

## JOINT USE AGREEMENT

This agreement made this 23rd day of March, 2010, by and between the City of Milpitas, a municipal corporation of the State of California, hereinafter referred to as "City" and the Milpitas Unified School District of Santa Clara County, hereinafter referred to as "District."

### WITNESSETH

Whereas, City and District are desirous of jointly providing recreation and community use of facilities to provide a well-rounded, wholesome program of activities, for persons of all ages residing within the City or District and as defined in and pursuant to Division 3, Part 23, Chapter 6 of the Education Code of State of California, within the City of Milpitas, and

Whereas, it is in the public interest that City and District enter into this agreement for such purpose:

Now, therefore, in consideration of their mutual covenants, City and District understand and agree as follows:

### SPECIAL CONDITIONS

#### I. Milpitas Unified School District

A. The District shall make available to City for community Parks and Recreation Services Department activities, Elementary and Middle School grounds, multi-purpose rooms and rooms necessary for the After the Bell Program and outdoor playground equipment at no charge. The City of Milpitas After the Bell program is currently offered at Burnett, Curtner, Weller and Zanker Elementary Schools during the regularly scheduled school year (August – June). This program runs from school dismissal till 6:00 p.m. Each school site has a dedicated classroom space for the After the Bell Program.

Sites to be used are to be selected by the Parks and Recreation Services Department and approved by the Superintendent of the District or designee. A yearly schedule of dates for use of District sites shall be worked out in advance to avoid conflict between District and City use. In scheduling sites, school events and programs shall have first priority, the Parks and Recreation Services Program established by the City shall have second priority, and any other events by other groups or agencies shall have lesser priority. Yearly schedule may be changed at the request of either party with thirty (30) days notice and with the mutual consent of the other. This Agreement does not include Bobby Sox use of Russell School or Milpitas Community Garden, which are governed by separate agreement.

B. Fee schedule applicable to the Milpitas High School indoor and outdoor facilities, including swimming pool and any District use Saturday, Sunday or Holiday is set forth in the District Fee Schedule, attached hereto as Exhibit A.

C. A District Facilities Use Form OP-92, shall be completed by the Parks and Recreation Department. It must be approved by the Site Administrator and Superintendant or designee of the District and be on file in the Purchasing /Contracts office before any use of any facility is granted. School District staff shall be consulted in the planning of Parks and Recreation Services Department programs that impact the indoor or outdoor facilities of the District.

D. In the event any dispute or difference arises as a result of the Parks and Recreation Services Department programs being conducted on District property, said dispute or difference shall be settled by appealing to both the City Manager and the Superintendent.

E. If the City wishes to construct additional facilities or improve the existing facilities on District property for the purpose of offering a Parks and Recreation Service Department program, all plans and specifications for the placement of said additional equipment, facilities and/or improvements, and the type of construction thereof must meet all specifications required by law and shall be approved by the Superintendent of District and Board of Education 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 as-built drawings documenting the actual construction activity must be submitted to the District. Any installations of equipment or construction of facilities on school premises by City shall be at City cost, unless otherwise agreed to by the District and City. The cost of maintaining said improved areas shall be borne by the City, unless otherwise agreed to by the District and City. 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. The District may use said improvements or equipment during normal school hours for school related activities.

In the event of termination of the Agreement, the removal of equipment previously installed and owned by the City, will be according to the provisions of Section IV, below. Land or area where equipment was installed shall be restored to its original state to the full satisfaction of the District. Cost of site restoration will be at the City's expense.

WHEREAS, the City and District wish to provide care and shelter services to all Milpitas residents: and

F. In cases of emergencies, and in particular where the Red Cross is unavailable within 72 hours after a declared emergency, the District shall make available at no charge to the City all multipurpose rooms and gyms

at the elementary, middle, and high schools in order for the City to provide and assist the Red Cross in providing care and shelter operations to Milpitas residents. The district office does not have a multipurpose room available. The City has no duty or obligation to use the District's facilities to provide such assistance.

#### Hold Harmless

City of Milpitas agrees to indemnify, hold harmless and defend Milpitas Unified School 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 City of Milpitas' use of identified facility(ies). City of Milpitas further waives all claims against the District for injury to the general public, its members, officers, agents and employees for any cause at any time in or about the identified facilities except that caused by the sole negligence or willful misconduct of District .

#### Insurance

City of Milpitas shall at 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 Milpitas Unified School District shall be included as an additional insured as respects liability arising out of the use of the identified facility. City of Milpitas liability shall be endorsed to be primary insurance as respects 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 canceled or reduced without thirty (30) days prior notice to the City. Said Certificate of Insurance shall be submitted by the City to the District prior to July 1 each year.

## II. City of Milpitas

- A. The City shall make available to the District facilities within the jurisdiction of the City Parks and Recreation Services Department for District/school sponsored activities. A yearly schedule of dates for use of City facilities shall be worked out in advance to avoid conflicts between District and City use. In scheduling facilities, City events and programs shall have first priority, programs or activities of senior citizens or handicapped groups which are composed principally of local residents (51% or more) shall have second priority, the District/school programs established by the District or one of its schools shall have third priority. Yearly schedule may be changed at the request of either party upon thirty (30) days notice with the mutual consent of the other.
- B. The City shall make available to the District within the priorities set forth above the Milpitas Sports Center Large Gymnasium and Cardoza Softball Field for District/school sponsored sporting events, including practice and games.

Scheduling for these facilities shall be included in the yearly schedule and upon the terms referred to in Section A above.

- C. Currently, the District uses the Sports Center Large Gymnasium from the months of October through February for various volleyball and basketball practices and games, up to 250 hours per school year. The District utilized the Cardoza Softball Field from March through April for softball practice and games, up to 50 hour per school year. Additionally, the District uses the Milpitas Sports Center Football stadium for one day, up to 15 hours, for the Calaveras Hills High School annual graduation ceremony. This agreement does not include provisions for use of the Sport Center pools.
- D. All fees for uses of City facilities by District shall be paid according to the City/District Fee Schedule attached as Exhibit B.
- E. Park Rentals  
All park rentals for the School District shall be signed by School District designee prior to reserving Parks at the Community Center. All School District employees must abide by the Park Rules and Regulations. Any fees for usage shall be according to the City/District fee schedule, attached hereto as Exhibit B.
- F. City staff shall be consulted in the planning of School District programs/activities on or in the facilities under the City's jurisdiction.
- G. In the event any dispute or difference arises as a result of the District's program being conducted on City property, said dispute of difference shall be settled by appealing to both the City Manager and Superintendent.
- H. If the District wishes to construct additional facilities or improve existing facilities on City property for the purpose of offering a desired program, all plans and specifications 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 City Manager of the City and/or City Council prior to any installation thereof. Any installations of equipment or construction of facilities on City premises by District shall be at District cost, unless otherwise agreed to by the City and District. The cost of maintaining improvements or equipment shall be borne by the District unless otherwise agreed to by the City and District.
- I. Applications. All City facility uses must be accompanied by an application which shall be in accord with standard Park and Recreation Services Department use forms. Use fees not set forth herein shall be according to the City/District fee schedule attached hereto as Exhibit B.

J. Any permanent improvements or equipment installed or erected on City property by the District shall remain the property of the District and may be removed if permit for use of the area is terminated. The City may use said improvements or equipment during non-school hours for park and recreation related activities. In the event of termination of this Agreement, the removal of equipment installed and owned by the District will be according to the provisions of Section IV, below. Land or area where equipment was installed shall be restored to its original state to the full satisfaction of the City. Cost of site restoration will be at the District's expense.

Hold Harmless

Milpitas Unified School District agrees to indemnify, hold harmless and defend City of Milpitas 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 Milpitas Unified School District's use of the identified facilities. Milpitas Unified School District further waives all claims against the City for injury to the general public, its members, officers, agents and employees for any cause at any time in or about the identified facilities except that caused by the sole negligence or willful misconduct of City .

Insurance

Milpitas Unified School District 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 City of Milpitas shall be included as an additional insured as respects liability arising out of the use of the identified facility. Milpitas Unified School District liability shall be endorsed to be primary insurance as respects the interest of the City and that any other insurance maintained by the City 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 canceled or reduced without thirty (30) day prior notice to the City. Said Certificate of Insurance shall be submitted by the District to the City prior to July 1 each year.

IV. TERM

This agreement shall supersede any and all prior agreements and shall take effect March 23, 2010, and shall continue in effect for five years or until terminated. Either party to this agreement may at any time terminate this agreement upon giving, in writing, to the other party twelve (12) months notice of its intention to terminate same. In the event this agreement is terminated or in the event permission to use certain school or City facilities is revoked pursuant to this agreement by the District or City each shall remove all improvements installed by it on the other's property at its own expense. When such improvements are of a permanent nature and their removal is not practical, the owner shall reimburse the tenant for fair market value of the improvements when revocation is at the owner's request. In addition to the forgoing,

at the request of either party, both parties shall meet to discuss proposed changes to the agreement on a yearly basis. All such proposed changes will be subject to Council and Board approval.

V. MAINTENANCE

Each of the parties shall maintain each of the properties owned by it at its own expense and with maintenance personnel, whether compensated or volunteer, controlled by it.

IN THE WITNESS WHEREOF, the parties hereto have executed this agreement as of the 23rd day of March, 2010,

MILPITAS UNIFIED SCHOOL DISTRICT

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

Date: March 23, 2010

CITY OF MILPITAS

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

**Exhibit A**  
**Milpitas Unified School District Fee Schedule**

The District shall make available to the City for Recreation Services activities on school grounds, equipment and buildings as described below. Charges where applicable are for direct operational expenses or personnel only. No Application fee will be assessed.

- Recreation and/or audio/visual equipment, etc. at no charge.
- Furniture such as tables, chairs, and portable risers, etc. at no charge
- Outdoor play areas including playing fields, tennis courts, parking lot blacktop areas at no charge.
- Indoor facilities available on weekdays, on days when school is in session at no charge.

**Indoor facilities on Saturdays, Sundays and Holidays at the rates listed below:**

**Indoor Facilities:**

- Custodial Cost Weekends and Holidays for all Indoor Facilities - \$45.00/hour
- (Custodian staff will be on duty for the event duration, clean up time additional.)

**Milpitas High School Fields:**

- \$50.00/hour for District Grounds Staff site supervision. District Grounds staff will be on duty for the duration of the event.
- Additional fee for restroom use on Saturdays, Sundays, or Holidays for custodial cleanup see Indoor Facilities above. Minimum 3 hours a day when fields are used.

**Milpitas High School Pool:**

- Milpitas High School Pool - \$33.00/hour.

**Exhibit B**  
**City of Milpitas Fee Schedule**

The City shall make available to the School District for business, Community, social and recreational activities on City grounds, equipment and buildings as described below. Charges where applicable are for direct operational expenses, i.e. gas, water, electricity and/ or personnel, etc. No application fee will be assessed.

- Recreation and/ or audio/visual equipment, etc. at no charge.
- Furniture such as tables, chairs, etc. at no charge
- Outdoor areas and park grounds including playing fields, picnic areas, tennis courts, parking lot, blacktop areas, amphitheatre and lawn areas at no charge.
- Indoor facilities available on weekdays, during regular business hours at no charge.

**Indoor facilities on Saturdays, Sundays and Holidays at the rates listed below:**

**Indoor Facilities:**

- Custodial Cost Weekends and Holidays for all Indoor Facilities - \$45.00/hour
- (Custodian staff will be on duty for the event duration, clean up time additional.)

**Outdoor Playing Fields:**

Lighted outdoor playing facilities at the rates listed below:

- Soccer/Football Fields \$40.00/hour
- Softball/Baseball Fields \$30.00/hour
- Additional fee for restroom use on Saturdays, Sundays, or Holidays for custodial cleanup see Indoor Facilities above. Minimum 3 hours a day when fields are used.

**Milpitas Sports Center Pools:**

- Milpitas Sports Center Pools - \$33.00/hour.