

**REIMBURSEMENT AGREEMENT
GRANT-FUNDED IMPROVEMENTS IN NORTH RICHMOND**

This Agreement is entered into effective March 1, 2022, by and between the County of Contra Costa, a political subdivision of the State of California ("County"), and Urban Tilth, a nonprofit public benefit corporation organized and existing under the laws of the State of California ("Urban Tilth").

RECITALS

- A. Urban Tilth is a nonprofit public benefit corporation headquartered in Richmond, California, that owns the North Richmond Farm, consisting of 3.09 acres located adjacent to County's Road ROW (right-of-way).
- B. County owns and maintains a public road system in the North Richmond area, including Fred Jackson Way from Brookside Drive to San Pablo Creek ("County's Road ROW").
- C. County has received \$884,000 in grant funding from the California State Coastal Conservancy ("SCC") for the construction of a three-component project, including Project Component 2 (the "Project"), consisting of the installation of sidewalk, bike lane, and stormwater infrastructure (linear raingardens and bioswales) and the planting of street trees (i.e., six 15-gallon fruitless olive, *Olea Europa* "Swan Hill") within County's Road ROW along Fred Jackson Way from Brookside Drive to San Pablo Creek and within the adjacent 3.09-acre parcel owned by Urban Tilth ("North Richmond Farm").
- D. Per Grant Agreement No. 19-111 between SCC and County, Urban Tilth has agreed to design and construct the Project within County's Road ROW and the adjacent North Richmond Farm. County wishes to allow Urban Tilth to perform the design and construction work on County's Road ROW and to receive the grant funding for design and construction costs of the Project as a pass-through from SCC to County to Urban Tilth.
- E. Pursuant to the California Environmental Quality Act (CEQA), County's Board of Supervisors has previously adopted Mitigated Negative Declarations for the Project on November 13, 2018 and July 23, 2019 and has approved the Project.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. Term. The term of this Agreement is from the date listed above until December 31, 2042.
- 2. Improvements. Urban Tilth agrees to design and construct the Project on County's Road ROW and the adjacent North Richmond Farm owned by Urban Tilth, as described in Exhibit "A" and as shown in Exhibit "B," in accordance with: (a) improvement plans and specifications entitled Urban Tilth Rain Garden Contra Costa County, Fred Jackson Way -- Permit #TP16-00036, 100% Review Set, prepared by Matt Thomas of the Restoration Design Group, a licensed engineer hired by Urban Tilth, reviewed by and on file with County; (b) the Contra Costa County Public Works

Department Standard Plans and Specifications; (c) the Caltrans Standard Plans; and (d) the State of California (Caltrans) Standard Specifications (May 2015 or later).

Urban Tilth shall complete the Project in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the Contra Costa County Public Works Department Standard Plans and Specifications, the Caltrans Standard Plans, and the State of California (Caltrans) Standard Specifications (May 2015 or later). Where there is a conflict between any of these and the improvement plans and specifications on file with County, the stricter requirements shall govern.

3. Permits and Approval. Urban Tilth shall be responsible for obtaining all permits and approvals from any permitting authorities, including County, necessary to complete the Project. Urban Tilth shall strictly comply with all terms and conditions of the Encroachment Permit for Use of County Right of Way to be issued by County prior to start of construction, and shall include a provision in the construction contract requiring the contractor to strictly comply with that and all other permits and approvals.
4. Improvement Security. Before beginning construction of the Project, Urban Tilth shall require its contractor to provide as security:
 - A. Performance and Guarantee: Security in the amount of 100% of the cost of the construction contract entered into by Urban Tilth and its contractor. Such security shall consist of a corporate surety bond, in a form acceptable to County, issued by a surety admitted in California and naming County as co-obligee on the bond.

With this security, Urban Tilth's contractor guarantees performance under this Agreement and acceptance against any defective materials or any unsatisfactory performance.
 - B. Payment: Security in the amount of 100% of the cost of the construction contract entered into by Urban Tilth and its contractor. Such security shall consist of a corporate surety bond, in a form acceptable to County, issued by a surety admitted in California and naming County as co-obligee on the bond.

With this security, Urban Tilth's contractor guarantees payment to subcontractors, material suppliers, and to persons renting equipment or furnishing labor or materials to them or the contractor.
5. Guarantee and Warranty of Project Work. Urban Tilth shall require its contractor to guarantee in writing that the Project work shall be free from defects in materials or workmanship and shall perform satisfactorily for a period of one year from and after the written acceptance of Project completion by County's Public Works Director or his designee. As part of that guarantee, which shall be in a form acceptable to County, Urban Tilth shall require its contractor to promptly correct, repair, or replace, at its sole expense, any defects in the Project work and to periodically maintain and replace the trees, landscaping, and plantings for a one-year establishment period consistent with the procedures of Section 14 below.
6. Improvement Plan Warranty. Urban Tilth warrants that the plans and specifications for the Project are adequate to accomplish the Project as promised in Section 2. If, at any time before County's written acceptance of Project completion or during the one-year guarantee

period, the improvement plans or specifications prove to be inadequate in any respect, Urban Tilth shall make whatever changes are necessary to accomplish the Project work as promised.

7. No Waiver. Inspection of the Project work and/or materials, or approval of Project work and/or materials, or statement by any officer, agent, or employee of County indicating that the Project work or any part of it complies with the requirements of this Agreement, or acceptance of the whole or any part of the Project work and/or materials, or payments for the Project work and/or materials, or any combination or all of these acts, shall not relieve Urban Tilth of its obligation to fulfill this Agreement as prescribed. Nor shall County be estopped by any such acts from bringing any action for damages arising from the failure to comply with any of the terms and conditions of this Agreement. For defective work and/or materials and/or inadequate plans, this section is only applicable to items for which County gives written notice to Urban Tilth within one year after County's written acceptance of Project completion as set forth in Sections 5 and 6 (i.e., within the one-year guarantee period).
8. Hold Harmless and Indemnification.
 - A. In its construction and maintenance contracts, Urban Tilth shall include the following indemnification provisions:
 - (1) The contractor promises to and shall defend, indemnify, save, and hold harmless the indemnitees from the liabilities as defined in this section.
 - (2) The indemnitees benefitted and protected by this promise are County, Urban Tilth, SCC, State of California, and their governing bodies, officers, agents, employees, and volunteers.
 - (3) The liabilities protected against are any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses, or liabilities arising out of or in connection with the actions defined below for personal injury, sickness, disease, emotional injury, death, property damage (including loss of use), trespass, nuisance, inverse condemnation, patent infringement, or any combination of these, regardless of whether or not such liability, claim, or damage was foreseeable at any time before County approved the Project design or accepted the improvements as completed, and including the defense of any suit(s) or action(s) at law or equity concerning these liabilities.
 - (4) The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this contract and attributable to the contractor, subcontractor(s), supplier(s), trucker(s), anyone for whose acts the contractor may be liable, or any officer(s), agent(s), or employee(s) of one or more of them.
 - (5) The promise and agreement in this section is not conditioned or dependent on whether or not any indemnitee has prepared, supplied, or approved any plan(s), drawing(s), specification(s), or special provision(s) in connection with this work or has insurance or other indemnification covering any of these matters.
 - (6) Except as prohibited by law, the contractor's obligations under this section shall exist regardless of the existence or degree of fault of County or any

other indemnitee.

(7) The contractor and its insurance carrier(s) shall respond within 15 days to the tender of any claim for defense and indemnity by any indemnitee, unless this time has been extended by the indemnitee.

B. To the extent not covered by the defense and indemnification provided by the contractor, Urban Tilth shall defend, indemnify, save, and hold harmless County, SCC, State of California, and their officers, agents, employees, and volunteers the same as required of the contractor under Subsection A. To the extent not covered by the defense and indemnification provided by the contractor, Urban Tilth's obligations shall also include any negligent act or omission or willful misconduct attributable to Urban Tilth, its officers, agents, or employees.

9. Costs and Utility Relocation. Except as provided otherwise in Section 10.D, Urban Tilth shall pay when due, all the costs of the Project, including permits and inspections. To the extent the Project work is located within County's Road ROW, County shall, under applicable franchise agreements, state, and federal law, request relocation by the respective utilities of existing utility facilities located in County's Road ROW that would conflict with the Project improvements.

10. Reimbursement to Urban Tilth.

A. County has received \$884,000 in grant funding ("Funding") for the construction of a three-component project, including Project Component 2 (the "Project"), consisting of the installation of sidewalk, bike lane, and stormwater infrastructure (linear raingardens and bioswales) and the planting of street trees (i.e., i.e., six 15-gallon fruitless olive, *Olea Europa* "Swan Hill") within County's Road ROW and the adjacent North Richmond Farm owned by Urban Tilth. County agrees to reimburse Urban Tilth an amount up to and not exceeding \$422,000 for all eligible costs, as specified below, of completing the Project (i.e., Component 2, as described in Recital C above).

Eligible Costs:

- (1) Construction work performed by Urban Tilth's contractor, estimated at \$571,600 under its construction contract with Urban Tilth. Such reimbursement shall be limited to costs for construction of the improvements shown on the Project plans, generally consisting of stormwater infrastructure (linear raingardens, bioswales, and connections to County's storm drainage system), curb and gutter, sidewalk, driveway, curb ramp, bike lane, plantings, and irrigation system, which costs shall be itemized or billed separately on bills prepared and submitted by Urban Tilth's contractor. Propagation of and installation by Urban Tilth staff of plants shown on the plans shall also be an eligible cost, being also part of the cost of construction and included in the construction cost estimate above.
- (2) Fees paid for construction management services and specialized inspection or testing services contracted by Urban Tilth, estimated at \$50,000, and which is included in the \$571,600 estimate in the preceding paragraph (Subsection A(1)).
- (3) Payment to Urban Tilth's contractor for any field orders or change orders approved by County in writing in advance, as provided in Section 12.

- (4) County's maximum reimbursement obligation for items #1 through #3 shall be limited to \$422,000, unless Urban Tilth obtains from County advance, written approval of a higher amount.
- B. During the construction work, Urban Tilth shall submit to County for reimbursement invoices detailing eligible Project costs, less 5% for contract retention, in a form and detail approved by County. For Urban Tilth staff charges, the invoices shall describe the work performed and shall list classifications, dates, hours, and rates, which shall be consistent with the rates set forth in Exhibit "C" (Schedule of Fees) attached to this Agreement. County will review the invoices and submit a reimbursement payment to Urban Tilth within 30 days of receipt of each invoice.
- C. Within 60 days of County's written acceptance of Project completion, Urban Tilth shall submit the following items to County: (a) a detailed final report listing all Project costs; (2) as-built drawings in ACAD reviewed and stamped by a civil engineer licensed in the State of California; (3) all contractor and manufacturers' warranties pertaining to the Project work; and (4) a final invoice for reimbursement of any remaining eligible Project costs. County will review the final invoice and submit a reimbursement payment to Urban Tilth within 30 days of receipt of the final invoice, report, as-built drawings, and warranties. The final reimbursement payment will include all withheld retention, unless stop notices, bond claims, or other claims have been filed or asserted against the Project, in which case County will continue to hold retention as necessary to cover such claims.
- D. County's obligation to reimburse Urban Tilth for eligible Project costs shall be limited to a maximum of \$422,000 and shall be subject to any legal requirements or restrictions, as well as to the terms and conditions of this Agreement. Moreover, no reimbursement shall be payable to Urban Tilth unless and until: (1) Urban Tilth has competitively bid the Project work and selected a bidder for award of contract as described in Section 13 below, County and SCC have approved in writing the selected bidder, and Urban Tilth has entered into a contract with the selected bidder for construction of the Project work; (2) Urban Tilth or its contractor has obtained an Encroachment Permit for Use of County Right of Way from County and any other necessary permits from permitting agencies to complete the Project; (3) Urban Tilth has submitted the invoices specified in Subsection B; and (4) Urban Tilth has submitted and received County approval of an Operations and Maintenance Plan.
- E. In addition to the reimbursement described in this Section, County shall contribute to the Project certain staff time, consisting of inspection of the Project work, and shall not require compensation from Urban Tilth or its contractor for such staff time.
11. Completion Deadline. Time is of the essence in this Agreement. Urban Tilth shall complete the Project no later than December 31, 2022 or such other date agreed to by SCC and County. If Urban Tilth fails to complete the Project by that date, and SCC has not agreed in writing to an extension, County may proceed to complete the Project. In that event, Urban Tilth shall pay all costs of completing the Project, subject to a credit for already-incurred Project costs that are eligible for reimbursement under Section 10.
12. Changes In Project Work. The plans and specifications for the Project work shall be in accordance with the current Contra Costa County Public Works Department "Standard Plans," the Caltrans Standard Plans, and the State of California (Caltrans) Standard

Specifications (May 2015). Before soliciting construction bids for the Project work, Urban Tilth shall first obtain County's written approval of the plans and specifications. Once the plans and specifications have been approved by County, any subsequent field orders or change orders which affect the original design, the design intent, or the Project costs shall require County's advance approval in writing. Once this Agreement has been executed, Urban Tilth shall not change the engineer(s) or construction manager(s) without first obtaining County's written consent. In addition, once the contract for the Project has been awarded, Urban Tilth shall not allow the substitution of the general contractor and subcontractors except with County's prior, written consent.

13. Construction Bids. Before proceeding with construction of the Project, Urban Tilth shall first bid the Project work pursuant to an open, competitive bidding process using bid documents approved in writing by County and SCC. Following Urban Tilth's receipt and evaluation of the bids, Urban Tilth shall forward the bids to County and SCC for review and written approval of the bid selected for award, after which Urban Tilth shall enter into a contract for construction of the Project work. County's review of the bids and approval/disapproval of the bid selected for award shall be completed no later than five working days after the bids are forwarded by Urban Tilth and received by County.
14. Ownership and Maintenance of Project Improvement. Upon written acceptance of Project completion by County's Public Works Director or his designee, County shall own the Project improvements located within County's Road ROW and shall maintain the same, except for the linear raingardens, bioswales, and landscaping improvements (i.e., trees, plantings, and irrigation system located therein), which shall be maintained by Urban Tilth or its contractor or its successors and assigns throughout the period of Grant Agreement No. 19-111 between SCC and County (i.e., until December 31, 2042). Should the required maintenance within County's Road ROW not be performed by Urban Tilth or its contractor or its successors and assigns, the same will be performed by County as necessary to comply with the Grant Agreement. Urban Tilth shall own the Project improvements located within the adjacent North Richmond Farm owned by Urban Tilth and Urban Tilth or its successors and assigns shall maintain the same pursuant to a perpetual, enforceable obligation running with the land for the owner to maintain the Project improvements. Urban Tilth shall execute all documents necessary to establish such obligation. The following procedures shall apply to Urban Tilth's maintenance of landscaping improvements located with County's Road ROW:
 - A. Maintenance of the bioswale shall include landscape maintenance to assure viability and growth control of vegetation, so it does not expand into the shoulder of Fred Jackson Way nor block sight distance for users of the roadway.
 - B. Maintenance shall include regular removal of debris, trash, and sediment and shall meet the green infrastructure maintenance guidelines set forth in the Operation & Maintenance Plan to be prepared for these improvements by Urban Tilth, subject to County's written approval.
 - C. Whenever possible, maintenance shall be conducted from the easterly side of the bioswale (on the adjacent pedestrian path).
 - D. If maintenance is required from the west side (road side) of the bioswale, Urban Tilth or its contractor shall first obtain from County a permit for a partial lane closure, including traffic control to reduce the potential danger to maintenance personnel from

adjacent vehicular traffic on Fred Jackson Way.

15. Insurance.

- A. Urban Tilth shall ensure that the construction contract and all maintenance contracts for the Project work includes provisions requiring the contractor to provide: (1) Commercial General Liability Insurance (ISO Form #CG 00 01 or comparable), including coverage for blanket contractual (or contractual liability), broad form property damage, operations, products, and completed operations, with a minimum combined single-limit coverage of \$2 million for all damages due to bodily injury, personal injury, sickness or disease, death to any person, and damage to property, including the loss of use thereof, arising out of each accident or occurrence; (2) Automobile Liability Insurance (ISO Form #CA 0001, Code 1 (any auto)), including coverage for owned and non-owned vehicles, with coverage of \$1 million per accident for bodily injury, death, and property damage; (3) Workers' Compensation Insurance pursuant to state law and Employer's Liability Insurance of not less than \$1 million per accident for bodily injury or disease; and (4) endorsements, certificate(s) of insurance, or other evidence of insurance satisfactory to County listing the required coverages and naming County, Urban Tilth, SCC, State of California, and their governing bodies, officers, agents, employees, and volunteers as additional insureds, and requiring 30 days' written notice to Urban Tilth, County and SCC of policy lapse or cancellation or, in case of cancellation due to nonpayment, 10 days' written notice to Urban Tilth, County and SCC.
- B. In addition, Urban Tilth shall provide the same insurance required under Subsection A above for itself, its officers, and employees.
- C. Before allowing the contractor to begin work constructing or maintaining the Project, Urban Tilth shall submit to County the evidence of insurance required under Subsections A and B and shall obtain County's approval to begin work.
- D. The insurance required under Subsections A and B above shall provide:
 - (1) The policies shall include a waiver of any right of subrogation against County, SCC, State of California, their officers, agents, employees, and volunteers by virtue of payment of any loss under such policies.
 - (2) For any claims related to the Project, the contractor's and Urban Tilth's insurance coverage shall be primary insurance as respects County, SCC, State of California, their officers, agents, employees, and volunteers and not excess to any insurance or self-insurance of County, SCC, or State of California.
 - (3) The limits of additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required in Subsections A and B above.
- E. The insurance required under Subsections A and B above shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better.

16. Prevailing Wages. Pursuant to Labor Code Section 1773, the Director of the Department

of Industrial Relations has ascertained the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which the Project work is to be performed, for each craft, classification, or type of worker needed to execute the Project work. Urban Tilth shall ensure that the construction contract for the Project includes provisions requiring the contractor and all subcontractors to pay at least these prevailing wage rates to all persons on the Project work and to fully comply with a labor compliance program pursuant to Labor Code Sections 1771.5 and 1771.8.

17. Grant Compliance. During construction of the Project work and during Urban Tilth's maintenance of Project improvements pursuant to Section 14 above, Urban Tilth is solely responsible for ensuring compliance with, and shall comply with, all obligations of County as Grantee that are set forth in Grant Agreement No. 19-111 between SCC and County. Urban Tilth will promptly provide County with copies of all reports submitted by Urban Tilth to SCC under the Grant Agreement.
18. Assignment. This Agreement may not be assigned, assumed, pledged, or hypothecated without the advance, written consent of the other party. Any attempt to circumvent this requirement shall be void and unenforceable.
19. Remedies for Breach. If either party breaches this Agreement, the non-breaching party may enforce the Agreement according to its terms and shall be entitled to all legal and equitable remedies.
20. No Third Party Beneficiaries. This Agreement is not intended to confer upon any person other than the parties any rights or remedies thereunder and no person or entity other than the parties shall have standing to enforce this Agreement. In addition, this Agreement is not intended to establish any standards or duties in favor of third parties different from those, if any, normally imposed by law.
21. Entire Agreement. This Agreement contains the entire understanding of the parties as to the subjects covered by this Agreement. Any alleged promise or representation by either party shall be unenforceable, unless it is set forth in this Agreement or in another written agreement or permit signed by the parties.
22. Amendment. This Agreement may be amended in writing at any time with the approval of both parties. For administrative amendments that do not increase the reimbursement limit to TWP specified in Section 10.D above, the approval and signatures of County's Public Works Director or his designee and TWP's Executive Director shall be sufficient to bind the parties.

CONTRA COSTA COUNTY, a political
subdivision of the State of California

URBAN TILTH, a California nonprofit public
benefit corporation

By: _____
Brian Balbas, Public Works Director

By: _____
Name: _____
Title: _____

By: _____

Name: _____
Title: _____

APPROVED AS TO FORM: MARY ANN
MASON, County Counsel

APPROVED AS TO FORM:

By: _____
David F. Schmidt
Deputy County Counsel

By: _____
[insert name]
Legal Counsel

EXHIBIT "A"

Legal Description – North Richmond Farm

EXHIBIT "A"

Real property in the unincorporated area of Contra Costa County, State of California, being a portion of Lot F as shown on the Map of the Sampson Tams Ranch, filed July 1, 1907 in Book 1 of Maps at page 7, and being a portion of the parcel described in the deed to Contra Costa County recorded February 8, 2013 as document No. 2013-0034989 Official Records of said County described as follows:

Commencing at a standard street monument at the intersection of Fred Jackson Way (formerly Third Street) and Brookside Drive as said monument is shown on the Record of Survey map (No. 3518) filed April 3, 2012 in book 145 of Licensed Surveyors Maps at page 34; thence along the centerline of Fred Jackson Way, north $1^{\circ}10'23''$ east 29.98 feet; thence south $88^{\circ}49'37''$ east 40.00 feet to the west line of said Lot F (1 Maps 7), being the Point of Beginning; thence from said Point of Beginning north $1^{\circ}10'23''$ east, along said west line, 662.23 feet to a point on the southerly line of Parcel 1488 as shown on drawing number ED-750.3 on file in the Contra Costa County Public Works Department Records section; thence along said southerly line north $90^{\circ}00'00''$ east 0.73 feet to a tangent curve concave to the north; thence continuing easterly along said southerly line and along said curve, having a radius of 800.00 feet, through a central angle of $14^{\circ}27'54''$, an arc length of 201.97 feet to a point on the westerly line of the Nabeta Nursery Inc. property as described in the deed recorded December 6, 1988 in Book 14756 of Official Records at page 900; thence southerly along said westerly line south $1^{\circ}10'23''$ west, 691.81 feet to a point lying 10.00 feet north of the southerly line of said Lot F; thence westerly, parallel with said southerly line, north $88^{\circ}47'34''$ west 200.00 feet to the Point of Beginning.

Containing an area of 134,539 square feet of land (3.09 acres), more or less.

Bearings are based on the California Coordinate System of 1927 (CCS27), Zone III. Distances given are ground distances.

Exhibit "B" (Drawing No. MA 256-2021) is attached hereto and by this reference made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: James A. Stein
Licensed Land Surveyor
Contra Costa County Public Works

Date: 8/17/21



EXHIBIT "B"

Plat – County Road ROW & North Richmond Farm

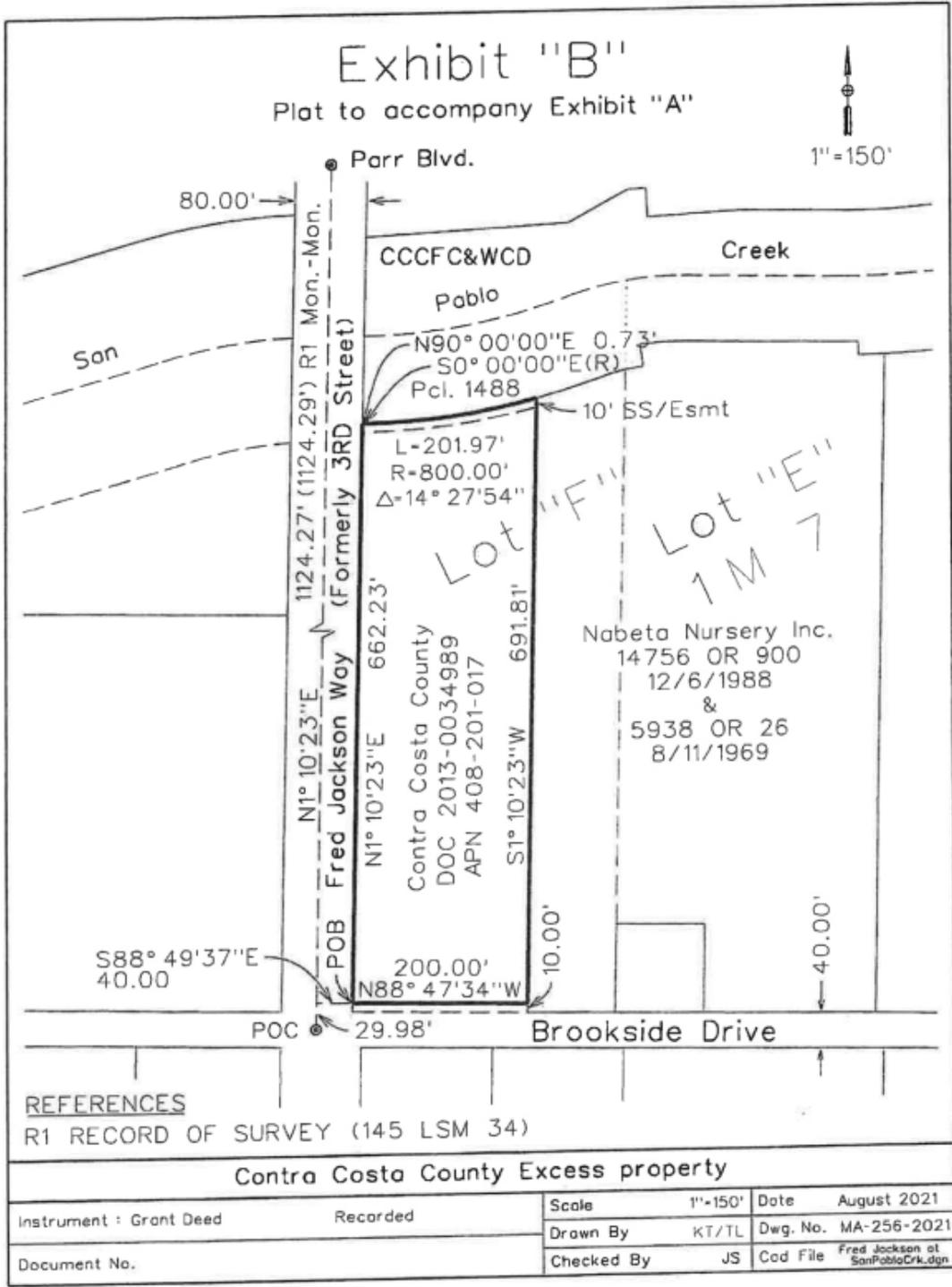


EXHIBIT “C”

Urban Tilth Staff Schedule of Fees



URBAN TILTH
Growing a foodshed in west
Contra Costa County to create a
healthier, more sustainable, and
more just local food system

a 501(c) (3) non-profit
#20-4124161

323 Brookside Drive
Richmond, CA 94801

T 510.778.5886
doria@urbantilth.org

www.urbantilth.org

WATERSHEDS TEAM BILLING RATES, January 2022

- o Program Manager \$30 / hr
- o Crew Leader \$27 / hr
- o Watershed Technicians: \$25 / hr
- o Watershed Apprentices \$22 / hr