

**Joint Use Agreement
Cesar Chavez Community Gardens
(A partnership between the Milpitas Unified School District and the City of Milpitas)**

This Agreement by and between Milpitas Unified School District, hereafter referred to as "District," and City of Milpitas, hereafter referred to as "City," is for the use of certain school property on the terms and conditions set forth hereafter.

Purpose

City shall be allowed use of the identified property and premise on the terms and conditions hereinafter set forth for the purpose of a community garden.

Description of Premises To Be Used

Property to be used is located east of Weller Elementary School, 345 Boulder Street, Milpitas, California, and consists of 1.2 acres improved with a perimeter fence and an irrigation system north of Sunnyhills Park and south of Dixon Landing Road. Attached hereto and incorporated herein as Exhibit "A" is a site map, which sets out the location of the property to be used as the Community Garden.

Use Parameters

The City shall have use of the property identified, seven days a week, year-round 8:00 a.m. to sunset.

Term

This Agreement shall supersede any and all prior agreements, shall take effect January 26, 2010, and shall continue until terminated upon 90 days written notice by either party. In addition, the parties shall meet within 5 years from the effective date to discuss potential amendments to this Agreement.

Conditions

The City agrees to the following conditions relative to the use of the identified property:

- 1) If the City wishes to construct additional facilities or improve existing facilities on District Property all plans and specification for the placement of said additional equipment, facilities and/or improvements, and the type, design and construction thereof must meet all specifications required by law and shall be approved by the Superintendent of the District prior to any installation thereof. Prior to any construction a request must be made in writing to the District describing the scope and budget of the proposed project. When work is completed 8 x 10 asbuilt drawings documenting the actual construction activity must be submitted to the District. Any installations of equipment or construction of facilities on premises by City shall be at City cost, unless otherwise agreed to by the District. Any permanent improvements or equipment installed or erected on District property by City shall remain the

property of the City and may be removed if permit for use of area is terminated.

- 2) The cost of any addition, modification or capital improvement of the property shall be the sole responsibility of the City.
- 3) The City shall assume sole responsibility for the appropriate oversight of the property in compliance with the terms of the Agreement.
- 4) The City shall assume all maintenance of the identified property, including weed removal, trash pick-up, and fence repairs.
- 5) No power equipment such as rototillers will be allowed before 9:30 a.m. or after 6:00 p.m. daily.
- 6) Vehicular access to the identified property will be restricted to the delivery or pick-up of gardening equipment and supplies, and for City maintenance purposes only. Appropriate signage shall be posted to restrict public access. Parking shall otherwise be off-site on Dixon Landing Road or other adjacent streets.
- 7) No pesticides are allowed to be used on this property.
- 8) The City shall pave and maintain the access road.

Hold Harmless

The City agrees to indemnify, hold harmless and defend the District, its officers, employees and agents from and against any and all claims of liability for any injury or damage to any person or property arising from the City's use of the identified property. The City further waives all claims against the District for injury to the general public, its members, officers, agents and employees with regard to said individuals, use of the Community Garden.

Insurance

The City shall at all times during the term of this Agreement, and at its own cost and expense, procure and continue public liability insurance in the amount of \$2,000,000 combined single limit covering both bodily injury and property damage.

It is further agreed that the District shall be included as an additional insured as respect to liability arising out of the use of the identified property. City liability shall be endorsed to be primary insurance as respect to the interest of the District and that any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder.

The above conditions shall be set forth on a Certificate of Insurance and shall not be cancelled or reduced without thirty (30) days prior notice to the District.

Agreement Review

The District and City shall meet no less than once a year to review the general condition of the Community Garden and the terms and conditions of this Agreement. More frequent meetings may be called from time to time by mutual agreement of the parties.

Right of Entry

The District shall, at all times, have the right to enter upon the identified property, for inspection purposes during the period of use by the City.

Notices

All notices to be given with respect to this Agreement shall be in writing. Each notice shall be by first class mail to the party to be notified at the address set forth below:

District: School Superintendent
Milpitas Unified School District
1331 East Calaveras Boulevard
Milpitas, CA 95035

City: City Manager
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

IN THE WITNESS WHEREOF, the parties hereto have executed this agreement as of the 26th day of January, 2010.

MILPITAS UNIFIED SCHOOL DISTRICT (MUSD)

By: 
Superintendent

Date: January 26, 2010

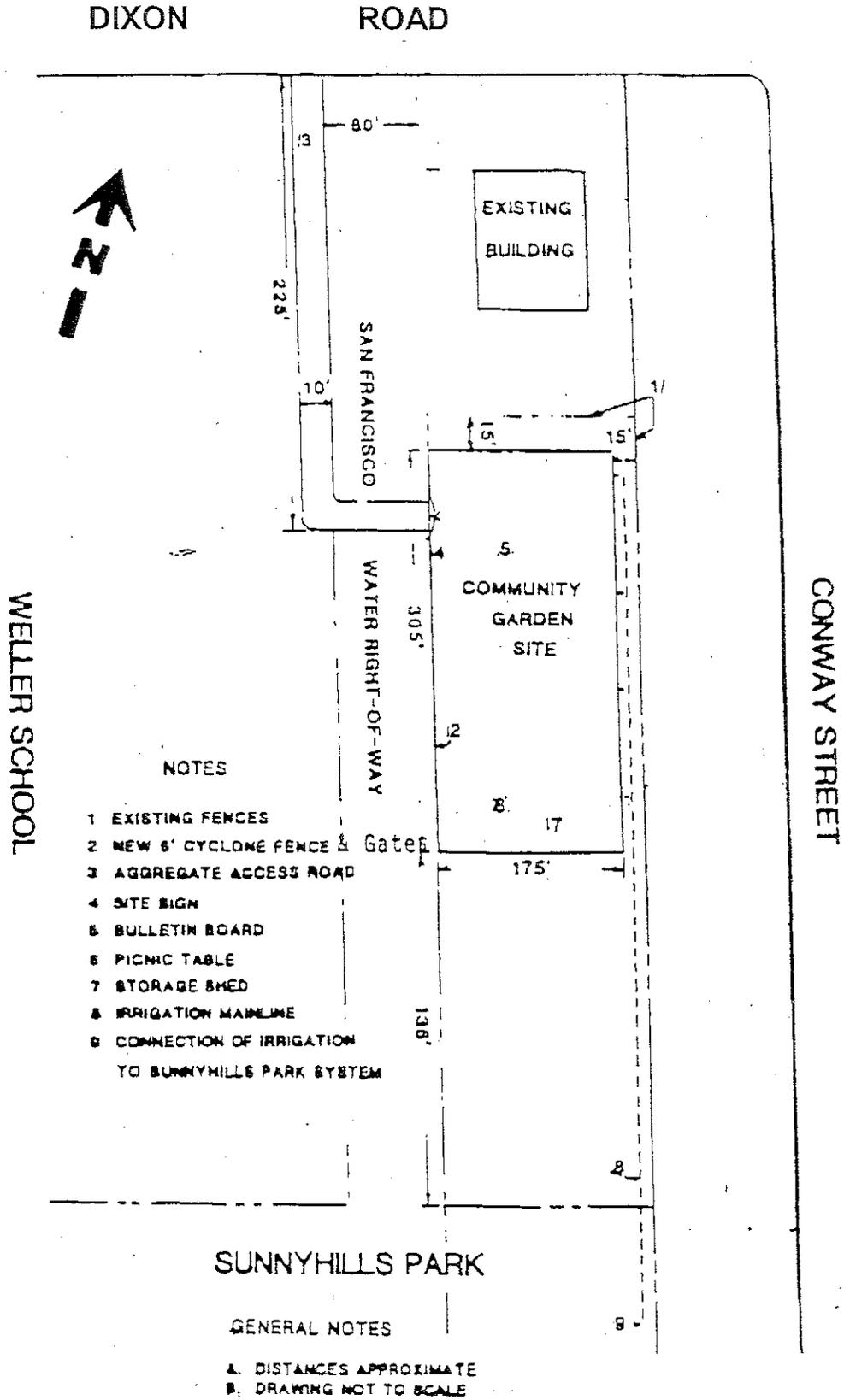
CITY OF MILPITAS

By: _____
City Manager

Date: _____

Exhibit "A"

Site Map



**JOINT USE AGREEMENT
CITY OF MILPITAS & MILPITAS UNIFIED SCHOOL DISTRICT
RUSSELL MIDDLE SCHOOL BOBBY SOX COMPLEX**

This Agreement by and between the Milpitas Unified School District, hereinafter referred to as "DISTRICT," and the City of Milpitas, hereinafter referred to as "CITY," is for the joint use of DISTRICT property, identified as the Russell Middle School Bobby Sox Complex, hereinafter referred to as "FACILITY," on the terms and conditions set forth hereafter.

Section 1- Purpose

CITY shall have use of FACILITY as mutually agreed upon by the parties on the terms and conditions hereinafter set for the purpose of conducting Bobby Sox League activities and recreational opportunities for the public.

DISTRICT shall have use of FACILITY as mutually agreed upon by the parties on the terms and conditions hereinafter set for the purpose connected with the provision of K-12 education.

Section 2- Description of Premises

FACILITY is located at Russell Middle School, 1500 Escuela Parkway, Milpitas, California and consists of one DISTRICT owned athletic field/ Bobby Sox Complex as represented on EXHIBIT A which is attached to this agreement, incorporated by reference and made a part herein.

Section 3- Lease Terms

DISTRICT agrees to lease FACILITY, as shown on EXHIBIT A, to CITY for the purpose of operating a Bobby Sox Softball Complex. CITY shall pay to DISTRICT the sum of \$1.00 per calendar year as rental fee for the FACILITY. No other rental or use fees shall be charged to DISTRICT by CITY for use of FACILITY.

Section 4- Authorized Representatives and Notice Provisions

Director of Maintenance, Operations and Transportation, or designee, shall serve as the authorized representative for DISTRICT. Any and all notices under this agreement shall be mailed or delivered to DISTRICT at the following address:

Milpitas Unified School District
Purchasing/Contracts Office
1331 E. Calaveras Blvd.
Milpitas, CA 95035

City Manager or designee, shall serve as the authorized representative for CITY. Any and all notices under this Agreement shall be mailed or delivered to CITY at the following address:

City Manager
Milpitas City Hall
455 E. Calaveras Blvd.
Milpitas, CA 95035

With the exception of issues involving imminent harm to persons or property, any concerns or issues, including those involving maintenance, construction, and/or use of FACILITY shall be communicated to the parties through the authorized representative.

Section 5-Use Restrictions

- a) DISTRICT shall have priority use of FACILITY between hours of 8:00 a.m. and 4:00 p.m. on days when school is in session. Generally, this will apply Monday through Friday, September through mid-June of each year, the academic year. The general public shall not be allowed to use FACILITY at any time while school is in session.
- b) CITY shall have priority use of FACILITY after 4:00 p.m. on days when school is in session and at all other times, including weekends, holidays and summer vacation. Exceptions to this schedule may be agreed upon by CITY and DISTRICT representatives. CITY and DISTRICT shall mutually agree upon a use schedule that allows DISTRICT reasonable opportunity to use FACILITY for its activities and programs.
- c) CITY shall have shared use of the on-site parking lots adjacent to FACILITY during CITY's priority use time. CITY will clean up the on-site parking lots adjacent to FACILITY, once per week. DISTRICT shall clean up the on-site parking lots the remainder of the time.
- d) CITY shall be responsible for administrating reservations for use of FACILITY by the Bobby Sox League and the public. CITY shall be solely responsible for determining a priority use system as well as fees to be charged for use of FACILITY during such time that CITY has priority use of FACILITY.

Such fees shall be required to conform to all applicable rules, regulations, ordinances and/or laws governing school grounds in addition to those applicable to CITY property. Any and all fees collected during CITY's priority use time shall be property of CITY.

Section 6- Improvements

- a) FACILITY will be graded as necessary to ensure playable terrain and adequate drainage.
- b) FACILITY irrigation systems may be redesigned, renovated and/or replaced as needed.

- c) Any and all FACILITY landscaping, including trees, turf, shrubs, and mulches may be redesigned, renovated and/or replaced as needed.
- d) Four regulation Bobby Sox softball fields have been constructed on FACILITY. In addition, bleachers, lighting, a concession stand and restroom facility may be installed at some future time contingent upon funding availability, appropriation and approval by the Milpitas City Council.
- e) Cost of any future additions, modification or capital improvements to FACILITY by CITY shall be the responsibility of CITY unless otherwise mutually agreed upon by the parties.
- f) CITY shall be responsible for all activities related to the construction and installation of the above listed improvements including, but not limited to, preparation of plans and specifications, selection of and compensation paid to consultants advertising and calling for bids, awarding of contracts, supervision of construction and installation of improvements and payments of cost of construction and installation. No agreement for construction shall be awarded until DISTRICT has approved the conceptual design.
- g) DISTRICT recognizes that construction of improvements may occur during the academic year. CITY will endeavor to schedule construction activities so as to cooperate with DISTRICT and will ensue that adequate safety precautions are in place. CITY shall consult with DISTRICT as to the scheduling and timing of construction of improvements so as to minimize any adverse impact such construction may have on the instructional programs of DISTRICT

Section 7- FACILITY Maintenance

- a) CITY shall pay for and be responsible for all mowing, trimming, fertilization, irrigation, repair and other related landscape maintenance of FACILITY. CITY shall have no obligation for maintenance of landscaped areas, buildings, parking lots, fences, sidewalks, or other facilities owned by DISTRICT but not a part of FACILITY as reflected on EXHIBIT A.
- b) Except as otherwise provided herein, CITY shall pay for and be responsible for maintenance of any and all future improvements to FACILITY, including, but not limited to bleachers, lighting, concession stand and/or restroom facilities.
- c) DISTRICT shall pay for all utilities provided to FACILITY including, but not limited to, water, sewer, gas, and electricity.
- d) CITY shall pay for solid waste and recycling services provided to FACILITY as a result of CITY and DISTRICT activities.

- e) DISTRICT shall be responsible, at sole expense of DISTRICT for preparation of FACILITY areas to be used in connection with DISTRICT special events including but not limited to, graduation ceremonies, physical education programs and athletic events.
- f) Priority access to FACILITY shall be given to CITY for maintenance work two days per week while school is in session. For purposes of providing required turf and grounds maintenance, CITY may curtail all DISTRICT use of FACILITY, with two weeks advance notice, a maximum of four times during any one academic year, CITY shall attempt to schedule such maintenance in coordination with the academic calendar and, when possible, on days when school is not in session, While fulfilling its maintenance obligations under this Agreement, CITY shall minimize the impact on DISTRICT use of FACILITY while school is in session. Authorized representatives of CITY and DISTRICT shall meet on an as required basis and review scheduling of necessary maintenance at FACILITY.
- g) CITY may curtail DISTRICT use of and access to FACILITY at any time and without prior notification for the purpose of abating hazardous conditions at FACILITY. CITY shall make every effort to minimize the amount of time DISTRICT's access to FACILITY is restricted.
- h) Upon assumption of maintenance responsibility for FACILITY, CITY shall modify FACILITY signs to indicate respective responsibilities of CITY and DISTRICT as to ownership, use, maintenance and improvements. Signage to include emergency contact information for Bobby Sox Complex.

Section 8-Sale or Transfer of Facility

DISTRICT shall not sell, lease, convey, transfer, or otherwise dispose of FACILITY on or before December 31, 2036 without following the procedure set forth below.

- a) At least thirty (30) days prior to selling, leasing, conveying, transferring or otherwise disposing of FACILITY, DISTRICT shall give CITY written notice of DISTRICT's intent to sell, lease, convey, transfer, or otherwise dispose of FACILITY. Such notice shall be sent by certified mail to the authorized CITY representative.
- b) Not more than thirty (30) days after receipt of such notice of intent, CITY may give DISTRICT written notice that CITY intends to exercise its rights of acquisition under this Agreement. If CITY fails to give DISTRICT timely notice pursuant to this section, CITY shall have no further rights with respect to acquisition of FACILITY.
- c) DISTRICT shall not sell, lease, convey, transfer or otherwise dispose of FACILITY unless DISTRICT offers to CITY a right of first refusal to purchase FACILITY. An

agreement for such purchase shall be executed within sixty (60) days of receipt by CITY of DISTRICT's notice of intent.

Section 9- Hold Harmless

CITY agrees to indemnify, hold harmless and defend DISTRICT, its officers, agents and employees from and against any and all claims of liability for any injury or damage to any person or property arising from CITY's use of FACILITY.

DISTRICT agrees to indemnify, hold harmless and defend CITY, its officers, agents, and employees from and against all claims of liability for any injury or damage to any person or property arising from DISTRICT's use of FACILITY.

Section 10- Insurance

- a) CITY shall at all times during the term of this Agreement, at its own cost and expense, obtain and maintain in full force and effect throughout the entire terms of this Agreement public liability insurance in the amount of \$2,000,000. Combined single limit covering both bodily injury and property damage. DISTRICT shall be included as an additional insured as respects any other valid and collectible insurance of DISTRICT, including any self-injured retention, and any other insurance maintained by DISTRICT is excess and not to be used as contributing insurance.

The above conditions shall be set forth on a Certificate of Insurance and shall not be cancelled or reduced without thirty (30) days prior written notice to DISTRICT. Such Certificate of Insurance shall be filed with the DISTRICT within twenty (20) days after execution of this Agreement.

Notwithstanding any language of the foregoing to the contrary, CITY may satisfy the insurance obligations hereunder by providing to DISTRICT proof of self-insurance in a form reasonably acceptable to DISTRICT, to the extent such self-insurance is permitted by the laws of the State of California and in accordance therewith.

- b) DISTRICT shall at all times during the term of this Agreement, at its own cost and expense, obtain and maintain in full force and effect throughout the entire term of this Agreement public liability insurance in the amount of \$1,000,000. Combined single limit covering both bodily injury and property damage. CITY shall be included as an additional insured as respects to liability arising out of the use of FACILITY. District's policy shall be considered primary insurance as respects any other valid and collectible insurance of CITY, including any self-insured retention, and any other insurance maintained by CITY is excess and not to be used as contributing.

The above conditions shall be set forth on a Certificate of Insurance and shall not be cancelled or reduced without thirty (30) days prior written notice to CITY. Such

Certificate of Insurance shall be filed with the City Clerk within twenty (20) days after execution of this Agreement.

Notwithstanding any language of the foregoing to the contrary, DISTRICT may satisfy the insurance obligations hereunder by providing to CITY proof of self-insurance in a form reasonable acceptable to CITY, to the extent such self-insurance is permitted by laws of the State of California and in accordance therewith.

Section 11- Term

This Agreement shall supersede any and all prior agreement, written or oral, and shall take effect January 26, 2010, and continue through December 31, 2036.

IN THE WITNESS WHEREOF, the parties hereto have executed this agreement as of the 26th day of January, 2010,

MILPITAS UNIFIED SCHOOL DISTRICT (MUSD)

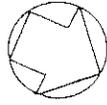
By: 
Superintendent

Date: January 26, 2010

CITY OF MILPITAS

By: _____
City Manager

Date: _____

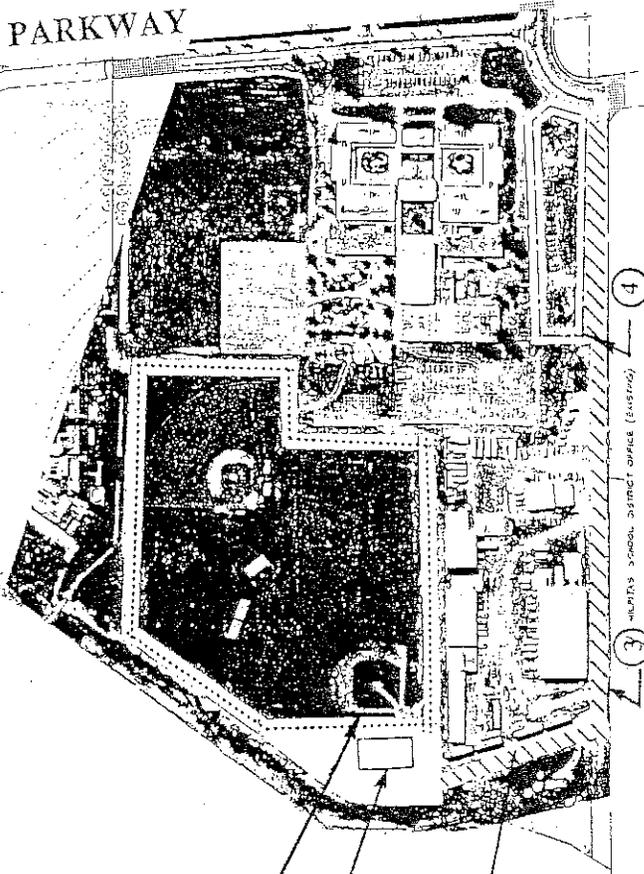


ESCUELA

PARKWAY

LEGEND

- ① Bobby Sox Complex Fields (Approx. Area 8 Acres)
- ② Bobby Sox Maintenance Storage Area
- ③ Bobby Sox Maintenance Access Road
- ④ Parking Lot (Bobby Sox Use)



④

③

③

①

②

JOINT USE AGREEMENT- CITY OF MILPITAS & MILPITAS UNIFIED SCHOOL DISTRICT- RUSSELL MIDDLE SCHOOL BOBBY SOX COMPLEX

EXHIBIT 'A'
THOMAS RUSSELL SCHOOL
MILPITAS