of the need to temporarily close or restrict access to the District Property.
- 1.2.2 No Unnecessary Student Contact. Urban Tilth shall instruct all Community Garden Users avoid engaging in any unnecessary contact with District students that may be on the District Property. If any unnecessary student contact is observed or reported, District, at District's sole discretion, may require Urban Tilth to take reasonable steps to ensure all further unnecessary contact ceases and is prevented, or terminate this Agreement.
- 1.2.3 No Disturbances. Community Garden Users shall refrain from disorderly conduct, or conduct that creates loud and unusual noises or unpleasant odors.
- 1.2.4 No Gambling. Community Garden Users shall refrain from conducting or participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets at, on, or in the District Property and the Community Garden.
- 1.2.5 Drug-Free Environment. Urban Tilth shall not knowingly permit any person under the influence of any non-prescribed drug that has been defined by the state or federal government as a "controlled substance" to enter upon the District Property. The possession, sale, or use of any "controlled substance" (except when permitted by law) on the District Property is strictly prohibited.
- 1.2.6 No Weapons and Explosives. Community Garden Users shall refrain from carrying firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, and from storing any such weapons or explosives on or within the District Property.
- 1.2.7 No Smoking. In accordance with the District's general policy, smoking shall not be permitted on the District Property at any time by any person. Community Garden Users shall additionally comply with all applicable laws and ordinances regarding smoking in the vicinity of the District Property.
- 1.2.8 No Hazardous or Toxic Substances. The use of hazardous or toxic substances by the Community Garden Users is strictly prohibited, as more fully described by and pursuant to the terms herein this Agreement.
- 1.2.9 No Dumping. Dumping of any kind on or at the District Property is strictly prohibited. Urban Tilth shall be responsible for and ensure that no dumping is allowed, permitted, or tolerated on or at the Community Garden in compliance with California Penal Code section 374.3 and all other applicable laws and regulations.
- 1.2.10 No Animals/Livestock. Animals and livestock of any kind shall not be permitted, housed, raised, stored, or otherwise kept on the District Property or the Community Garden at any time. Notwithstanding the foregoing, Urban Tilth may house, raise, store or otherwise keep no more than five (5) chickens and such chickens as may be necessary to conduct an annual chick hatching as may be part of Urban Tilth's program conducted on the School Site. No roosters shall be permitted, housed, raised, stored or otherwise kept on the District Property or the Community Garden at any time. In the event the District, in its sole discretion, determines that the permitted animals are unduly disrupting the District's programs or activities on the School Site, the District may provide written notice to Urban Tilth that such animals be removed upon such notice as determined by the

District to be reasonably necessary. In the event the animals are not so removed as required by the District, this Agreement may be terminated.

1.2.11 **Use of Community Garden Items.** The Parties hereby acknowledge, understand, and agree that the production, consumption, delivery, gift, donation, storing, or any other use whatsoever in any manner of any, and all items that are the product or result of the Community Garden Users' use of the District Property shall be at the sole risk and responsibility of Urban Tilth and the Community Garden Users, and District shall in no way be liable or responsible therefor.

1.2.12 **Notice of Rules.** Urban Tilth shall post and provide reasonable notice at the Community Garden of the rules and requirements of the Community Garden Users as described hereunder the terms of this Agreement.

1.3 **Term.** Urban Tilth's right to enter the District Property to access the Community Garden pursuant to this Agreement shall commence on the Effective Date and expire on November 1, 2020 ("Term"). The Parties may agree to extend the Term of this Agreement upon prior written agreement. District shall have the option to terminate this Agreement upon thirty (30) days' notification to Urban Tilth. The District shall also have the option to suspend or terminate Urban Tilth's right to access and use the Community Garden upon twenty-four (24) hours' notification to Urban Tilth.

1.4 **Utilities; Water; Portable Toilet.** The Parties acknowledge and agree that Urban Tilth shall be responsible for providing, supplying, and paying for any and all utilities, including but not limited to water, for and to the Community Garden. District shall in no way be responsible or liable for providing, supplying, or paying for any utilities for or to the Community Garden. Urban Tilth shall be responsible for complying with any metering requirements mandated by any public utility provider. Urban Tilth acknowledges and agrees that, due to issues and concerns related to water conservation in the State and community, Urban Tilth shall not permit or tolerate any needless use or wasting of water and shall only use those resources necessary to maintain and operate the Community Garden. Urban Tilth shall be solely responsible for any penalty, fine or charge that may be assessed by the local water district, utility or State, arising out of or resulting from Urban Tilth's use of water at the District Property.

1.4.1 Urban Tilth shall pay the District \$0.7056/square foot for the utilities that are furnished to the Community Garden by the District. Based on the square footage of the Community Garden, the yearly utility charge is \$5,998 or \$499.84 per month ("Pro Rata Share").

1.4.2 The Pro Rata Share for the first month shall be due upon the Effective Date. Thereafter, the Pro Rata Share shall be due on the first of each month until the expiration or termination of the Agreement.

1.4.3 Urban Tilth shall promptly pay to District the Pro Rata Share on the first day of each month in advance during the Term of the Agreement, without deduction, setoff, prior notice or demand.

1.4.4 Urban Tilth acknowledges that late payment by Urban Tilth to District of the Pro Rata Share and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Pro Rata Share or any other sum due from Urban Tilth by 4:00 p.m. within ten (10) days after the Pro Rata Share is due, Urban Tilth shall pay to District, as additional sums due, a late charge equal to five

percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that any late charge assessed to Urban Tilth shall represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Urban Tilth. Acceptance of any late sums by District shall in no event constitute a waiver of Urban Tilth's default with respect to any overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

- 1.4.5 **Portable Toilet Service.** The Parties acknowledge and agree that Urban Tilth may maintain one portable toilet located on the Community Garden Site. Urban Tilth shall be solely responsible for paying for all costs associated with the portable toilet. Urban Tilth shall ensure that the portable toilet is serviced on a regular basis to avoid any health or unsanitary conditions.

- 1.5 **Additions and Improvements.** Urban Tilth shall not construct or cause to be constructed on the District Property or the Community Garden any additions or improvements without express prior written consent from District.

- 1.5.1 If additions or improvements are approved by District pursuant to this Section, Urban Tilth shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site(s), grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction of any additions or improvements and shall provide District with evidence of approval by all applicable governmental agencies. All contractors and subcontractors of Urban Tilth, if any, shall be duly licensed in the State of California. Urban Tilth shall be solely responsible for maintaining any additions or improvements installed on the Community Garden during the term of this Agreement, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

- 1.5.2 Any and all additions or improvements constructed or caused to be constructed on the District Property or the Community Garden by Urban Tilth ("Improvements") prior to or after the Effective Date shall be maintained at the sole expense of Urban Tilth. Improvements shall be properly maintained during the Term. Failure to maintain Improvements shall be a basis for terminating this Agreement.

- 1.5.2.1 The Parties agree and acknowledge that the Improvements set forth in Exhibit "B" were constructed on the District Property prior to the Effective Date and may remain on the School Site so long as maintained in accordance with the requirements herein.

- 1.6 **Liens.** Urban Tilth shall promptly pay for all materials supplied and work done with respect to the Community Garden or Urban Tilth's Improvements so as to ensure that no lien is recorded against any portion of the District Property against the District's or Urban Tilth's interest therein. If a lien is so recorded, the Urban Tilth shall discharge it promptly by payment or bonding. If any such lien against the District Property or Urban Tilth's interest therein is recorded and not discharged by Urban Tilth as above required within thirty (30) days following recording, the District shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately by Urban Tilth to the District. The District and Urban Tilth expressly agree and acknowledge that no interest of District in the District Property or any improvement placed on the District Property shall be subject to any lien for improvements made by Urban Tilth in or for the District Property or the Community Garden, and the District shall not be liable for any lien for any improvements made by Urban Tilth, such liability being expressly prohibited by the terms

of this Agreement. Urban Tilth waives any lien rights it may have concerning the District Property.

- 1.7 **Fingerprinting and Criminal Background Verification.** Unless District determines that the Urban Tilth, its employees, agents, subcontractors, invitees, and/or volunteers will have only limited and/or no contact with District students, Urban Tilth shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Safety Code, § 1500 et seq.). Urban Tilth shall provide written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of employment or participation in any activity by Urban Tilth upon the School Site.
- 1.8 **Indemnification.** To the furthest extent permitted by California law, Urban Tilth shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, and trustees ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury of any kind, in law or equity, including without limitation the payment of all consequential damages ("damage"), arising out of, pertaining to or relating to, in whole or in part, the Urban Tilth's use of the District Property, the Improvements, and the establishment, maintenance and operation of the Community Garden, or Urban Tilth's volunteers, employees, guests, agents, members, or invitees', activities authorized in this Agreement. Urban Tilth agrees also to either reimburse District for any damage or destruction to the District Property, roads, fences, access gate, or other property located on the District Property, occurring by reason of the exercise of rights granted herein, or to replace or restore said property to its preexisting condition.
- 1.9 **Insurance.** Urban Tilth shall secure and maintain, and shall cause any of its contractors to secure and maintain, in full force and effect, commercial general liability insurance or participation in a self-insurance program, including coverage for owned and non-owned automobiles and other insurance necessary to protect the public, with limits of liability of not less than Two Million Dollars (\$2,000,000.00) combined single limit bodily injury and property damage. If and as applicable, Urban Tilth shall secure and maintain, in full force and effect during the term of this permit, workers' compensation insurance, at statutory minimums, including employers' liability coverage with limits not less than Two Million Dollars (\$2,000,000.00) for each accident, Two Million Dollars (\$2,000,000.00) as the aggregate policy limit, and Two Million Dollars (\$2,000,000.00) as the policy limit for each employee. Policies shall be issued by an insurance company or companies that are rated "A-VII" or higher by A.M. Best's key rating guide, and are approved to do business in the State of California. A certificate evidencing the insurance requirements of this section shall be provided prior to Urban Tilth's use of the Community Garden or any entrance on District Property pursuant to the right of entry provided herein. The insurance policies shall include, or be endorsed to include "West Contra Costa Unified School District" as an additional named insured. All endorsements shall waive any right to subrogation against any of the named additional insureds.
- 1.10 **Hazardous Substances.** Urban Tilth shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the District Property by any Community Garden Users except for limited quantities of standard supplies related to the Urban Tilth's purpose (which shall be used in strict compliance with Environmental Laws). Urban Tilth shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCBs, and any

material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

- 1.10.1 **Notice.** Urban Tilth shall promptly notify District in writing if Urban Tilth has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the District Property or the Community Garden in violation of Environmental Laws. Urban Tilth shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Community Garden or compliance with Environmental Laws. Urban Tilth shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Urban Tilth to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and/or any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Urban Tilth shall promptly notify District of any liens threatened or attached against the District Property pursuant to any Environmental Laws.
- 1.11 **Signage.** Urban Tilth may place temporary, nonpermanent signs upon the District Property to identify Urban Tilth's use of a portion of the District Property as a community garden. All signs used by Urban Tilth shall be approved by the District prior to placement, and shall be immediately removed following the expiration or earlier termination of this Agreement or upon request by District.
- 1.12 **Public Complaints.** If any person, group, entity, or association complains, orally or in writing, to District about the Community Garden, or Urban Tilth's use thereof, it shall be grounds, at the District's sole discretion, for termination of this Agreement. If Urban Tilth receives any complaints about the Community Garden, or Urban Tilth's use thereof, Urban Tilth shall give written notice of each complaint received to District within seven (7) days of Urban Tilth's receipt of the complaint. Urban Tilth shall reasonably cooperate with District on action(s), if any, to be taken to alleviate the complaint.
- 1.13 **Due Diligence.** Urban Tilth shall perform its own due diligence, at its sole cost, to satisfy itself as to the condition and feasibility of the District Property for its anticipated use.
- 1.14 **Notice of Damage, Injury, Accident, or Claims.** Urban Tilth shall, as soon as reasonably possible, notify the District of any damage, injury, accident or claim that occurs on the District Property or the Community Garden at any time during Urban Tilth's use. In no event shall Urban Tilth's notice to District be more than twenty-four (24) hours after the event of damage, injury, accident, or claim. Notice shall be provided in writing and via telephonic notification as set forth in the Notice section herein.
- 1.15 At the expiration of the Term or the earlier termination of this Agreement, Urban Tilth shall surrender possession of the Community Garden and deliver the same to District in good order, condition, and state of repair, ordinary wear and tear excepted.

## 2. MISCELLANEOUS

- 2.1 **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**DISTRICT**

West Contra Costa Unified School District  
1400 Marina Way South  
Richmond, CA 94804  
ATTN: Executive Director of Maintenance and  
Operations  
Facsimile: (510) 231-2406  
Telephone: (510) 307-4543

**URBAN TILTH**

Urban Tilth  
323 Brookside Drive  
Richmond, CA 94801  
Facsimile: 510-232-0911  
Telephone: 510-232-0911  
E-mail: admin@urbantilth.org

- 2.1.1 Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.
- 2.2 **Amendment.** No addition to or modification of the terms of this Agreement shall be valid unless made in a written amendment to this Agreement, which is formally approved and signed by each Party to this Agreement.
- 2.3 **Assignment.** Urban Tilth may not assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without the prior written consent of the District.
- 2.4 **Waiver.** The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any provision of this Agreement.
- 2.5 **Applicable Law.** The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall in all respects be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. Venue for any action arising from this agreement shall be in Contra Costa County, California.
- 2.6 **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.
- 2.7 **Captions, Number, and Gender.** The captions appearing at the commencement of the paragraphs, subparagraphs and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the section, paragraph, or subparagraph at the head of which it appears the section, paragraph, or subparagraph and not the caption shall control and govern the construction of this Agreement. In this Agreement, the masculine,



feminine, or neutral gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

- 2.8 **Facsimile Signatures.** Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by both Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.
- 2.9 **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties hereto, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against any of the Parties hereto.
- 2.10 **Cooperation With Other Occupants of the School Site.** It is understood and recognized by Urban Tilth that the School Site will be used by third parties and the District, and Urban Tilth shall cooperate with the other parties in reaching amicable arrangements concerning the School Site's use.
- 2.11 **Mutual Drafting:** This Agreement shall be construed as if drafted mutually by the Parties through their respective counsel and therefore shall not be construed against either Party.
- 2.12 **Force Majeure.** Neither Party will be responsible for performance under this Agreement to the extent performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions, or terrorism, whether foreseeable or unforeseeable.

IN WITNESS WHEREOF, this Agreement has been executed as of the date last written below.

Dated: \_\_\_\_\_, 2017

West Contra Costa Unified School District

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Dated: OCTOBER 5TH, 2017

Urban Tilth

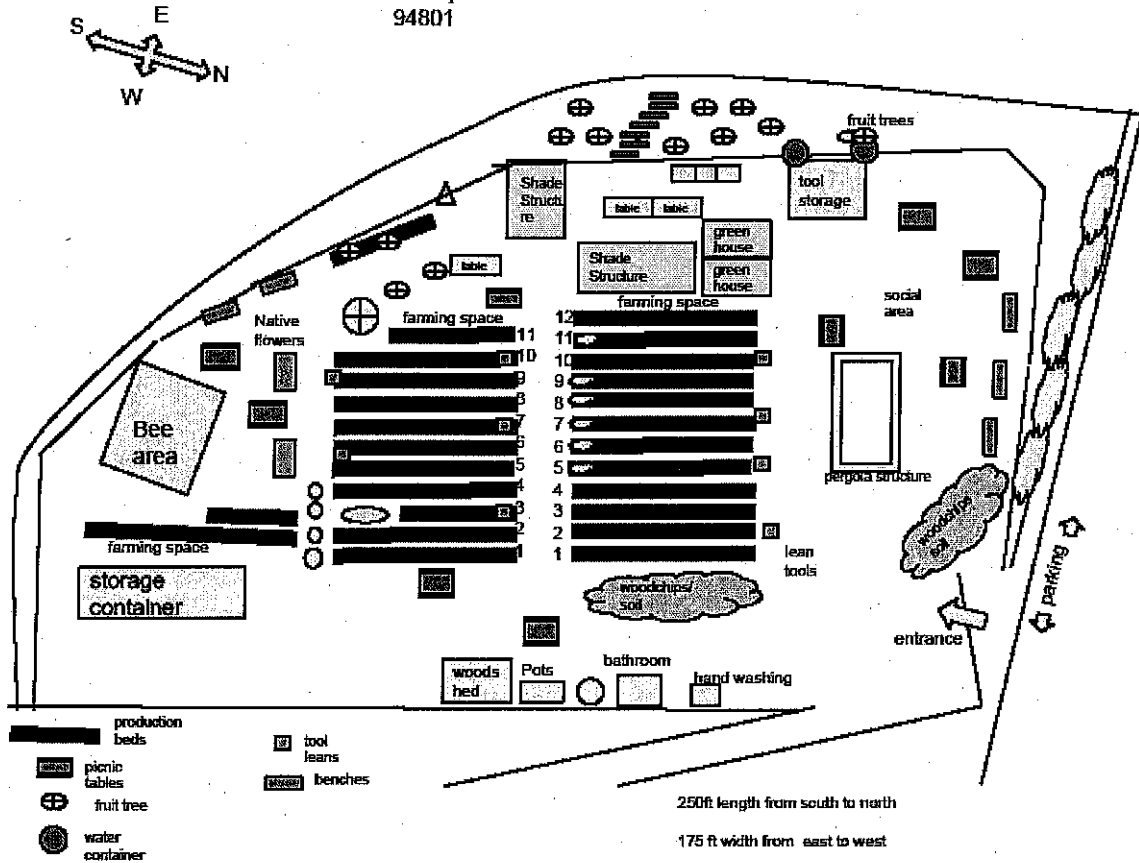
By:  \_\_\_\_\_

Print Name: DORIA ROBINSON

Print Title: EXECUTIVE DIRECTOR

**EXHIBIT "A"**  
**Community Garden**  
**Former Adams Middle School Site**

**Adams Crest Farm**  
 5000 patterson Circle Richmond Ca.  
 94801



**EXHIBIT "B"**  
**Community Garden**  
**Existing Improvements**

- I. Two Shade Structures**
- II. Pergola Structure**
- III. Two Green Houses**
- IV. Two Tool Storage Areas**
- V. One porta potty**
- VI. One hand washing station**
- VII. Two Water Catchment Tanks**
- VIII. Ten Picnic Tables**
- IX. Five Benches**
- X. Three Hardening Off Tables**
- XI. One Shed for Wood Storage**
- XII. Nine Tool Leans**
- XIII. 25 50ft long crop rows each with 2-50ft long drip lines**
- XIV. Hillside Fruit Tree Orchard**
- XV. Storage Area for Pots**

**JOINT USE AGREEMENT  
FOR USE OF A PORTION OF THE RICHMOND HIGH SCHOOL SITE  
FOR COMMUNITY GARDEN AND FARM PURPOSES BETWEEN  
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT AND URBAN TILTH**

THIS JOINT USE AGREEMENT ("Agreement") is made and entered into on this 15<sup>th</sup> day of November, 2017 ("Effective Date") by and between the West Contra Costa Unified School District, a California public school district located in the County of Contra Costa, California ("District"), and the Urban Tilth, a nonprofit organization ("Urban Tilth"). District and Urban Tilth may be referred to herein individually as "Party" and collectively as "Parties."

**BACKGROUND TO AND PURPOSE OF AGREEMENT**

- A. District is owner, in fee, of the real property located at 1250 23<sup>rd</sup> Street, Richmond, CA and commonly known as Richmond High School site ("District Property" or "School Site").
- B. Urban Tilth has established, maintains and operates a public community garden and farm on and the use therefor of the District Property, as depicted in Exhibit "A" attached hereto ("Community Garden"). The Parties agree that for purposes of this Agreement, references herein to the "District Property" and "School Site" shall mean and include the location of the "Community Garden" located thereon.
- C. In connection with its use of the District Property, Urban Tilth provides a multi-modal education, employment and empowerment elective course to the District pupils located on the School Site and as further described in Exhibit "A."
- D. Pursuant to California Education Code section 17527(a), the District is authorized to "enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours if the school is in session."
- E. Pursuant to California Education Code section 17529, the District has determined that by approving this Agreement, that allowing Urban Tilth to use the District Property will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site;
- F. Urban Tilth agrees that the District's fee interest in the Site School shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Urban Tilth's interest hereunder or upon the improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien.

**NOW THEREFORE**, the District and Urban Tilth hereby agree as follows:

**1. RESPONSIBILITIES AND OBLIGATIONS**

- 1.1 **Right of Entry.** District hereby provides Urban Tilth with reasonable non-exclusive access to and use of the District Property, as depicted in Exhibit "A" attached hereto, subject to the following provisions:

- 1.1.1 Urban Tilth's operation and maintenance of the Community Garden shall not interfere

with any District's educational program or activities that may be conducted on the School Site.

- 1.1.2 Reasonable precautions and all due care will be exercised to avoid damage and protect persons and property. Urban Tilth shall undertake all measures reasonably necessary to ensure that its volunteers, employees, guests, agents, members, and invitees who use the Community Garden or enter the District Property for purposes related to the Community Garden shall do so in a safe manner and solely for purposes directly related to establishing, maintaining and operating the Community Garden, pursuant to the terms herein this Agreement.
- 1.1.3 District assumes no liability for loss or damage to property or injuries to or deaths of volunteers, employees, guests, agents, members, or invitees of Urban Tilth using, accessing, or otherwise related to the Community Garden by reason of the exercise of privileges given in this Agreement.
- 1.1.4 Urban Tilth acknowledges that the District Property is provided in an "AS IS" condition. The District shall not be obligated to repair, improve, or maintain in any way the District Property for any purpose related to Urban Tilth, the Community Garden or this Agreement.
- 1.1.5 Urban Tilth shall perform or provide regular and reasonable cleaning and maintenance of, and removal of litter and debris during its use of the District Property. The failure of Urban Tilth to regularly clean, maintain, or remove litter and debris from the District Property shall be a basis for terminating this Agreement.
- 1.1.6 The rights granted herein this Agreement in no way permit Urban Tilth, or its volunteers, employees, guests, agents, members, or invitees, any right of entry or access to the District Property outside of the Community Garden as described herein.
- 1.1.7 Urban Tilth, and its volunteers, employees, guests, agents, members, or invitees, shall use the District Property only for the purposes of establishing and maintaining the Community Garden, pursuant to the terms herein this Agreement, and for no other purposes whatsoever without the District's prior written consent, which shall be granted or withheld in District's sole discretion.
- 1.1.8 Urban Tilth, and its volunteers, employees, guests, agents, members, or invitees, shall not collect any rate or charge for the use of or access to the District Property. In the event Urban Tilth conducts any business, sales, or transactions for profit of any kind at or in conjunction with the Community Garden, on the District Property, it must first obtain the District's specific, written consent to do so, which shall be granted or withheld in District's sole discretion. Urban Tilth shall obtain all licenses necessary or required by applicable law for its maintenance or operation of the Community Garden at the District Property. The failure of Urban Tilth to obtain and maintain the required licensing during the term of this Agreement, shall be a basis for terminating this Agreement.
- 1.1.9 Urban Tilth shall exercise the rights granted by this Agreement in accordance with all applicable State and Federal laws and regulations.

- 1.2 **Rules of Conduct.** Urban Tilth and its volunteers, employees, guests, agents, members, and invitees that enter upon or access the District Property and/or the Community Garden (collectively the "Community Garden Users") shall abide by the following rules of conduct:

- 1.2.1 Hours of Operations. The Community Garden shall be accessible to the Community Garden Users between the hours of sundown and sunset, seven days per week, unless otherwise notified by District of the need to temporarily close or restrict access to the District Property.
- 1.2.2 No Unnecessary Student Contact. Urban Tilth shall instruct all Community Garden Users avoid engaging in any unnecessary contact with District students that may be on the District Property. If any unnecessary student contact is observed or reported, District, at District's sole discretion, may require Urban Tilth to take reasonable steps to ensure all further unnecessary contact ceases and is prevented, or terminate this Agreement.
- 1.2.3 No Disturbances. Community Garden Users shall refrain from disorderly conduct, or conduct that creates loud and unusual noises or unpleasant odors.
- 1.2.4 No Gambling. Community Garden Users shall refrain from conducting or participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets at, on, or in the District Property and the Community Garden.
- 1.2.5 Drug-Free Environment. Urban Tilth shall not knowingly permit any person under the influence of any non-prescribed drug that has been defined by the state or federal government as a "controlled substance" to enter upon the District Property. The possession, sale, or use of any "controlled substance" (except when permitted by law) on the District Property is strictly prohibited.
- 1.2.6 No Weapons and Explosives. Community Garden Users shall refrain from carrying firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, and from storing any such weapons or explosives on or within the District Property.
- 1.2.7 No Smoking. In accordance with the District's general policy, smoking shall not be permitted on the District Property at any time by any person. Community Garden Users shall additionally comply with all applicable laws and ordinances regarding smoking in the vicinity of the District Property.
- 1.2.8 No Hazardous or Toxic Substances. The use of hazardous or toxic substances by the Community Garden Users is strictly prohibited, as more fully described by and pursuant to the terms herein this Agreement.
- 1.2.9 No Dumping. Dumping of any kind on or at the District Property is strictly prohibited. Urban Tilth shall be responsible for and ensure that no dumping is allowed, permitted, or tolerated on or at the Community Garden in compliance with California Penal Code section 374.3 and all other applicable laws and regulations.
- 1.2.10 No Animals/Livestock. Animals and livestock of any kind shall not be permitted, housed, raised, stored, or otherwise kept on the District Property or the Community Garden at any time. Notwithstanding the foregoing, Urban Tilth may house, raise, store or otherwise keep no more than five (5) chickens and such chickens as may be necessary to conduct an annual chick hatching as may be part of Urban Tilth's program conducted on the School Site. No roosters shall be permitted, housed, raised, stored or otherwise kept on the District Property or the Community Garden at any time. In the event the District, in its sole discretion, determines that the permitted animals are unduly disrupting the District's programs or activities on the School Site, the District may provide written notice to Urban Tilth that such animals be removed upon such notice as determined by the

District to be reasonably necessary. In the event the animals are not so removed as required by the District, this Agreement may be terminated.

1.2.11 **Use of Community Garden Items.** The Parties hereby acknowledge, understand, and agree that the production, consumption, delivery, gift, donation, storing, or any other use whatsoever in any manner of any and all items that are the product or result of the Community Garden Users' use of the District Property shall be at the sole risk and responsibility of Urban Tilth and the Community Garden Users, and District shall in no way be liable or responsible therefor.

1.2.12 **Notice of Rules.** Urban Tilth shall post and provide reasonable notice at the Community Garden of the rules and requirements of the Community Garden Users as described hereunder the terms of this Agreement.

1.3 **Term.** Urban Tilth's right to enter the District Property to access the Community Garden pursuant to this Agreement shall commence on the Effective Date and expire on November 1, 2020 ("Term"). The Parties may agree to extend the Term of this Agreement upon prior written agreement. District shall have the option to terminate this Agreement upon thirty (30) days' notification to Urban Tilth. The District shall also have the option to suspend or terminate Urban Tilth's right to access and use the Community Garden upon twenty-four (24) hours' notification to Urban Tilth.

1.4 **Utilities; Water; Portable Toilet.** The Parties acknowledge and agree that Urban Tilth shall be responsible for providing, supplying, and paying for any and all utilities, including but not limited to water, for and to the Community Garden. District shall in no way be responsible or liable for providing, supplying, or paying for any utilities for or to the Community Garden. Urban Tilth shall be responsible for complying with any metering requirements mandated by any public utility provider. Urban Tilth acknowledges and agrees that, due to issues and concerns related to water conservation in the State and community, Urban Tilth shall not permit or tolerate any needless use or wasting of water and shall only use those resources necessary to maintain and operate the Community Garden. Urban Tilth shall be solely responsible for any penalty, fine or charge that may be assessed by the local water district, utility or State, arising out of or resulting from Urban Tilth's use of water at the District Property.

1.4.1 Urban Tilth shall pay the District \$0.7056/square foot for the utilities that are furnished to the Community Garden by the District. Based on the square footage of the Community Garden, the yearly utility charge is \$3,144 or \$262 per month ("Pro Rata Share").

1.4.2 The Pro Rata Share for the first month shall be due upon the Effective Date. Thereafter, the Pro Rata Share shall be due on the first of each month until the expiration or termination of the Agreement.

1.4.3 Urban Tilth shall promptly pay to District the Pro Rata Share on the first day of each month in advance during the Term of the Agreement, without deduction, setoff, prior notice or demand.

1.4.4 Urban Tilth acknowledges that late payment by Urban Tilth to District of the Pro Rata Share and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Pro Rata Share or any other sum due from Urban Tilth by 4:00 p.m. within ten (10) days after the Pro Rata Share is due, Urban Tilth shall pay to District, as additional sums due, a late charge equal to five

percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that any late charge assessed to Urban Tilth shall represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Urban Tilth. Acceptance of any late sums by District shall in no event constitute a waiver of Urban Tilth's default with respect to any overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

- 1.4.5 **Portable Toilet Service.** The Parties acknowledge and agree that Urban Tilth may maintain one portable toilet located on the Community Garden Site. Urban Tilth shall be solely responsible for paying for all costs associated with the portable toilet. Urban Tilth shall ensure that the portable toilet is serviced on a regular basis to avoid any health or unsanitary conditions.

- 1.5 **Additions and Improvements.** Urban Tilth shall not construct or cause to be constructed on the District Property or the Community Garden any additions or improvements without express prior written consent from District.

- 1.5.1 If additions or improvements are approved by District pursuant to this Section, Urban Tilth shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site(s), grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction of any additions or improvements and shall provide District with evidence of approval by all applicable governmental agencies. All contractors and subcontractors of Urban Tilth, if any, shall be duly licensed in the State of California. Urban Tilth shall be solely responsible for maintaining any additions or improvements installed on the Community Garden during the term of this Agreement, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

- 1.5.2 Any and all additions or improvements constructed or caused to be constructed on the District Property or the Community Garden by Urban Tilth ("Improvements") prior to or after the Effective Date shall be maintained at the sole expense of Urban Tilth. Improvements shall be properly maintained during the Term. Failure to maintain Improvements shall be a basis for terminating this Agreement.

- 1.5.2.1 The Parties agree and acknowledge that the Improvements set forth in Exhibit "B" were constructed on the District Property prior to the Effective Date and may remain on the School Site so long as maintained in accordance with the requirements herein.

- 1.6 **Liens.** Urban Tilth shall promptly pay for all materials supplied and work done with respect to the Community Garden or Urban Tilth's Improvements so as to ensure that no lien is recorded against any portion of the District Property against the District's or Urban Tilth's interest therein. If a lien is so recorded, the Urban Tilth shall discharge it promptly by payment or bonding. If any such lien against the District Property or Urban Tilth's interest therein is recorded and not discharged by Urban Tilth as above required within thirty (30) days following recording, the District shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately by Urban Tilth to the District. The District and Urban Tilth expressly agree and acknowledge that no interest of District in the District Property or any improvement placed on the District Property shall be subject to any lien for improvements made by Urban Tilth in or for the District Property or the Community Garden, and the District shall not be liable for any lien for any improvements made by Urban Tilth, such liability being expressly prohibited by the terms



of this Agreement. Urban Tilth waives any lien rights it may have concerning the District Property.

- 1.7 **Fingerprinting and Criminal Background Verification.** Unless District determines that the Urban Tilth, its employees, agents, subcontractors, invitees, and/or volunteers will have only limited and/or no contact with District students, Urban Tilth shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Safety Code, § 1500 et seq.). Urban Tilth shall provide written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of employment or participation in any activity by Urban Tilth upon the School Site.
- 1.8 **Indemnification.** To the furthest extent permitted by California law, Urban Tilth shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, and trustees ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury of any kind, in law or equity, including without limitation the payment of all consequential damages ("damage"), arising out of, pertaining to or relating to, in whole or in part, the Urban Tilth's use of the District Property, the Improvements, and the establishment, maintenance and operation of the Community Garden, or Urban Tilth's volunteers, employees, guests, agents, members, or invitees', activities authorized in this Agreement. Urban Tilth agrees also to either reimburse District for any damage or destruction to the District Property, roads, fences, access gate, or other property located on the District Property, occurring by reason of the exercise of rights granted herein, or to replace or restore said property to its preexisting condition.
- 1.9 **Insurance.** Urban Tilth shall secure and maintain, and shall cause any of its contractors to secure and maintain, in full force and effect, commercial general liability insurance or participation in a self-insurance program, including coverage for owned and non-owned automobiles and other insurance necessary to protect the public, with limits of liability of not less than Two Million Dollars (\$2,000,000.00) combined single limit bodily injury and property damage. If and as applicable, Urban Tilth shall secure and maintain, in full force and effect during the term of this permit, workers' compensation insurance, at statutory minimums, including employers' liability coverage with limits not less than Two Million Dollars (\$2,000,000.00) for each accident, Two Million Dollars (\$2,000,000.00) as the aggregate policy limit, and Two Million Dollars (\$2,000,000.00) as the policy limit for each employee. Policies shall be issued by an insurance company or companies that are rated "A-VII" or higher by A.M. Best's key rating guide, and are approved to do business in the State of California. A certificate evidencing the insurance requirements of this section shall be provided prior to Urban Tilth's use of the Community Garden or any entrance on District Property pursuant to the right of entry provided herein. The insurance policies shall include, or be endorsed to include "West Contra Costa Unified School District" as an additional named insured. All endorsements shall waive any right to subrogation against any of the named additional insureds.
- 1.10 **Hazardous Substances.** Urban Tilth shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the District Property by any Community Garden Users except for limited quantities of standard supplies related to the Urban Tilth's purpose (which shall be used in strict compliance with Environmental Laws). Urban Tilth shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCBs, and any

material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

- 1.10.1 **Notice.** Urban Tilth shall promptly notify District in writing if Urban Tilth has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the District Property or the Community Garden in violation of Environmental Laws. Urban Tilth shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Community Garden or compliance with Environmental Laws. Urban Tilth shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Urban Tilth to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and/or any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Urban Tilth shall promptly notify District of any liens threatened or attached against the District Property pursuant to any Environmental Laws.
- 1.11 **Signage.** Urban Tilth may place temporary, nonpermanent signs upon the District Property to identify Urban Tilth's use of a portion of the District Property as a community garden. All signs used by Urban Tilth shall be approved by the District prior to placement, and shall be immediately removed following the expiration or earlier termination of this Agreement or upon request by District.
- 1.12 **Public Complaints.** If any person, group, entity, or association complains, orally or in writing, to District about the Community Garden, or Urban Tilth's use thereof, it shall be grounds, at the District's sole discretion, for termination of this Agreement. If Urban Tilth receives any complaints about the Community Garden, or Urban Tilth's use thereof, Urban Tilth shall give written notice of each complaint received to District within seven (7) days of Urban Tilth's receipt of the complaint. Urban Tilth shall reasonably cooperate with District on action(s), if any, to be taken to alleviate the complaint.
- 1.13 **Due Diligence.** Urban Tilth shall perform its own due diligence, at its sole cost, to satisfy itself as to the condition and feasibility of the District Property for its anticipated use.
- 1.14 **Notice of Damage, Injury, Accident, or Claims.** Urban Tilth shall, as soon as reasonably possible, notify the District of any damage, injury, accident or claim that occurs on the District Property or the Community Garden at any time during Urban Tilth's use. In no event shall Urban Tilth's notice to District be more than twenty-four (24) hours after the event of damage, injury, accident, or claim. Notice shall be provided in writing and via telephonic notification as set forth in the Notice section herein.
- 1.15 At the expiration of the Term or the earlier termination of this Agreement, Urban Tilth shall surrender possession of the Community Garden and deliver the same to District in good order, condition, and state of repair, ordinary wear and tear excepted.

## 2. MISCELLANEOUS

- 2.1 **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

### DISTRICT

West Contra Costa Unified School District  
1400 Marina Way South  
Richmond, CA 94804  
ATTN: Executive Director of Maintenance and Operations  
Facsimile: (510) 231-2406  
Telephone: (510) 307-4543

### URBAN TILTH

Urban Tilth  
323 Brookside Drive  
Richmond, CA 94801  
Facsimile: 510-232-0911  
Telephone: 510-232-0911  
E-mail: admin@urbantilth.org

- 2.2 Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.
- 2.3 **Amendment.** No addition to or modification of the terms of this Agreement shall be valid unless made in a written amendment to this Agreement, which is formally approved and signed by each Party to this Agreement.
- 2.4 **Assignment.** Urban Tilth may not assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without the prior written consent of the District.
- 2.5 **Waiver.** The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any provision of this Agreement.
- 2.6 **Applicable Law.** The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall in all respects be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. Venue for any action arising from this agreement shall be in Contra Costa County, California.
- 2.7 **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.
- 2.8 **Captions, Number, and Gender.** The captions appearing at the commencement of the paragraphs, subparagraphs and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the section, paragraph, or subparagraph at the head of which it appears the section, paragraph, or subparagraph and not the caption shall control and govern the construction of this Agreement. In this Agreement, the masculine,

feminine, or neutral gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

- 2.9 **Facsimile Signatures.** Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by both Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.
- 2.10 **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties hereto, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against any of the Parties hereto.
- 2.11 **Cooperation With Other Occupants of the School Site.** It is understood and recognized by Urban Tilth that the School Site will be used by third parties and the District, and Urban Tilth shall cooperate with the other parties in reaching amicable arrangements concerning the School Site's use.
- 2.12 **Mutual Drafting:** This Agreement shall be construed as if drafted mutually by the Parties through their respective counsel and therefore shall not be construed against either Party.
- 2.13 **Force Majeure.** Neither Party will be responsible for performance under this Agreement to the extent performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions, or terrorism, whether foreseeable or unforeseeable.

IN WITNESS WHEREOF, this Agreement has been executed as of the date last written below.

Dated: \_\_\_\_\_, 2017

West Contra Costa Unified School District

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Dated: October 5, 2017

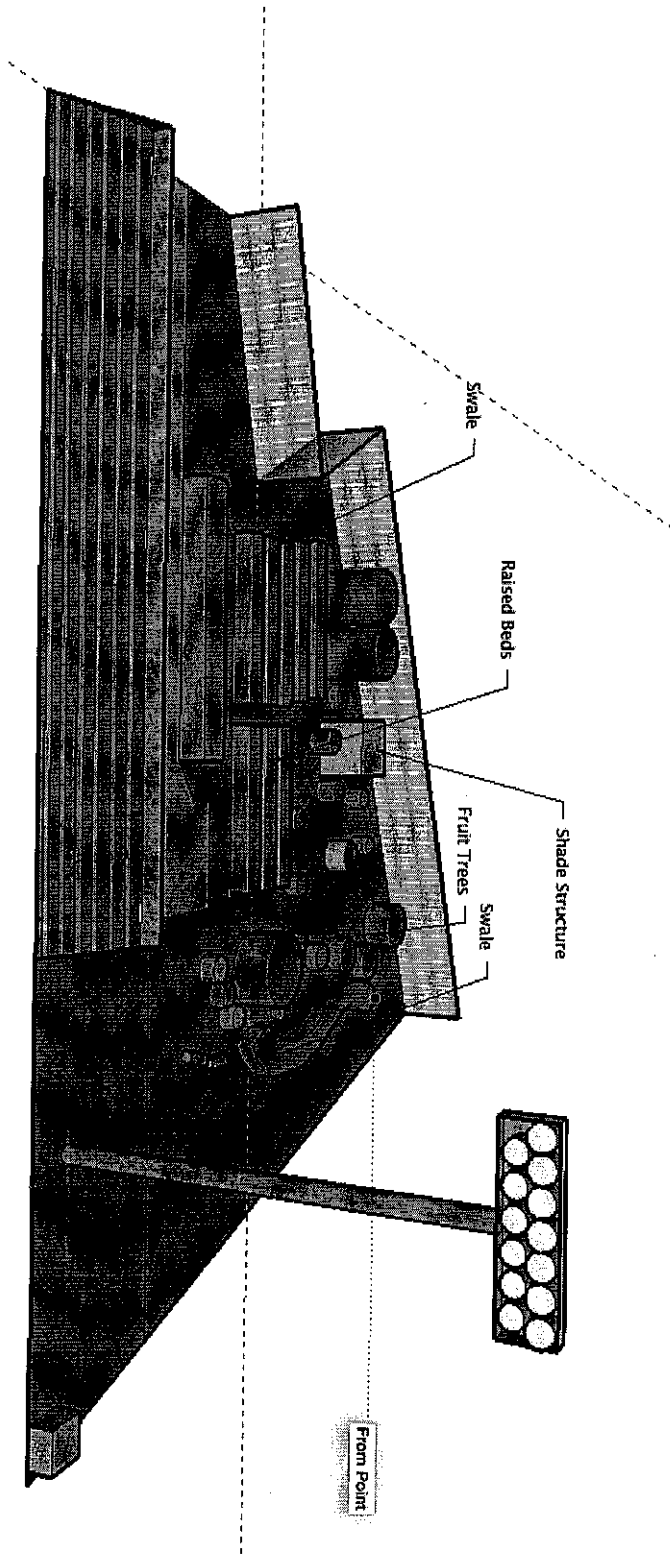
Urban Tilth

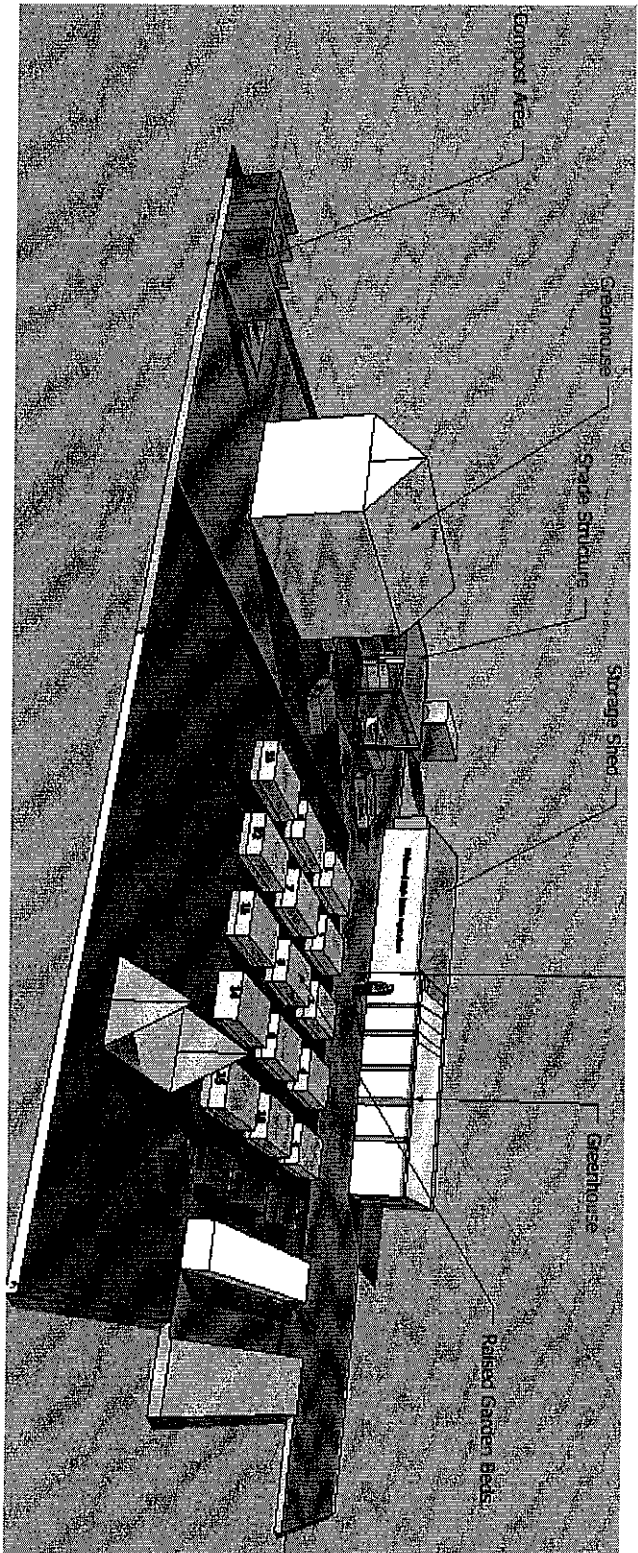
By:  \_\_\_\_\_

Print Name: DORIA ROBINSON

Print Title: EXECUTIVE DIRECTOR

**EXHIBIT "A"**  
**Community Garden**  
**Richmond High School Site**





## **Exhibit A.**

### **Joint Use Agreement for Richmond High School Urban Agriculture Institute**

In connection with its use of the District Property, Urban Tilth provides [describe educational program provided] to the District pupils located on the School Site.

The Richmond High School Urban Agriculture Institute is a multi-modal education, employment, and empowerment hub located on campus at Richmond High School. Servicing at-risk youth of color, the Urban Ag. Institute offers a credited 3rd period elective course (Urban Agriculture and the American Food System) at Richmond High School surveying topics such as:

- Organic Agriculture
  - Composting
  - Planet Earth and The Four Seasons
  - Seasonal Agriculture
  - Permaculture
- Human Nutrition
  - Creating a Food Log
  - Cooking With Vegetables
  - Diet Related Diseases
- Industrial Agriculture
  - Genetically Modified Food (GMOs)
  - Synthetic Pesticides, Fungicides, Insecticides
  - Synthetic Fertilizer
  - Concentrated Animal Feeding Operations (CAFOs)
  - Desertification
- Ecology
  - Flower Anatomy
  - Spider Anatomy
  - Plant Anatomy
  - Biology of Fungi
  - Water Cycle
  - Photosynthesis
  - Anatomy of Worms
  - Anatomy of Bees
- Community Resilience
  - Peak Oil
  - Climate Change
  - Economic Downturn
  - Water Catchment
- Permaculture
  - Garden Site Design
  - Scale
  - Mapping
  - Zones and Sectors

The course is held both inside and outside the classroom, allowing students to practice lessons in agro-ecology and environmental stewardship in a hands-on, experiential way. Each week we also include a lesson on preparing a garden fresh meal with the students, teaching basic concepts in healthy meal preparation. This course has been around for over 6 years at Richmond High School and many of the staff at Urban Tilth started their careers in food justice through this course. The program currently runs Monday through Friday for approximately 1 hour from 9:15-10:20, and is based out of the Health Academy under the supervision of course liaison and credentialed teacher Bob Gade.

**EXHIBIT "B"**  
**Community Garden**  
**Existing Improvements**

**Garden**

- 15 - 8'x4' raised garden beds
- 12 - 6'x4' raised garden beds
- 2 - Greenhouses
- 1 - Tool Shed
- 1 - Bunny Hutch
- 1 - Shade Structure/Water Catchment Structure
- 1 - 350 gallon barrel
- 3 - 50 gallon rain barrel
- 25 - 2'x2' flower planters
- 1 - Outdoor Chalkboard
- 4 - Large Tables

**Farm**

- 8 - 4'x32' raised garden beds
- 25 - Fruit Trees
- 2 - Bioswales
- 2 - native plant gardens
- 1 - outdoor classroom
- 1 - shade structure



**JOINT USE AGREEMENT  
FOR USE OF A PORTION OF THE VERDE ELEMENTARY SCHOOL SITE  
FOR COMMUNITY GARDEN AND FARM PURPOSES BETWEEN  
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT AND URBAN TILTH**

THIS JOINT USE AGREEMENT ("Agreement") is made and entered into on this 15th day of November, 2017 ("Effective Date") by and between the West Contra Costa Unified School District, a California public school district located in the County of Contra Costa, California ("District"), and the Urban Tilth, a nonprofit organization ("Urban Tilth"). District and Urban Tilth may be referred to herein individually as "Party" and collectively as "Parties."

**BACKGROUND TO AND PURPOSE OF AGREEMENT**

- A. District is owner, in fee, of the real property located at 2000 Giaramita Street, Richmond, CA and commonly known as Verde Elementary School site ("District Property" or "School Site").
- B. Urban Tilth has established, maintains and operates a public community garden and farm on and the use therefor of the District Property, as depicted in Exhibit "A" attached hereto ("Community Garden"). The Parties agree that for purposes of this Agreement, references herein to the "District Property" and "School Site" shall mean and include the location of the "Community Garden" located thereon.
- C. In connection with its use of the District Property, Urban Tilth provides a multi-modal education, employment and empowerment elective course to the District pupils located on the School Site and as further described in Exhibit "A."
- D. Pursuant to California Education Code section 17527(a), the District is authorized to "enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours if the school is in session."
- E. Pursuant to California Education Code section 17529, the District has determined that by approving this Agreement, that allowing Urban Tilth to use the District Property will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site;
- F. Urban Tilth agrees that the District's fee interest in the Site School shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Urban Tilth's interest hereunder or upon the improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien.

**NOW THEREFORE**, the District and Urban Tilth hereby agree as follows:

**1. RESPONSIBILITIES AND OBLIGATIONS**

- 1.1 **Right of Entry.** District hereby provides Urban Tilth with reasonable non-exclusive access to and use of the District Property, as depicted in Exhibit "A" attached hereto, subject to the following provisions:

- 1.1.1 Urban Tilth's operation and maintenance of the Community Garden shall not interfere

with any District's educational program or activities that may be conducted on the School Site.

- 1.1.2 Reasonable precautions and all due care will be exercised to avoid damage and protect persons and property. Urban Tilth shall undertake all measures reasonably necessary to ensure that its volunteers, employees, guests, agents, members, and invitees who use the Community Garden or enter the District Property for purposes related to the Community Garden shall do so in a safe manner and solely for purposes directly related to establishing, maintaining and operating the Community Garden, pursuant to the terms herein this Agreement.
- 1.1.3 District assumes no liability for loss or damage to property or injuries to or deaths of volunteers, employees, guests, agents, members, or invitees of Urban Tilth using, accessing, or otherwise related to the Community Garden by reason of the exercise of privileges given in this Agreement.
- 1.1.4 Urban Tilth acknowledges that the District Property is provided in an "AS IS" condition. The District shall not be obligated to repair, improve, or maintain in any way the District Property for any purpose related to Urban Tilth, the Community Garden or this Agreement.
- 1.1.5 Urban Tilth shall perform or provide regular and reasonable cleaning and maintenance of, and removal of litter and debris during its use of the District Property. The failure of Urban Tilth to regularly clean, maintain, or remove litter and debris from the District Property shall be a basis for terminating this Agreement.
- 1.1.6 The rights granted herein this Agreement in no way permit Urban Tilth, or its volunteers, employees, guests, agents, members, or invitees, any right of entry or access to the District Property outside of the Community Garden as described herein.
- 1.1.7 Urban Tilth, and its volunteers, employees, guests, agents, members, or invitees, shall use the District Property only for the purposes of establishing and maintaining the Community Garden, pursuant to the terms herein this Agreement, and for no other purposes whatsoever without the District's prior written consent, which shall be granted or withheld in District's sole discretion.
- 1.1.8 Urban Tilth, and its volunteers, employees, guests, agents, members, or invitees, shall not collect any rate or charge for the use of or access to the District Property. In the event Urban Tilth conducts any business, sales, or transactions for profit of any kind at or in conjunction with the Community Garden, on the District Property, it must first obtain the District's specific, written consent to do so, which shall be granted or withheld in District's sole discretion. Urban Tilth shall obtain all licenses necessary or required by applicable law for its maintenance or operation of the Community Garden at the District Property. The failure of Urban Tilth to obtain and maintain the required licensing during the term of this Agreement, shall be a basis for terminating this Agreement.
- 1.1.9 Urban Tilth shall exercise the rights granted by this Agreement in accordance with all applicable State and Federal laws and regulations.
- 1.2 **Rules of Conduct.** Urban Tilth and its volunteers, employees, guests, agents, members, and invitees that enter upon or access the District Property and/or the Community Garden (collectively the "Community Garden Users") shall abide by the following rules of conduct:

- 1.2.1 Hours of Operations. The Community Garden shall be accessible to the Community Garden Users between the hours of sundown and sunset, seven days per week, unless otherwise notified by District of the need to temporarily close or restrict access to the District Property.
- 1.2.2 No Unnecessary Student Contact. Urban Tilth shall instruct all Community Garden Users avoid engaging in any unnecessary contact with District students that may be on the District Property. If any unnecessary student contact is observed or reported, District, at District's sole discretion, may require Urban Tilth to take reasonable steps to ensure all further unnecessary contact ceases and is prevented, or terminate this Agreement.
- 1.2.3 No Disturbances. Community Garden Users shall refrain from disorderly conduct, or conduct that creates loud and unusual noises or unpleasant odors.
- 1.2.4 No Gambling. Community Garden Users shall refrain from conducting or participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets at, on, or in the District Property and the Community Garden.
- 1.2.5 Drug-Free Environment. Urban Tilth shall not knowingly permit any person under the influence of any non-prescribed drug that has been defined by the state or federal government as a "controlled substance" to enter upon the District Property. The possession, sale, or use of any "controlled substance" (except when permitted by law) on the District Property is strictly prohibited.
- 1.2.6 No Weapons and Explosives. Community Garden Users shall refrain from carrying firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, and from storing any such weapons or explosives on or within the District Property.
- 1.2.7 No Smoking. In accordance with the District's general policy, smoking shall not be permitted on the District Property at any time by any person. Community Garden Users shall additionally comply with all applicable laws and ordinances regarding smoking in the vicinity of the District Property.
- 1.2.8 No Hazardous or Toxic Substances. The use of hazardous or toxic substances by the Community Garden Users is strictly prohibited, as more fully described by and pursuant to the terms herein this Agreement.
- 1.2.9 No Dumping. Dumping of any kind on or at the District Property is strictly prohibited. Urban Tilth shall be responsible for and ensure that no dumping is allowed, permitted, or tolerated on or at the Community Garden in compliance with California Penal Code section 374.3 and all other applicable laws and regulations.
- 1.2.10 No Animals/Livestock. Animals and livestock of any kind shall not be permitted, housed, raised, stored, or otherwise kept on the District Property or the Community Garden at any time. Notwithstanding the foregoing, Urban Tilth may house, raise, store or otherwise keep no more than five (5) chickens and such chickens as may be necessary to conduct an annual chick hatching as may be part of Urban Tilth's program conducted on the School Site. No roosters shall be permitted, housed, raised, stored or otherwise kept on the District Property or the Community Garden at any time. In the event the District, in its sole discretion, determines that the permitted animals are unduly disrupting the District's programs or activities on the School Site, the District may provide written notice to Urban Tilth that such animals be removed upon such notice as determined by the

District to be reasonably necessary. In the event the animals are not so removed as required by the District, this Agreement may be terminated.

1.2.11 **Use of Community Garden Items.** The Parties hereby acknowledge, understand, and agree that the production, consumption, delivery, gift, donation, storing, or any other use whatsoever in any manner of any and all items that are the product or result of the Community Garden Users' use of the District Property shall be at the sole risk and responsibility of Urban Tilth and the Community Garden Users, and District shall in no way be liable or responsible therefor.

1.2.12 **Notice of Rules.** Urban Tilth shall post and provide reasonable notice at the Community Garden of the rules and requirements of the Community Garden Users as described hereunder the terms of this Agreement.

1.3 **Term.** Urban Tilth's right to enter the District Property to access the Community Garden pursuant to this Agreement shall commence on the Effective Date and expire on November 1, 2020 ("Term"). The Parties may agree to extend the Term of this Agreement upon prior written agreement. District shall have the option to terminate this Agreement upon thirty (30) days' notification to Urban Tilth. The District shall also have the option to suspend or terminate Urban Tilth's right to access and use the Community Garden upon twenty-four (24) hours' notification to Urban Tilth.

1.4 **Utilities; Water; Portable Toilet.** The Parties acknowledge and agree that Urban Tilth shall be responsible for providing, supplying, and paying for any and all utilities, including but not limited to water, for and to the Community Garden. District shall in no way be responsible or liable for providing, supplying, or paying for any utilities for or to the Community Garden. Urban Tilth shall be responsible for complying with any metering requirements mandated by any public utility provider. Urban Tilth acknowledges and agrees that, due to issues and concerns related to water conservation in the State and community, Urban Tilth shall not permit or tolerate any needless use or wasting of water and shall only use those resources necessary to maintain and operate the Community Garden. Urban Tilth shall be solely responsible for any penalty, fine or charge that may be assessed by the local water district, utility or State, arising out of or resulting from Urban Tilth's use of water at the District Property.

1.4.1 Urban Tilth shall pay the District \$0.7056/square foot for the utilities that are furnished to the Community Garden by the District. Based on the square footage of the Community Garden, the monthly utility charge is \$18,602 or \$1550 per month ("Pro Rata Share").

1.4.2 The Pro Rata Share for the first month shall be due upon the Effective Date. Thereafter, the Pro Rata Share shall be due on the first of each month until the expiration or termination of the Agreement.

1.4.3 Urban Tilth shall promptly pay to District the Pro Rata Share on the first day of each month in advance during the Term of the Agreement, without deduction, setoff, prior notice or demand.

1.4.4 Urban Tilth acknowledges that late payment by Urban Tilth to District of the Pro Rata Share and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Pro Rata Share or any other sum due from Urban Tilth by 4:00 p.m. within ten (10) days after the Pro Rata Share is due, Urban Tilth shall pay to District, as additional sums due, a late charge equal to five

percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that any late charge assessed to Urban Tilth shall represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Urban Tilth. Acceptance of any late sums by District shall in no event constitute a waiver of Urban Tilth's default with respect to any overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

1.4.5 **Portable Toilet Service.** The Parties acknowledge and agree that Urban Tilth may maintain one portable toilet located on the Community Garden Site. Urban Tilth shall be solely responsible for paying for all costs associated with the portable toilet. Urban Tilth shall ensure that the portable toilet is serviced on a regular basis to avoid any health or unsanitary conditions.

1.5 **Additions and Improvements.** Urban Tilth shall not construct or cause to be constructed on the District Property or the Community Garden any additions or improvements without express prior written consent from District.

1.5.1 If additions or improvements are approved by District pursuant to this Section, Urban Tilth shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site(s), grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction of any additions or improvements and shall provide District with evidence of approval by all applicable governmental agencies. All contractors and subcontractors of Urban Tilth, if any, shall be duly licensed in the State of California. Urban Tilth shall be solely responsible for maintaining any additions or improvements installed on the Community Garden during the term of this Agreement, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

1.5.2 Any and all additions or improvements constructed or caused to be constructed on the District Property or the Community Garden by Urban Tilth ("Improvements") prior to or after the Effective Date shall be maintained at the sole expense of Urban Tilth. Improvements shall be properly maintained during the Term. Failure to maintain Improvements shall be a basis for terminating this Agreement.

1.5.2.1 The Parties agree and acknowledge that the Improvements set forth in Exhibit "B" were constructed on the District Property prior to the Effective Date and may remain on the School Site so long as maintained in accordance with the requirements herein.

1.6 **Liens.** Urban Tilth shall promptly pay for all materials supplied and work done with respect to the Community Garden or Urban Tilth's Improvements so as to ensure that no lien is recorded against any portion of the District Property against the District's or Urban Tilth's interest therein. If a lien is so recorded, the Urban Tilth shall discharge it promptly by payment or bonding. If any such lien against the District Property or Urban Tilth's interest therein is recorded and not discharged by Urban Tilth as above required within thirty (30) days following recording, the District shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately by Urban Tilth to the District. The District and Urban Tilth expressly agree and acknowledge that no interest of District in the District Property or any improvement placed on the District Property shall be subject to any lien for improvements made by Urban Tilth in or for the District Property or the Community Garden, and the District shall not be liable for any lien for any improvements made by Urban Tilth, such liability being expressly prohibited by the terms

of this Agreement. Urban Tilth waives any lien rights it may have concerning the District Property.

- 1.7 **Fingerprinting and Criminal Background Verification.** Unless District determines that the Urban Tilth, its employees, agents, subcontractors, invitees, and/or volunteers will have only limited and/or no contact with District students, Urban Tilth shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Safety Code, § 1500 et seq.). Urban Tilth shall provide written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of employment or participation in any activity by Urban Tilth upon the School Site.
- 1.8 **Indemnification.** To the furthest extent permitted by California law, Urban Tilth shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, and trustees ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury of any kind, in law or equity, including without limitation the payment of all consequential damages ("damage"), arising out of, pertaining to or relating to, in whole or in part, the Urban Tilth's use of the District Property, the Improvements, and the establishment, maintenance and operation of the Community Garden, or Urban Tilth's volunteers, employees, guests, agents, members, or invitees', activities authorized in this Agreement. Urban Tilth agrees also to either reimburse District for any damage or destruction to the District Property, roads, fences, access gate, or other property located on the District Property, occurring by reason of the exercise of rights granted herein, or to replace or restore said property to its preexisting condition.
- 1.9 **Insurance.** Urban Tilth shall secure and maintain, and shall cause any of its contractors to secure and maintain, in full force and effect, commercial general liability insurance or participation in a self-insurance program, including coverage for owned and non-owned automobiles and other insurance necessary to protect the public, with limits of liability of not less than Two Million Dollars (\$2,000,000.00) combined single limit bodily injury and property damage. If and as applicable, Urban Tilth shall secure and maintain, in full force and effect during the term of this permit, workers' compensation insurance, at statutory minimums, including employers' liability coverage with limits not less than Two Million Dollars (\$2,000,000.00) for each accident, Two Million Dollars (\$2,000,000.00) as the aggregate policy limit, and Two Million Dollars (\$2,000,000.00) as the policy limit for each employee. Policies shall be issued by an insurance company or companies that are rated "A-VII" or higher by A.M. Best's key rating guide, and are approved to do business in the State of California. A certificate evidencing the insurance requirements of this section shall be provided prior to Urban Tilth's use of the Community Garden or any entrance on District Property pursuant to the right of entry provided herein. The insurance policies shall include, or be endorsed to include "West Contra Costa Unified School District" as an additional named insured. All endorsements shall waive any right to subrogation against any of the named additional insureds.
- 1.10 **Hazardous Substances.** Urban Tilth shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the District Property by any Community Garden Users except for limited quantities of standard supplies related to the Urban Tilth's purpose (which shall be used in strict compliance with Environmental Laws). Urban Tilth shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCBs, and any

material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

- 1.10.1 **Notice.** Urban Tilth shall promptly notify District in writing if Urban Tilth has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the District Property or the Community Garden in violation of Environmental Laws. Urban Tilth shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Community Garden or compliance with Environmental Laws. Urban Tilth shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Urban Tilth to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and/or any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Urban Tilth shall promptly notify District of any liens threatened or attached against the District Property pursuant to any Environmental Laws.
- 1.11 **Signage.** Urban Tilth may place temporary, nonpermanent signs upon the District Property to identify Urban Tilth's use of a portion of the District Property as a community garden. All signs used by Urban Tilth shall be approved by the District prior to placement, and shall be immediately removed following the expiration or earlier termination of this Agreement or upon request by District.
- 1.12 **Public Complaints.** If any person, group, entity, or association complains, orally or in writing, to District about the Community Garden, or Urban Tilth's use thereof, it shall be grounds, at the District's sole discretion, for termination of this Agreement. If Urban Tilth receives any complaints about the Community Garden, or Urban Tilth's use thereof, Urban Tilth shall give written notice of each complaint received to District within seven (7) days of Urban Tilth's receipt of the complaint. Urban Tilth shall reasonably cooperate with District on action(s), if any, to be taken to alleviate the complaint.
- 1.13 **Due Diligence.** Urban Tilth shall perform its own due diligence, at its sole cost, to satisfy itself as to the condition and feasibility of the District Property for its anticipated use.
- 1.14 **Notice of Damage, Injury, Accident, or Claims.** Urban Tilth shall, as soon as reasonably possible, notify the District of any damage, injury, accident or claim that occurs on the District Property or the Community Garden at any time during Urban Tilth's use. In no event shall Urban Tilth's notice to District be more than twenty-four (24) hours after the event of damage, injury, accident, or claim. Notice shall be provided in writing and via telephonic notification as set forth in the Notice section herein.
- 1.15 At the expiration of the Term or the earlier termination of this Agreement, Urban Tilth shall surrender possession of the Community Garden and deliver the same to District in good order, condition, and state of repair, ordinary wear and tear excepted.

## 2. MISCELLANEOUS

- 2.1 **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**DISTRICT**

West Contra Costa Unified School District  
1400 Marina Way South  
Richmond, CA 94804  
ATTN: Executive Director of Maintenance and Operations  
Facsimile: (510) 231-2406  
Telephone: (510) 307-4543

**URBAN TILTH**

Urban Tilth  
323 Brookside Drive  
Richmond, CA 94801  
Facsimile: 510-232-0911  
Telephone: 510-232-0911  
E-mail: admin@urbantilth.org

- 2.2 Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.
- 2.3 **Amendment.** No addition to or modification of the terms of this Agreement shall be valid unless made in a written amendment to this Agreement, which is formally approved and signed by each Party to this Agreement.
- 2.4 **Assignment.** Urban Tilth may not assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without the prior written consent of the District.
- 2.5 **Waiver.** The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any provision of this Agreement.
- 2.6 **Applicable Law.** The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall in all respects be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. Venue for any action arising from this agreement shall be in Contra Costa County, California.
- 2.7 **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.
- 2.8 **Captions, Number, and Gender.** The captions appearing at the commencement of the paragraphs, subparagraphs and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the section, paragraph, or subparagraph at the head of which it appears the section, paragraph, or subparagraph and not the caption shall control and govern the construction of this Agreement. In this Agreement, the masculine,



feminine, or neutral gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

- 2.9 **Facsimile Signatures.** Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by both Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.
- 2.10 **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties hereto, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against any of the Parties hereto.
- 2.11 **Cooperation With Other Occupants of the School Site.** It is understood and recognized by Urban Tilth that the School Site will be used by third parties and the District, and Urban Tilth shall cooperate with the other parties in reaching amicable arrangements concerning the School Site's use.
- 2.12 **Mutual Drafting:** This Agreement shall be construed as if drafted mutually by the Parties through their respective counsel and therefore shall not be construed against either Party.
- 2.13 **Force Majeure.** Neither Party will be responsible for performance under this Agreement to the extent performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions, or terrorism, whether foreseeable or unforeseeable.

IN WITNESS WHEREOF, this Agreement has been executed as of the date last written below.

Dated: \_\_\_\_\_, 2017

West Contra Costa Unified School District

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Dated: OCTOBER 5<sup>TH</sup>, 2017

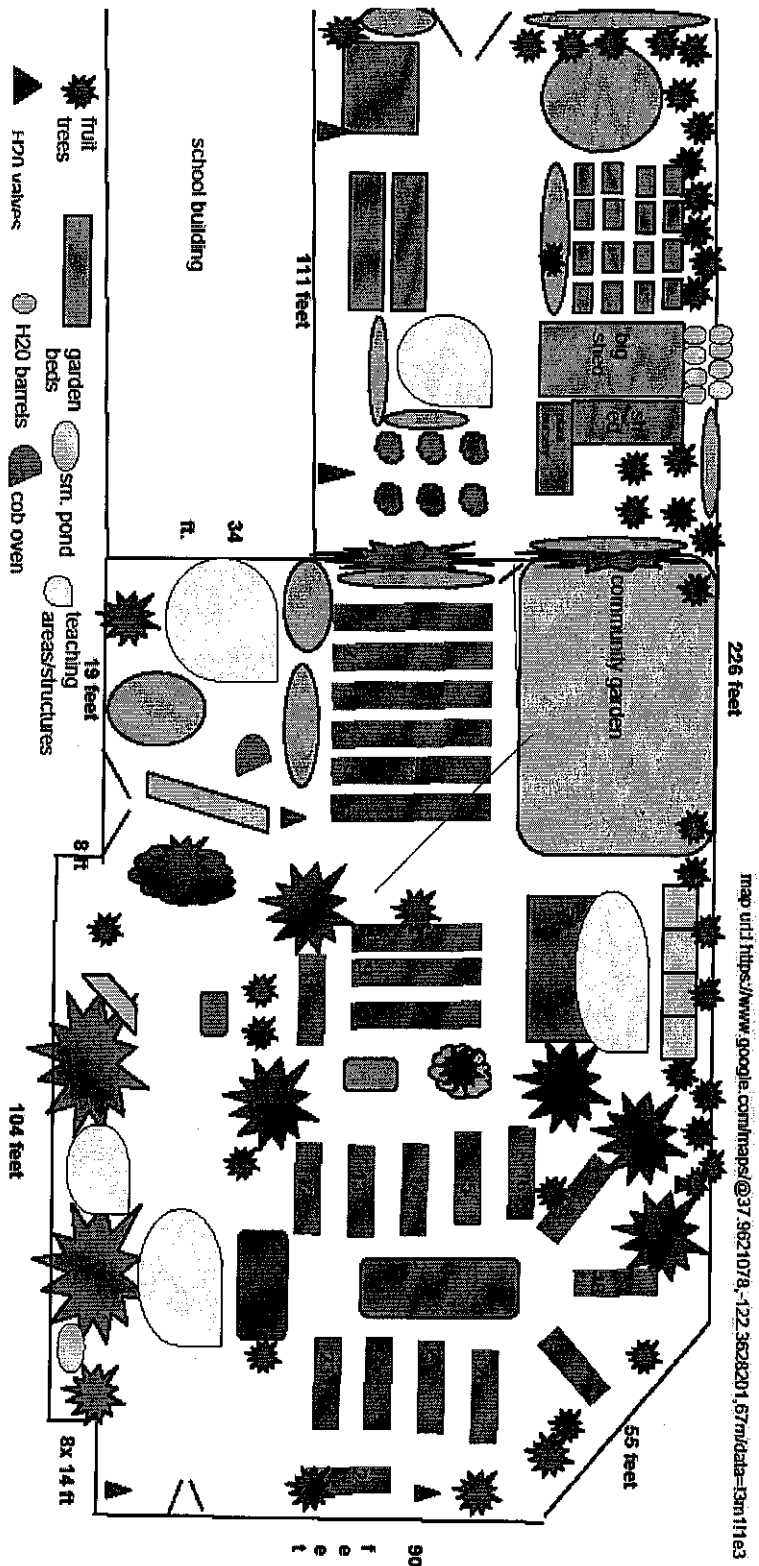
Urban Tilth

By: 

Print Name: DORIA ROBINS

Print Title: EXECUTIVE DIRECTOR

**EXHIBIT "A"**  
**Community Garden**  
**Verde Elementary School Site**



## **Exhibit A.**

### **Joint Use Agreement for Verde Partnership Garden**

**In connection with its use of the District Property, Urban Tilth provides [describe educational program provided] to the District pupils located on the School Site.**

Verde Partnership Garden is a school and community garden located in North Richmond, CA, dedicated to serving Verde Elementary School students, parents, and community members. This is one of Urban Tilth's oldest garden as it has been around for over 20 years, led by long time garden mentor Bienvenida Meza.

The Verde Partnership Garden is an outdoor laboratory that brings classroom learning to life, educating program participants/students in subjects ranging from healthy cooking, nutrition, literacy, math, and science to conflict resolution and leadership development. The garden serves as a local food hub, cultivating affordable healthy food to Verde School students and the North Richmond community. Students visit the garden in droves everyday during recess and lunch, where students are offered a safe space to hang out, as well as the opportunity to engage in meaningful educational classes and activities.

Providing a connective hub and safe haven for the North Richmond community, Verde Partnership Garden grows the belief that students and community members can make positive changes in their lives.

**EXHIBIT "B"**  
**Community Garden**  
**Existing Improvements**

- 32 Crop Rows
- 1 Storage Container
- 1 Community Garden
- 5 classroom/gathering spaces
- 1 Greenhouse
- 10 Water Catchment Barrels
- 1 Shade House