

**JOINT USE AGREEMENT BETWEEN
CITY OF MILPITAS
AND MILPITAS UNIFIED SCHOOL DISTRICT
FOR OPEN SPACE**

This Joint Use Agreement (“Agreement”) is made and entered into this ____ day of _____, 2021 (“Effective Date”), by and between the City of Milpitas, a municipal corporation of the State of California (“City”) and the Milpitas Unified School District, a California public school district (“District”). City and District are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Education Code Section 10900, *et seq.*, of the State of California authorizes and empowers school districts and cities to “organize, promote, and conduct programs of community recreation;” to establish systems of playgrounds and recreation; and to acquire, improve, maintain, and operate recreation centers within or without the territorial limits of such districts; and

WHEREAS, City and District desire to establish a basis for the cooperative use of District open space and City open space; and

WHEREAS, it is in the community’s interest that the usage of open space of the City and District be maximized; and

WHEREAS, City is the owner of certain real properties identified in Section 2 of this Agreement, located in Milpitas, California (“City Sites”); and

WHEREAS, District is the owner of certain real properties identified in Section 3 of this Agreement, located in Milpitas, California (“District Sites”); and

WHEREAS, the Parties now wish to establish one comprehensive agreement, superseding all prior agreements executed from 1988 to 2016, that addresses the Parties’ respective access of each other’s open space for the community’s use; and

WHEREAS, in the interest of providing recreation programs to the community with the least possible expenditure of public funds, full cooperation between the City and District is both necessary and desirable.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties agree as follows:

1. Term of Agreement. The Term of this Agreement shall be for approximately ten (10) years commencing on the Effective Date, and shall remain in effect until December 31, 2031, and shall continue from year to year unless terminated earlier pursuant to the termination provisions set forth in this Agreement.
2. Use of City Sites.
 - A. City Sites subject to this Agreement are:
 - i. General Use Areas (Exhibit C-1)

ii. Specific Use Areas:

- Cardoza Park Softball Field (Exhibit C-2)
- Gill Park Softball Field (Exhibit C-3)
- Milpitas Sports Center Turf Fields (Exhibit C-4)

Other real property owned by the City not expressly identified in the Exhibits (“Other Property”) shall not be considered City Sites subject to the terms of this Agreement. Use of Other Property shall be subject to an amendment to this Agreement.

B. City’s Use. Unless otherwise specified in the Exhibits to this Agreement, the City’s use of the sports courts, paved surfaces, pools, sports turf areas, playgrounds, and parking lots (“City Facilities”) located on the City Sites for any purpose shall take precedence and priority over the District’s or any other person or entity’s use. “City’s Use” includes use of the City’s Facilities, without limitation:

- i. Use during any time when a scheduled recreation program is in session;
- ii. Use during any time that has been scheduled in advance by City staff for classes, activities, exercises, or functions; and
- iii. Use during any time when the City has permitted another person or entity to use the City Facilities for specific event(s) or activity(ies). District acknowledges and agrees that City may have existing, pre-scheduled use that cannot be re-scheduled to accommodate City’s use. In this event, District shall have second priority behind the existing and pre-scheduled use.

C. District’s Use. The District may use the City Facilities when such use does not conflict with the City’s use. District’s right of use shall be non-exclusive.

3. Use of District Sites.

A. District Sites subject to this Agreement are:

- i. General Use Areas: (Exhibit D-1)
- ii. Specific Use Areas:
 - Cesar Chavez Community Garden (Exhibit D-2)
 - Curtner Elementary School Field (Exhibit D-3)
 - Rancho Middle School Trail Access Path (Exhibit D-4)
 - Russell Middle School Softball Fields (Exhibit D-5)

Other real property owned by the District not expressly identified in the Exhibits (“Other Property”) shall not be considered District Sites subject to the terms of this Agreement. Use of Other Property shall be subject to an amendment to this Agreement.

B. District’s Use. Unless otherwise specified in the Exhibits to this Agreement, the District’s use of the sports courts, paved surfaces, pools, sports turf areas, playgrounds, and parking lots (“District Facilities”) located on the District Sites for any purpose shall take precedence and

priority over the City's or any other person or entity's use. "District's Use" includes use of the District's Facilities, without limitation:

- i. Use during any time when school is in session, which is typically the months of mid-August through early June from 7:00 AM – 4:00 PM for Elementary School sites and 7:00 AM – 6:30 PM for Middle and High Schools sites, including Summer School, which varies in location and hours depending on District student needs;
- ii. Use during any time when school is not in session for special District-sponsored events;
- iii. Use during any time that has been scheduled in advance by the various school principals or other school officers for classes, activities, exercises, or functions; and
- iv. Use during any time when the District has permitted another person or entity to use the District Facilities for specific event(s) or activity(ies). City acknowledges and agrees that District may have existing, pre-scheduled use that cannot be re-scheduled to accommodate City's use. In this event, City shall have second priority behind the existing and pre-scheduled use.

C. City's Use. The City may use the District Facilities when such use does not conflict with the District's use. City's right of use shall be non-exclusive.

4. Use of Parties' Facilities.

A. Coordination Meetings. District and City shall establish a master schedule of facilities, dates, and times for the use of the District and City Facilities ("Master Schedule") at semi-annual coordination meetings. The first meeting shall occur on or before [August 31] of each year. The purpose of the first meeting shall be to coordinate the schedule for each Party's uses of the facilities for the District and City Sites and to avoid conflict between District, City, and third-party users, to resolve any issues concerning maintenance or renovation of the Facilities, and to address any of the Parties' concerns or issues arising under this Agreement. The Parties will also meet as needed to discuss any necessary repairs or maintenance issues, ongoing scheduling, and/or use issues associated with the Facilities.

B. Process to Request/Schedule Facility Use. The Parties shall follow the following process in scheduling use of the other Party's Facilities:

- i. City staff is responsible for scheduling City Facilities.
- ii. District staff is responsible for scheduling District Facilities.
- iii. All users are required to complete appropriate District or City permit forms, pay applicable fees, and meet insurance requirements set by the District and City in order to request use of District and/or City Facilities.
- iv. Non-City and non-District users will be scheduled based on remaining facility availability and on a "first come, first served" basis.
- v. Once each Party has developed a schedule for its own Facilities usage, designated staff from each Party will provide the other Party with the proposed schedule.

- vi. Once the Parties agree to a Master Schedule, each Party's scheduled use of the Facilities shall receive priority over all other use, except as may be otherwise required by law or mutual written agreement of the Parties.

C. Facility Use - Unforeseen Occurrences

- i. Notwithstanding any other provision of this Agreement, in the event of unforeseen occurrences, including but not limited to, unscheduled maintenance or repair of City Facilities, weather conditions, or scheduling conflicts with respect to previously scheduled use of City Facilities, City shall have the right to free occasional use of District Facilities at City's discretion.
- ii. Notwithstanding other provision of this Agreement, in the event of unforeseen occurrences, including but not limited to, unscheduled maintenance or repair of District Facilities, weather conditions, or scheduling conflicts with respect to previously scheduled use of District Facilities, District shall have the right to free occasional use of City Facilities at the District's discretion.

D. Ancillary Fees.

- i. City shall pay an "Ancillary Fee" (Exhibit E) related to the direct costs to District for City's use of District Facilities. The direct costs shall include, but not be limited to, costs for District staff required to be present at the District Facilities during City's use. All users will be required to pay the fees for the District Facilities as outlined in Exhibit E. District will endeavor to provide an annual fee schedule for this Exhibit E by no later than May 31st of each year, if known. If not provided by June 30, the fee schedule from the previous year shall apply until an updated fee schedule is submitted.
- ii. District shall pay an "Ancillary Fee" related to the direct costs to City for District's use of City's Facilities. The direct costs shall include, but not be limited to, costs for City staff required to be present at the City Facilities during District's use. All users will be required to pay the fees for the City Facilities as outlined in Exhibit E. City will endeavor to provide an annual fee schedule for this Exhibit E by no later than May 31st of each year, if known. If not provided by June 30, the fee schedule from the previous year shall apply until an updated fee schedule is submitted.

E. Third Party Easements.

- i. The Parties recognize that there may be existing third party easements in, on, over, and throughout a particular District Site for the purpose of constructing, installing, or maintaining utilities and/or services for the benefit of the Site, or for other purposes reasonably related to the operation of the Site. District shall notify City of any conditions requiring a third party easement holder to perform construction, installation, maintenance or other services on the District Site or any portion thereof. If possible, such notification shall be provided at least seventy-two (72) hours in advance of the activities and/or services to be performed by the third party easement holder. The District will be responsible to ensure that the third party easement holder return the Site to its previous condition.

- ii. The Parties recognize that there may be existing third party easements in, on, over, and throughout a particular City Site for the purpose of constructing, installing, or maintaining utilities and/or services for the benefit of the Site, or for other purposes reasonably related to the operation of the Site. City shall notify District of any conditions requiring a third party easement holder to perform construction, installation, maintenance or other services on the City Site or any portion thereof. If possible, such notification shall be provided at least seventy-two (72) hours in advance of the activities and/or services to be performed by the third party easement holder. The City will be responsible to ensure that the third party easement holder return the Site to its previous condition.

5. Maintenance.

- A. City Maintenance. Unless otherwise specified in the Exhibits to this Agreement, City agrees to provide, at its own cost and expense, any and all maintenance for the City Facilities. Maintenance to be provided by City shall be staffed by City personnel, be consistent with normal maintenance levels as applied to other comparable City Facilities and shall insure safe and healthful use. Maintenance to be provided by City shall also include payment by City, at its own cost and expense, any and all utility costs, including without limitation, electricity, water, and refuse removal costs.
- B. District Maintenance. Unless otherwise specified in the Exhibits to this Agreement, District agrees to provide, at its own cost and expense, any and all maintenance for the District Facilities. Maintenance to be provided by District shall be staffed by District personnel, be consistent with normal maintenance levels as applied to other comparable District Facilities and shall insure safe and healthful use. Maintenance to be provided by District shall also include payment by District, at its own cost and expense, any and all utility costs, including without limitation, electricity, water, and refuse removal costs.

6. Custodial. Unless otherwise specified in the Exhibits to this Agreement, each Party agrees to provide, at its own cost and expense, any and all custodial services for their respective facilities for special, on-going uses of District or City Facilities. Each Party will return utilized space in a clean and useable manner after each use which includes the removal and proper disposal of trash. If either Party fails to adhere to the provisions of this Section, that Party may be charged applicable fees and billed directly as extra cost under this Agreement.

7. Repairs.

- A. District shall be responsible for the cost of repair and/or replacement of any damage to City Facilities, including fixtures and improvements with the City Facilities that are lost, damaged, or stolen during and/or as the result of District's use of City Facilities, normal wear and tear excepted. District shall promptly notify City upon District's actual knowledge of any loss or damage to the City Facilities of which the District becomes aware during and/or in conjunction with District's use of same.
- B. City shall be responsible for the cost of repair and/or replacement of any damage to District Facilities, including fixtures and improvements that are lost, damaged, or stolen during and/or as the result of City's use of District's Facilities, normal wear and tear excepted. City shall promptly notify District upon City's actual knowledge of any loss or damage to the District's Facilities of which City becomes aware during and/or in conjunction with City's use of same.

8. Site Development. Should the Parties agree to jointly fund and/or develop a facility, site-specific agreements would be developed to address details required for satisfactory design, construction, maintenance, repair, renovation, use, and other items which have not been anticipated in this Agreement. Once such sites are developed, a site specific exhibit will be added to this Agreement or an existing site specific exhibit amended, as applicable.

9. Improvements.

A. Existing Improvements.

- i. Each Party shall retain its existing ownership interest in and to its Sites and any improvement(s) existing thereon as of the Effective Date of this Agreement. No past, present, or future use of any of the Sites pursuant to this Agreement shall be interpreted as conveying any ownership or other property interests in any of the Sites.
- ii. In the event of sale, redevelopment, and/or reconstruction of a particular Site, the Party who owns the Site (“Owner”) shall notify the Party who owns the improvement(s) existing thereon (“Improvement Owner”) of its request to remove the improvement(s) at least six (6) months prior to the intended date of removal. The Owner shall provide payment to the Improvement Owner, if requested by the Improvement Owner, for the value of the improvement(s) requested to be removed. If the parties cannot agree on the value, the parties shall jointly select an independent, third-party appraiser who shall determine the value of the improvement requested to be removed. The appraised value of the improvement shall be the amount to be paid by the Owner to the Improvement Owner.
- iii. In the event the Improvement Owner chooses to vacate the Owner’s site, the Improvement Owner shall provide at least six months notice prior to the intended date of vacating the site. The Improvement Owner shall be solely responsible to remove all improvements and return the site to a safe condition at the Improvement Owner’s expense unless the Owner provides permission to vacate without removal of the improvement.

B. Additional Improvements. Either Party may make additional capital or non-capital improvements to any Site owned by the other Party, subject to a separate agreement by the Parties. The separate agreement shall address, at a minimum, responsibility for all costs associated with any improvements, responsibility for compliance with California Environmental Quality Act (CEQA), the Division of State Architects (DSA), the Department of Toxic Substances Control (DTSC), or the California Department of Education (CDE), and the terms of construction delivery including contracting with the architect and contractor. Once such improvements are developed, a site specific exhibit will be added to this Agreement or an existing site specific exhibit amended, as applicable.

10. Insurance.

Each Party shall maintain the following programs of insurance coverage:

A. General Liability insurance with limits of not less than the following, and naming the other part as an additional insured:

General Aggregate:	\$2 million
Personal Injury:	\$1 million

Each Occurrence: \$1 million

- B. Workers' Compensation and Employers Liability insurance providing workers' compensation benefits, as required by the State of California.
- C. The insurance coverage requirements in this Section shall be subject to review and adjustment to reflect coverage recommended by the parties' insurance advisors over the term of this Agreement. Any such adjustment shall be set forth in a written amendment to the Agreement signed by both Parties.

11. Indemnification.

- A. Indemnification of District. To the furthest extent permitted by California law, City shall protect, defend, indemnify, and hold harmless District and its officers, agents, representatives, consultants, employees, and volunteers ("District's Indemnified Parties") from any and all demands, liabilities, losses, damages, injury, claims, suits, and actions ("Claims against the City") of any kind, nature, or description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connecting with or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the City in conjunction with this Agreement except to the extent that the Claims against the City are not caused by the negligence or willful misconduct of the District's Indemnified Parties. The District shall have the right to accept or reject any legal representation that City proposes to defend the District's Indemnified Parties.
- B. Indemnification of City. To the furthest extent permitted by California law, District shall protect, defend, indemnify, and hold harmless City and its officers, agents, representatives, consultants, employees, and volunteers ("City's Indemnified Parties") from any and all demands, liabilities, losses, damages, injury, claims, suits, and actions ("Claims against the District") of any kind, nature, or description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connecting with or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the District in conjunction with this Agreement except to the extent that the Claims against the District are not caused by the negligence or willful misconduct of the City's Indemnified Parties. The City shall have the right to accept or reject any legal representation that District proposes to defend the City's Indemnified Parties.

12. Termination For Cause. Failure of a Party to comply with any provision of this Agreement and/or Exhibit to this Agreement shall constitute a breach. The Party alleging breach (the "Noticing Party") shall provide written notification to the other Party (the "Breaching Party") identifying the alleged breach. The Breaching Party shall have ten (10) business days ("Cure Period") to cure said breach. If the Breaching Party does not cure the breach within the Cure Period, the Noticing Party, may, pursuant to the dispute resolution process set forth in Section 14 of this Agreement, a) suspend its performance under this Agreement and if applicable, suspend the Breaching Party's use of the Site until the breach is cured, or b) terminate this Agreement without regard for any remaining term provided by this Agreement or early termination rights provided herein. Upon termination of this Agreement, all ongoing obligations of either Party shall also terminate.

13. Termination For Unforeseen Circumstances. Notwithstanding Section 12 of this Agreement, either Party may terminate this Agreement due to unforeseen circumstances upon one (1) year's written

notice to the other Party. For purposes of this Section, “unforeseen circumstances” means unfavorable financial conditions of the noticing Party, either Party’s unforeseen loss of revenue or funding, or the noticing Party’s unforeseen need for the exclusive use of a facility or site.

14. Dispute Resolution. In the event of any dispute arising under the terms of this Agreement, the Parties shall follow the dispute resolution procedures below.

A. Meet and Confer. The Parties shall meet and confer with the objective of resolving any dispute, controversy, or claim arising out of or relating to this Agreement (“Dispute”) within seventy-two (72) hours of the request of either Party.

B. Non-binding Mediation. If, within seven (7) calendar days, or such longer period as may be agreed upon by the Parties, the Dispute cannot be resolved to the Parties’ mutual satisfaction, either Party may request that a non-binding mediation take place. In such mediation, representatives of the Parties with the authority to resolve the Dispute shall meet with a mutually agreed upon mediator. If the Parties are unable to agree upon a mediator, then either Party may request the American Arbitration Association to appoint a mediator. The mediator’s fee and expenses shall be paid one-half by each Party. Absent written agreement of the Parties to the contrary, the mediation process shall be completed or terminated within forty-five (45) days of the initial request for mediation.

C. Arbitration. In the event that the Parties are unable to resolve the Dispute through non-binding mediation, if elected, the issues in dispute may, upon mutual election by the Parties, be submitted to arbitration pursuant to California Code of Civil Procedure Section 1280 *et seq.* Should the Parties agree to arbitration, the Parties may also choose to agree on whether such arbitration shall decide each and every dispute in accordance with the laws of the State of California, or whether such arbitration shall be non-binding in nature. Nothing herein shall limit the Parties’ rights to any formal judicial determination.

15. Superseding All Prior Agreements. This Agreement sets forth the entire understanding of the Parties relating to the joint use of each Party’s Facilities located on the District and City Sites, and supersedes all prior understandings relating to them, whether written or oral. There are no obligations, commitments, representations, or warranties relating to the facilities except those expressly set forth in this Agreement.

16. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: City Manager

Milpitas Unified School District
1331 E. Calaveras Boulevard
Milpitas, CA 95035
Attn: Superintendent

and shall be effective upon receipt thereof.

17. General Provisions.

- A. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- B. Incorporation of Recitals and Exhibits. The Recitals and Exhibits herein are deemed true and correct, are hereby incorporated into this Agreement as though fully set forth herein, and the Parties acknowledge and agree that they are bound by the same. In the event of any conflict between this Agreement and the Exhibits to this Agreement, the Exhibits shall govern.
- C. Force Majeure. Notwithstanding any other terms and conditions hereof, in the event that a party is materially unable to perform any of its obligations hereunder because of severe weather, natural disasters, epidemics, riots, wars, acts of terrorism, governmental action or other events of force majeure beyond the party's control, then such party shall, upon written notice to the other party hereof, be relieved from its performance of such obligations to the extent, and for the duration that such performance is prevented by such events; provided that such party shall at all times use its best efforts to resume such performance.
- D. Compliance with Law. Each Party agrees to comply with all federal, state and local laws, statutes, codes, ordinances, rules, regulations, policies and requirements (collectively, "Law") regarding their respective use of the Facilities under this Agreement. The Parties further agree that they shall not cause Facilities to be used, occupied, or improved under this Agreement in any manner or for any purpose that is in any way in violation of any Law. If any license, permit, or other governmental authorization is required for either Party's lawful use of the Facilities, such affected Party shall procure and maintain same to the extent required by Law. Each Party shall be solely and completely responsible for the safety of all persons and property associated with their respective use of the Facilities, and all materials, equipment, and supplies provided by such Party during said use shall fully conform to all applicable Law.
- E. No Assignment of Rights. No rights that District or City has under this Agreement may be assigned to any other person(s), entity, agency, or corporation without prior written approval of the other Party.
- F. Non-Discrimination. Neither Party shall employ any discriminatory practices in its performance hereunder, including its employment practices, on the basis of sex, race, color, religion, national origin, ancestry, age, sexual orientation, or physical or mental disability.
- G. Independent Contractor. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.
- H. Laws and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.
- I. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

- J. Approval and Amendment of Exhibits. Notwithstanding the provisions of Section 16.I, any addition to, amendment to, or termination of the Exhibits attached hereto shall take effect only after being approved by both Parties.
- K. Entry and Inspection. Each Party reserves, and shall always have the right, to enter upon the Party's respective sites at reasonable times for the purpose of viewing and ascertaining the condition of the sites.
- L. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.
- M. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successor, and assigns.
- N. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- O. Counterparts. This Agreement may be signed in multiple counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had signed the same Agreement.
- P. Captions. The captions contained in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.
- Q. Joint Preparation. This Agreement shall be deemed to have been prepared jointly by the Parties, and the usual rule that the provisions of a document are to be construed against the drafter shall not apply.

**SIGNATURE PAGE FOR JOINT USE AGREEMENT BETWEEN
CITY OF MILPITAS AND MILPITAS UNIFIED SCHOOL DISTRICT
FOR OPEN SPACE**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

MILPITAS UNIFIED SCHOOL DISTRICT

Approved By:

Cheryl Jordan, Superintendent

Steven G. McHarris, City Manager

Date

Date

Approved As To Form:

DIR Registration Number (If Applicable)

Christopher J. Diaz, City Attorney

Approved:

Lauren Lai, CPA, MPA, Finance Director/Risk
Manager

Approved As To Content:

Renee Lorentzen, Recreation and Community
Services Director

[EXHIBITS]

City of Milpitas General Use Areas		EXHIBIT: C-1	
Property Owner:	City of Milpitas		
Property Address:	NA		
Property Acreage:	181.28		

Park/Complex Name	Park Acreage
Alviso Adobe	2.26
Sunnyhills Augustine Memorial Park	6.2
Bob McGuire Park	3
Ben Rodgers Park	8.66
Calle Oriente Park	0.35
Cardoza Park	10.15
Cerano Park	1
Creighton Park	5
Dixon Landing Park	11.4
Foothill Park	3.98
Gill Memorial Park	8.16
Hall Memorial Park	9.91
Hidden Lake Park	6.57
Higuera Adobe Park	4.8
Hillcrest Park	5.08
John McDermott Park	0.94
Jones Memorial Park	4.93
McCandless Park **	4
Milpitas Sports Center Complex	24.4
Murphy Park	8.3
O'Toole Elms Park	1.63
Parc Metro East	2.06
Pecot Park	3
Pinewood Park	9.88
Robert E. Browne Park	4.93
Russell Fields JUA	8
Sandalwood Park	3.88
Selwyn Park	0.23
Sinnott Park	4.67
Skatepark	0.46
Starlite Park	3.44
Strickroth Park	4.87
Tom Evatt Park	4.42
Traverse Park Phase 1	0.72
Total	181.28

** Separate Joint Use Agreement

Joint Use Area: Cardoza Park Softball Field		EXHIBIT: C.2	
Property Owner:	City of Milpitas	Other Agency Easements:	None
Property Address:	1525 Kennedy Dr.		
Property Acreage:	10.0 Acres		

<p>Description of Area: The Cardoza Park Softball Field area includes one (1) softball field, bleacher seating and walking paths.</p>
<p>Hours of Use: The District may have use of the property during regular school hours until 3:00 PM, or as mutually agreed upon by the District and City.</p>
<p>Terms of Use: The District will shall have access to the site property for the majority use of Calaveras Hills High Physical Education program but not limited to and other student sports activities.</p>
<p>Cost Share: The District shall be solely responsible for all custodial staff costs, including costs related to area amenities (i.e., restrooms), for use of the property during non-regular business hours (after 5pm on weekdays and all day on weekends).</p>

Joint Use Area: Gill Park Softball Field		EXHIBIT: C.3	
Property Owner:	City of Milpitas	Other Agency Easements:	SFPUC
Property Address:	611 Paseo Refugio Dr.		
Property Acreage:	8.0 Acres		

<p>Description of Area: The Gill Park Softball Field area includes one (1) softball field, bleacher seating and walking paths.</p>
<p>Hours of Use: The District may have use of the property during regular school hours until 3:00 PM, or as mutually agreed upon by the District and City.</p>
<p>Terms of Use: The District will shall have access to the site property for the majority use of Calaveras Hills High Physical Education program but not limited to any other student sports activities.</p>
<p>Cost Share: The District shall be solely responsible for all custodial staff costs, including costs related to area amenities (i.e., restrooms), for use of the property during non-regular business hours (after 5pm on weekdays and all day on weekends).</p>

Joint Use Area: Milpitas Sports Center Turf Fields		EXHIBIT: C.4	
Property Owner:	City of Milpitas	Other Agency Easements: None	
Property Address:	1325 E. Calaveras Blvd.		
Property Acreage:	5.0 Acres		

<p>Description of Area: The Milpitas Sports Center Turf Fields area includes one (1) multi-use football and soccer field, one (1) multi-use soccer field, and two (2) volleyball courts, bleacher seating and walking paths.</p>
<p>Hours of Use: The District may have use of the property during regular school hours until 3:00 PM, or as mutually agreed upon by the District and City.</p>
<p>Terms of Use:</p> <ol style="list-style-type: none"> 1. The District will shall have access to the site property for the majority use of Calaveras Hills High Physical Education program but not limited to and other student sports activities. 2. The District shall have access to the property for the Calaveras Hills High School Graduation ceremony, typically held on the first weekend in June.
<p>Cost Share: Except for the Calaveras Hills High School Graduation ceremony, the District shall be solely responsible for all custodial staff costs, including costs related to area amenities (i.e., restrooms), for use of the property during non-regular business hours, after 5pm on weekdays and all day on weekends.</p>

Milpitas Unified School District General Use Areas		EXHIBIT: D-1	
Property Owner:	Milpitas Unified School District		
Property Address:	NA		
Property Acreage:	89.55		

SCHOOL NAME	OPEN SPACE ACREAGE
Burnett Elementary School	7.61
Curtner Elementary School	6.52
Mattos Elementary School **	6.7
Milpitas High School	18.37
Pomeroy Elementary School	3.71
Rancho Middle School	16.79
Randall Elementary School	5.99
Rose Elementary School	5.1
Russell Middle School	11.59
Sinnott Elementary School	4.06
Spangler Elementary School	3.55
Weller Elementary School	4.05
Zanker Elementary School	2.21
TOTAL	96.25

** ** Separate Joint Use Agreement

Joint Use Area: Cesar Chavez Community Garden		EXHIBIT: D.2	
Property Owner:	Milpitas Unified School District	Other Agency Easements: SFPUC	
Property Address:	345 Boulder Street		
Property Acreage:	1.2 Acres		

Description of Area:

1. The Milpitas Cesar Chavez Community Garden is east of Weller Elementary School. The City improved the property by installing garden infrastructure including irrigation, utilities, perimeter fencing north of Sunnyhills Augustine Park.
2. The Hetch Hetchy Trail Access Path is approximately 600 feet long and runs north to south on the west side of the Cesar Chavez Community Garden. The Trail Access Path provides safe access to surrounding parks and Weller Elementary School.

Hours of Use:

1. The City shall have use of the Cesar Chavez Community Garden seven days a week, year-round, from 8:00 a.m. to sunset.
2. The Trail Access Path shall be available to the public, seven days a week, year-round, dawn to dusk.

Terms of Use:

1. Cesar Chavez Community Garden
 - a. City shall assume sole responsibility for the management and oversight of the property, in accordance with the terms of the Agreement, including but not limited to, all programs, events, and services related to the Cesar Chavez Community Garden.
 - b. Weller Elementary School and Sunnyhills Preschool shall be allotted three (3) garden plots for school educational purposes, with the third plot assigned as it becomes available.
 - c. Vehicular access to the identified property shall be restricted to delivery or pick-up of gardening equipment and supplies for gardeners, and for City maintenance purposes only. Vehicular access is restricted to Boyd St. Parking shall otherwise be off-site on Dixon Landing Road or other adjacent streets.
 - d. No power equipment such as rototillers will be allowed before 9:30 a.m. or after 6:00 p.m. daily.
2. Trail Access Path
 - a. The City shall maintain on District property a Trail Access path for residents to safely access the surrounding parks and Weller Elementary School.
 - b. Any District perimeter/safety fencing on the property shall not include the path area. The space between the path and said fencing shall be at least 12" to allow for maintenance and repair.

Maintenance & Improvements:

1. Cesar Chavez Community Garden
 - a. The City shall be responsible for all maintenance of the property, including the fencing around the garden.
 - b. No pesticides shall be used on the property due to State School Pesticide restrictions.
 - c. Any additions, modifications, or capital improvements to the property must be reviewed by the District Superintendent or his/her authorized representative for final approval prior to the commencement of any project.
 - d. The City shall be responsible for all maintenance of the City-installed paved access road at Boulder and Boyd Street, sidewalk entrance/exit to the garden.
2. Trail Access Path

- a. The City shall be responsible for all maintenance and any additions, modifications or capital improvements to the Trail Access Path, including the sidewalk and bollards at Dixon Landing Road.

Cost Share:

1. The cost of maintenance, utilities, and any additions, modifications or capital improvements to the property shall be the sole responsibility of the City.
2. If the District sells the property in which the Community Garden is on, the City, at its own cost and expense, shall remove the sewer line within three (3) months of City's receipt of written request by the new owner.

Joint Use Area: Curtner Elementary School Field		EXHIBIT: D.3	
Property Owner:	Milpitas Unified School District	Other Agency Easements: PG&E	
Property Address:	275 Redwood Dr.		
Property Acreage:	6.5 Acres		

<p>Description of Area: The Curtner Elementary School Field area consists of open space typically used for youth soccer. The field property line is adjacent to the City of Milpitas Hall Park and field. Infrastructure for field lighting and irrigation in the joint use area is located on both City and District property. (See Map Exhibit D.3.1)</p>
<p>Hours of Use: The City may have use of the Curtner Elementary School Field per the master JUA.</p>
<p>Terms of Use:</p> <ol style="list-style-type: none"> 1. Any school site perimeter/safety fencing shall be swing, retractable, or removable so as not to impede on the joint use area or Access Path. 2. The City and third-party users shall have restricted access to the property for equipment for the lining of fields for games played outside of District related events, programs, graduations, and ceremonies. City will inform District prior to lining the field.
<p>Maintenance & Improvements:</p> <ol style="list-style-type: none"> 1. The City shall be responsible for all field maintenance. 2. The City shall be responsible for all lighting and water utility maintenance and any additions, modifications or capital improvements to the field lighting and irrigation shall be the sole responsibility of the City.
<p>Cost Share:</p> <ol style="list-style-type: none"> 1. The City shall pay all utilities related to field lighting and irrigation. 2. The City shall pay the District for required custodial staff.



Joint Use Area: Rancho Middle School Trail Access Path		EXHIBIT: D.4	
Property Owner:	Milpitas Unified School District	Other Agency Easements: None	
Property Address:	1915 Yellowstone Ave.		
Property Acreage:	17.0 Acres		

<p>Description of Area(s):</p> <ol style="list-style-type: none"> 1. The Rancho Middle School Trail Access Path is approximately 1,042 feet long and runs north to south at the farthest west end of the Rancho Middle School property. The Trail Access Path provides safe access to Sinnott Park, Bob Browne Park, and Murphy Park for the arterial streets opposite the path.
<p>Hours of Use:</p> <ol style="list-style-type: none"> 1. The Trail Access Path will be available to the public, seven days a week, year-round, dawn to dusk.
<p>Terms of Use:</p> <ol style="list-style-type: none"> 1. Trail Access Path <ol style="list-style-type: none"> a. The City shall provide on the property a Trail Access Path for residents to safely access Sinnott Park, Bob Browne Park and Murphy Park. b. Any District perimeter/safety fencing on the property will not include the path area. The space between the path and said fencing shall be at least 12" to allow for maintenance and repair.
<p>Maintenance & Improvements:</p> <ol style="list-style-type: none"> 1. Trail Access Path <ol style="list-style-type: none"> a. The City shall be responsible for all maintenance of the Trail Access Path and any additions, modifications or capital improvements to the path, including the sidewalk and bollards, shall be the sole responsibility of the City. b. The City shall maintain the space between the Trail Access Path and fencing.
<p>Cost Share:</p> <p>None</p>

Joint Use Area: Russell Middle School Softball Fields		EXHIBIT: D.5	
Property Owner:	Milpitas Unified School District	Other Agency Easements: SCVWD	
Property Address:	1500 Escuela Parkway		
Property Acreage:	11.5 Acres		

<p>Description of Area: Currently, the Russell Middle School site includes a City built structure (Snack Shack). The District is scheduled to begin reconstruction of the site in June 2021 to rehabilitate the Russell Middle School Athletic fields, which will consist of two (2) regulation softball fields.</p>
<p>Hours of Use: The City may have use of the Russell Middle School Softball fields per the terms of this Agreement.</p>
<p>Terms of Use:</p> <ol style="list-style-type: none"> 1. As of the Effective Date of this Agreement, the District shall be authorized to demolish the City built structure (Snack Shack), which the City has determined as having no value, at the District's expense consistent with the terms of the Agreement, and specifically Paragraph 9 thereof. 2. The City and District shall engage in discussions regarding the terms of use for the site by no later than June 2022 and shall resume discussions in 2023. 3. Should the City's use of this property be more significant than described in the Master JUA Section C. Facility Use – Unforeseen Occurrences, third party users will be referred to the District for direct field rental.
<p>Cost Share: The City and District shall engage in discussions regarding maintenance and utility costs for the site by no later than June 2022 and shall resume discussions in 2023.</p>

City of Milpitas and Milpitas Unified School District
Master Joint Use Agreement For Open Space

Ancillary Fees

Milpitas Unified School District Ancillary Fee Schedule:

- Custodial Cost - \$58 - \$78.00/hour (Staff will be on duty for the duration of the event. Custodial clean up time is additional. Grounds staff require a minimum of three (3) hours a day when fields are in use.)

City of Milpitas Ancillary Fee Schedule:

- Custodial Cost - \$50-75.00/hour (Custodian staff will be on duty for the duration of the event. Custodial clean up time is additional; Custodial staff require a minimum three (3) hours a day when fields are in use..)