

**AGREEMENT BETWEEN
MILPITAS UNIFIED SCHOOL DISTRICT
AND THE CITY OF MILPITAS
FOR ON-GOING OPERATION AND MAINTENANCE OF FACILITIES
CONSTRUCTED AS PART OF THE MCCANDLESS PARK PROJECT AND MABEL
MATTOS SCHOOL**

This Agreement (hereinafter “Agreement”) is entered into between the Milpitas Unified School District, a public school district organized and existing under the laws of the State of California (“District”), and the City of Milpitas, a municipal corporation under the State of California (hereinafter “CITY as of the date of the last signature set forth below (the “Effective Date”). Each of District and the CITY are sometimes hereinafter referred to in the singular as a “Party” or collectively as the “Parties.”

SECTION 1: RECITALS

1.1 Whereas, District a public school district organized and existing under the laws of the State of California; and CITY is a duly established municipal corporation organized and existing under the laws of the State of California.

1.2 Whereas, on October 21, 2014, District purchased approximately 6.7 acres of real property from the CITY for the construction and operation of a new elementary school. The real property is located at the corner of McCandless Drive and Penitencia Creek East Channel, in the City of Milpitas.

1.3 Whereas, District has developed their 6.7 acre parcel into Mabel Mattos Elementary School; and CITY is constructing a park on their 4 acre parcel.

1.4 Whereas, both the CITY and District, in benefit of the Milpitas residents, identified and cooperatively planned joint use facilities on both parcels to be constructed as part of their respective projects.

1.5 Whereas, the Parties have come to agreement regarding their rights and responsibilities related to ongoing operation and maintenance of certain District Mabel Mattos Elementary School facilities (“District Facilities”) and CITY facilities constructed as part of the McCandless Park Project (“CITY Facilities”).

NOW THEREFORE, the Parties agree as follows:

SECTION 2: DEFINITIONS

Field. The 1.2 acre portion of CITY property adjacent to the District property depicted on Exhibit A, along with the 1.2 acre portion of District property adjacent to CITY property depicted on Exhibit A, together totaling 2.4 acres.

Parking Lot or West Parking Lot. The marked parking spaces along the western border of the McCandless Park consisting of 1.17 acres, as depicted on Exhibit A.

Basketball Courts. The 0.25 acre portion of District property adjacent to the Field depicted on Exhibit A.

Inclusive Playground or Playground. The marked circular area to the west of the Field depicted on Exhibit A and located on District property.

Butterfly Gardens. Refers to landscaping around to the north of the Playground depicted on Exhibit A and located on District property.

Joint Use Property. Refers to the Field, Basketball Courts, Playground, Butterfly Garden and West Parking Lot, as depicted in its entirety on Exhibit A.

SECTION 3: PERMITTING

3.1 District work on District Facilities within CITY Owned or Controlled Real Property

- 3.1.1** No permit shall be required for inspection and maintenance activities, or other work that does not alter or impede, or otherwise materially affect the operation of CITY Facilities.
- 3.1.2** District or District's designee shall obtain an encroachment permit from CITY for District activities within CITY owned or controlled real property such as major construction or major repairs/alterations requiring excavation, trenching or relocation of District Facilities.
- 3.1.3** The CITY shall not unreasonably delay, deny, or withhold District's or District designee's request for a permit.
- 3.1.4** Permit requests and notification of work by District, as required, shall be directed to the CITY's Public Works Department. District shall comply with the CITY's standard encroachment permit process.

3.1.5 In the event any emergency work needs to be undertaken by District on District Facilities on CITY owned or controlled real property or easement, or on CITY Facilities, District shall notify CITY as soon as possible and coordinate with CITY to minimize public inconvenience. District shall contact CITY Police Department Dispatch (408) 586-2400 for all Emergency Work conducted after normal business hours and on weekends.

3.2 CITY work on CITY Facilities within District Owned or Controlled Real Property

3.2.1 No permit shall be required for inspection and maintenance activities, or other work that does not alter or impede, or otherwise materially affect the operation of District Facilities.

3.2.2 CITY or CITY's designee shall obtain an encroachment permit from District for CITY activities within District owned or controlled real property such as major construction or major repairs/alterations requiring excavation, trenching or relocation of CITY Facilities.

3.2.3 The District shall not unreasonably delay, deny, or withhold CITY's or CITY designee's request for a permit.

3.2.4 Permit requests and notification of work by CITY, as required, shall be directed to District's Business Services Department. CITY shall comply with the District's standard encroachment permit process.

3.2.5 In the event any emergency work needs to be undertaken by CITY on CITY Facilities within District owned or controlled real property or on District Facilities, the CITY shall notify District as soon as possible and coordinate with District to ensure the work is done in a manner that does not impact District Facilities or operations. CITY shall contact Director of Maintenance, Operations and Transportation at (408) 635-2888 for all emergency work conducted after normal business hours and on weekends.

SECTION 4: OPERATION AND MAINTENANCE

4.1 FIELD

4.1.1 CITY shall maintain the Field as shown on Exhibit A of this Agreement.

4.1.2 CITY shall be responsible for all utilities associated with the Field.

4.2.3 The Parties shall mutually agree upon replacement or improvements to the Field. The Parties shall share the cost of the improvements or replacements to the Field equally unless the other Party caused damage to the Field, in which case the Party causing the damage shall pay the total cost of repair or replacement of the damaged area.

4.2 PARKING LOT

4.2.1 District shall maintain the lights in the Parking Lot.

4.2.2 District shall maintain the irrigation system in the Parking Lot.

4.2.3 CITY shall maintain the Parking Lot pavement and markings.

4.2.4 District shall perform daily maintenance on the Parking Lot.

4.2.5 District shall be responsible for all utilities associated with the Parking Lot

4.2.6 The Parties shall mutually agree upon replacements or improvements to the Parking Lot. The Parties shall share the cost of the improvements or replacements to the Parking Lot equally unless the other Party caused damage to the Parking Lot, in which case the Party causing the damage shall pay the total cost of repair or replacement of the damaged area.

4.3 BASKETBALL COURTS

4.3.1 District shall maintain the surface and all amenities on the Basketball Courts.

4.3.2 The Parties shall mutually agree upon replacement of equipment or improvements to the Basketball Courts. The Parties shall share the cost of the improvements or replacements to the Basketball Court equally unless the other Party caused damage to the Basketball Courts, in which case the Party causing the damage shall pay the total cost of repair or replacement of the damaged area.

4.4 INCLUSIVE PLAYGROUND

4.4.1 CITY shall maintain the Inclusive Playground.

4.4.2 The Parties shall mutually agree upon replacement of equipment or improvements to the Playground. The Parties shall share the cost of the improvements or replacements to the Playground equally unless the other Party caused damage to the Playground, in which case the Party causing

the damage shall pay the total cost of repair or replacement of the damaged area.

4.5 BUTTERFLY GARDENS

4.5.1 CITY shall maintain the Butterfly Gardens.

4.5.2 The Butterfly Gardens shall be on CITY utilities system and sub metered. DISTRICT shall be billed annually by CITY for the time period of July 1- June 30 for the total cost of utilities associated with the Butterfly Gardens.

4.5.3 The Parties shall mutually agree upon replacement or improvements to the Butterfly Gardens. The Parties shall share the cost of the improvements or replacements to the Butterfly Gardens equally unless the other Party caused damage to the Butterfly Gardens, in which case the Party causing the damage shall pay the total cost of repair or replacement of the damaged area.

SECTION 5: RECORD KEEPING

5.1 District and CITY shall keep and maintain books, papers, plans, drawings, records, files, reports, and other materials relating to the work for a period of three years from construction completion. Records shall be made available to other parties involved in the funding for the construction services.

SECTION 6: MISCELLANEOUS

6.1 Notice. Any notice required or permitted to be given by either Party shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To District: Milpitas Unified School District
Business Services Department
1331 E. Calaveras Blvd.
Milpitas, CA 95035

To CITY: Public Works Department
City of Milpitas
1265 North Milpitas Boulevard
Milpitas, CA 95035

6.2 Exhibits. Except as specifically set forth herein, Exhibits attached hereto are attached for purposes of illustration only and not intended to provide substantive

provisions to this Agreement. In the event of a conflict between any of the Exhibits and the terms set forth in the body of this Agreement, the terms in the body of this Agreement shall control.

6.3 Dispute Resolution. If issues arise regarding interpretation of this Agreement or the performance, or the alleged failure of a party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The Parties representatives shall promptly meet to resolve the issues. If the Parties fail to resolve the issues, alternative forms of dispute resolution including mediation, may be pursued by mutual agreement however, there shall not be a duty on either Party to participate in such alternative forms of dispute resolution. If resolution cannot be reached through alternatives forms of dispute resolution within a reasonable time period as determined by the Party raising the question or making the allegation, then such Party may pursue its rights and remedies at law or in equity.

6.4 Hold Harmless and Indemnification. Neither CITY nor any of its officers or employees shall be responsible for any damage or liability by reason of anything done or omitted by DISTRICT in connection with any work, authority or jurisdiction delegated to DISTRICT under this Agreement. Pursuant to Government Code Section 895.4, DISTRICT shall fully indemnify and hold CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by DISTRICT in connection with any work, authority or jurisdiction delegated to DISTRICT under this Agreement. This hold harmless shall apply to any activities errors or omissions of the DISTRICT and/or DISTRICT's officers, employees, agents, consultants or contractors or any persons or entities acting or omitting to act for or on behalf of DISTRICT where such persons or entities are specifically authorized and empowered by DISTRICT to act for DISTRICT.

Neither DISTRICT nor any of its officers or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted by the CITY in connection with any work, authority or jurisdiction delegated to the CITY under this Agreement. Pursuant to Government Code Section 895.4, the CITY shall fully indemnify and hold DISTRICT harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by the CITY in connection with any work, authority or jurisdiction delegated to the CITY' under this Agreement. This hold harmless shall apply to any activities errors or omissions of the CITY and/or its officers, employees, agents, consultants or contractors or any persons or entities acting or omitting to act for or on behalf of the CITY where such persons or entities are specifically authorized and empowered by the CITY to act for the CITY.

6.5 Severability. If any term, provision, covenant, or condition of this Agreement is

held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect.

- 6.6 Amendments.** This Agreement may not be modified except by written instrument executed and approved in the same manner as this Agreement.
- 6.7 Term of Agreement.** This Agreement shall be effective on the date specified on the signature page hereof and, unless earlier terminated by agreement of the Parties, shall remain in effect for as long as McCandless Park continues to remain in service.
- 6.8 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter set forth herein, and supersedes all understandings, offers, negotiations and other agreements, oral or written, concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both Parties.
- 6.9 Successors and Assign.** This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.
- 6.10 Governing Laws.** This Agreement shall be governed by the laws of the State of California and be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.
- 6.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
- 6.12 Non-Waiver.** The failure of either Party to insist upon the strict performance of any of the terms, covenants, and conditions of this Agreement will not be deemed a waiver of any right or remedy that a Party may have and will not be deemed a waiver of the right to require strict performance of all of the terms, covenants, and conditions thereafter.

Signatures of Parties on following page.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as set forth below.

“CITY”

CITY OF MILPITAS
APPROVED BY:

Steven McHarris, City Manager

Date

APPROVED:

Walter Rossmann, Risk Manager/Director
of Finance

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

APPROVED AS TO CONTENT:

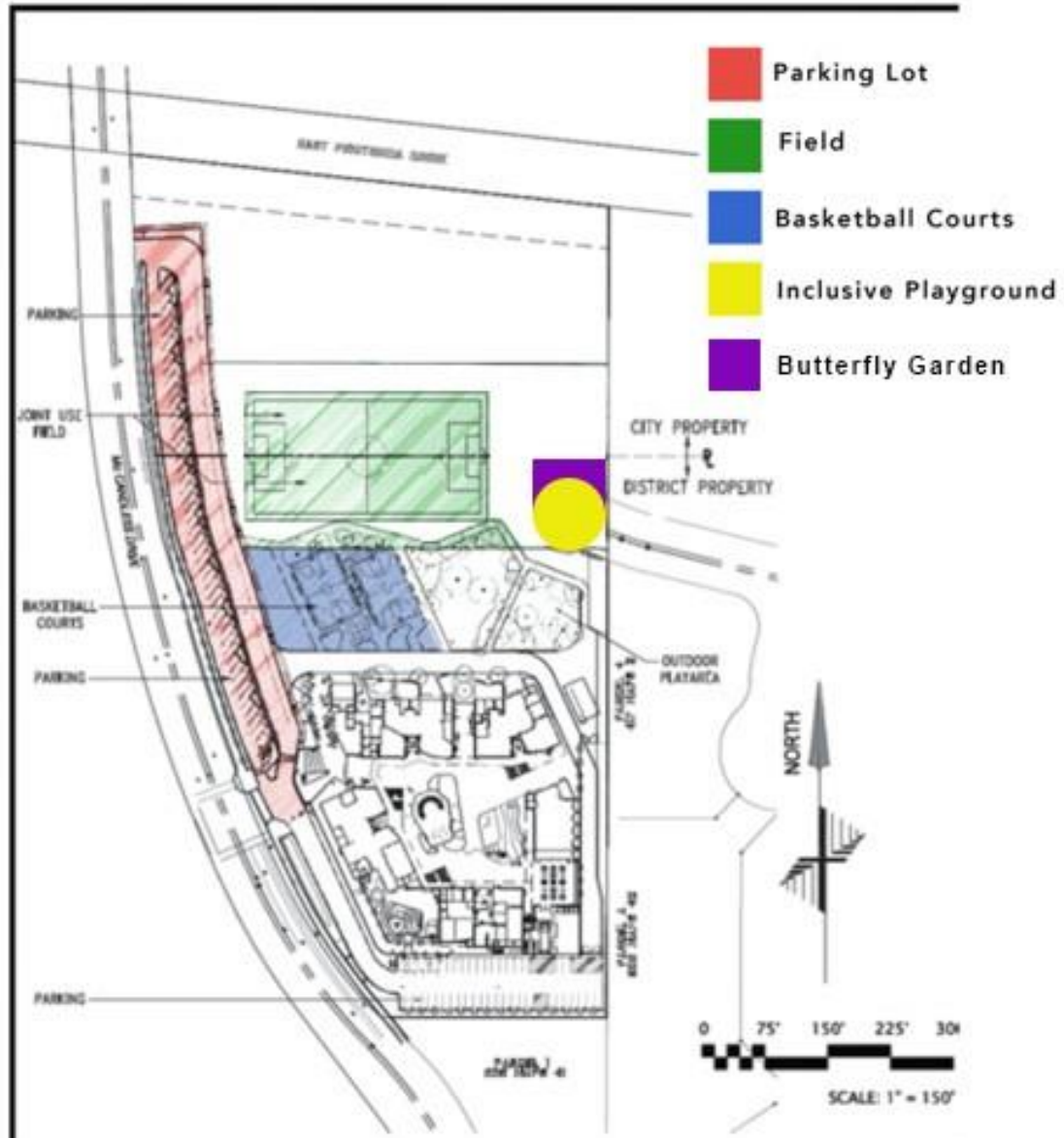
Tony Ndah
Public Works Director

“DISTRICT”

MILPITAS UNIFIED SCHOOL DISTRICT
APPROVED BY:

Cheryl Jordan, Superintendent

Date



DATE: 2016-05-05
 SCALE: AS SHOWN
 DRAWN: VAB
 CHECKED: SPF
 JOB NO: 10259.36

MILPITAS USD
 BOUNDARY EXHIBIT
 1800 1750 MCANDLESS DRIVE
 MILPITAS, CA

NONIACH-LEWIN, INC.
 STRUCTURAL & CIVIL ENGINEERS
 1000 S. GARDEN AVENUE, SUITE 100
 MILPITAS, CA 95035
 TEL: 408.351.1100 FAX: 408.351.1101