

**AGREEMENT BETWEEN THE PACIFICA SCHOOL DISTRICT
AND PACIFICA GARDENS TO EXCHANGE SERVICE FOR USE OF FACILITIES**

This Agreement to provide garden education opportunities for Pacifica School District students and teachers in exchange for use of the school district property at Linda Mar School for Pacifica Gardens activities ("Agreement"), entered into this 1st day of March 1, 2015, by and between the Pacifica School District (the "District"), and Pacifica Gardens ("Pacifica Gardens," and, together with the District, the "Parties"):

WITNESSETH

WHEREAS, the District is the owner of certain real property located in the City of Pacifica, California, currently used for the operation of an elementary school known as Linda Mar Educational Center;

WHEREAS, Pacifica Gardens is a nonprofit corporation formed and existing under the laws of the State of California;

WHEREAS, the Parties wish to provide school garden science activities for Pacifica School District students; and

WHEREAS, the Parties and students will benefit from the Parties offering experiences in establishing and maintaining school gardens;

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained in this Agreement, the Parties agree as follows:

1. Site: The District agrees to make available, pursuant to Education Code sections 10900, et seq. and 17400, et seq., a 115 ft by 260 ft. area of land located in the field at Linda Mar School (see Exhibit A). The District also agrees to make available a set of bathrooms at the end of the hallway in the main building of the school for use by Pacifica Gardens' participants. Pacifica Gardens will have the ability to bring water to the project site from a well drilled on school property.

Pacifica Gardens will need to request and receive prior written approval from the District for all fencing and temporary and permanent structures placed on the property. Pacifica Gardens shall also obtain written prior approval for the use of any chemicals on the site.

Pacifica Gardens acknowledges that aside from the limited term use rights provided for herein, this Agreement confers on Pacifica Gardens no ownership or other rights with respect to any District property. Further, the Parties understand and agree that nothing in this agreement shall be construed as conferring on Pacifica Gardens title to any portion of district property.

Pacifica Gardens shall maintain all areas under their control in a clean, safe, and orderly manner. The District reserves the right to enter and inspect the site for safety, emergency, and cleanliness purposes without prior notice to Pacifica Gardens.

Pacifica Gardens agrees to leave the doors to the main building locked after accessing the bathrooms.

All participants in Pacifica Gardens' activities shall park in the back of Linda Mar School and not create excessive noise.

2. Term

This Agreement shall be for a period of five years, from March 1, 2015 to January 31, 2020 and may be renewed for additional five year periods per mutual consent. The district reserves the right to terminate the agreement at any time during the term with 90 days of written notice if the District determines that it needs to reclaim part or all the Linda Mar field for necessary educational purposes.

3. Exchange of Services:

The Pacifica School District shall provide Pacifica Gardens the following considerations:

- the use of a 115 foot by 260 foot area of land in the Linda Mar field (Exhibit A)
- the use of bathrooms at the Linda Mar site
- Access through district property to the water well located on district property. The district assumes no responsibility or liability for the quality of water drawn from the well.

In exchange for the district's considerations, Pacifica Gardens shall provide the following services to the school district:

- Provide onsite garden education opportunities for classes at Linda Mar Educational Center and for other district schools. It is understood that all implementation and proper follow through of district garden projects is the responsibility of each individual school.
- Create planting beds for the classes at Linda Mar Educational Center per request. Classes that request planting beds agree to abide by the policies and procedures of Pacifica Gardens as outlined in the Volunteer Bed Agreement (Exhibit B).

4. Default:

- A. Default by Pacifica Gardens. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Pacifica Gardens

- (1) The failure to provide the agreed upon services for Pacific School District students.
 - (2) The failure to lock Linda Mar Educational Center after accessing bathrooms.
 - (3) The failure to maintain a safe and orderly environment for participants in Pacifica Gardens' activities on the Linda Mar campus.
 - (4) The failure to be good neighbors with the surrounding community.
 - (5) The failure to adhere to all federal, state, and local laws, codes, and ordinances.
- B. District's Remedies. In the event of any such default and breach by Pacifica Gardens described hereinabove, District may at any time thereafter terminate Pacifica Gardens' right to use of the Linda Mar Educational Center field with a written notice terminating this Agreement.

5. Mutual Hold Harmless and Insurance:

- A. It is agreed that all Pacifica Gardens activities are the sole responsibility of Pacifica Gardens and that Pacifica Gardens assumes full and complete liability for all activities under its direction.
- B. It is agreed that Pacifica Gardens shall defend, hold harmless and indemnify the District, its officers, agents and/or employees from any and all liability, damage, cost, expense, and/or claims for injuries to persons (including, but not limited to, Pacifica Gardens participants and spectators) and/or damage to property which arise from Pacifica Gardens' use of any district property (including ingress and egress to the property), and/ or Pacifica Gardens sponsored activities for such liability, damage, cost, expense, and/or claims arising from the negligent acts or omissions of Pacifica Gardens, its officers, agents and/or employees.
- C. It is agreed that the District shall defend, hold harmless and indemnify Pacifica Gardens its officers, agents and/or employees from any and all liability, damage, cost, expense, and/or claims for injuries to persons (including, but not limited to, participants and spectators) and/or damage to property which arise from the classes at any district property and for such liability, damage, cost, expense, and/or claims arising from the negligent acts or omissions of the District, its officers, agents and/or employees
- D. Pacifica Gardens agrees to have and maintain, for the duration of the contract, a general liability insurance policy insuring Pacifica Gardens in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage. Pacifica Gardens add the District as additional insured to this policy. Pacifica Gardens shall provide the District with an endorsement effecting coverage required by this subparagraph. Further, Pacifica Gardens, upon the District's request, shall furnish the District with a Certificate of Insurance, which shall provide that the District will

receive ten (10) days prior notice of cancellation, change in scope or modification in coverage of such insurance coverage.

- E. District agrees to have and maintain, for the duration of the contract, a general liability insurance policy insuring District in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage. This policy may be in the form of self-insurance.

6. Assignment and Subletting:

Pacifica Gardens may provide plots to community members for rent under specific written terms per the template attached to this agreement (Exhibit B). Pacifica Gardens shall not assign or encumber its interest in this without District's advance written consent. Any assignment or encumbrance without District's consent shall be voidable and, at District's election, shall constitute a default. No consent to any assignment or encumbrance shall constitute a further waiver of provisions of this Section.

7. General Provisions:

- (A) Compliance with Law. The Parties shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any federal, state, or local law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. All California Education Code regulations and restrictions apply to the property assigned to Pacifica Gardens.
- (B) Rules and Regulations. The Parties agree that the Premises shall be used in compliance with any relevant provisions of law, and that the Parties shall meet and confer to formulate any necessary rules and regulations regarding the use of the Premises.
- (C) No employment. Nothing in this Agreement shall be construed as establishing either an employer/employee or joint venture relationship between Pacifica Gardens and/or its agents and the District. Pacifica Gardens expressly acknowledges and accepts that neither it or its agents has any rights, benefits, privileges, and/or claims in any form whatsoever under, from, through, and/or pursuant to any civil service statutes, regulations or rules applicable to the District.

- (C) The CONTRACTOR will obey all laws and policies that govern school district property including those laws and policies applying to possession and use of alcohol and tobacco (such as, for example, Board Policy 3513..3, Tobacco-Free Schools). The CONTRACTOR will follow all California Education Code and other local, state, and federal laws and policies that pertain to school property.

"DISTRICT"

By _____
Title: _____ Date _____

"PACIFICA GARDENS"

By: 
Title: DIRECTOR Date 2/4/2015