

**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 administering 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 ensure 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 purposed 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 of 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.

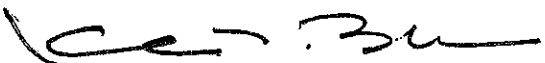
Notwithstanding any language of the foregoing to the contrary, DISTRICT may satisfy the insurance obligations hereunder by providing to CITY proof of self-insurance in a form reasonable acceptable to CITY, to the extent such self-insurance is permitted by laws of the State of California and in accordance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

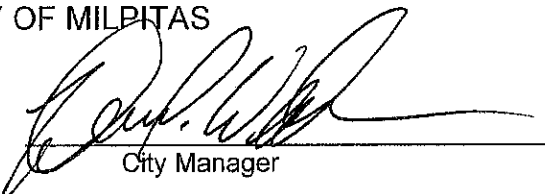
IN THE WITNESS WHEREOF, the parties hereto have executed this agreement as of the 26<sup>th</sup> day of January, 2010,

MILPITAS UNIFIED SCHOOL DISTRICT (MUSD)

By:   
Superintendent

Date: January 26, 2010

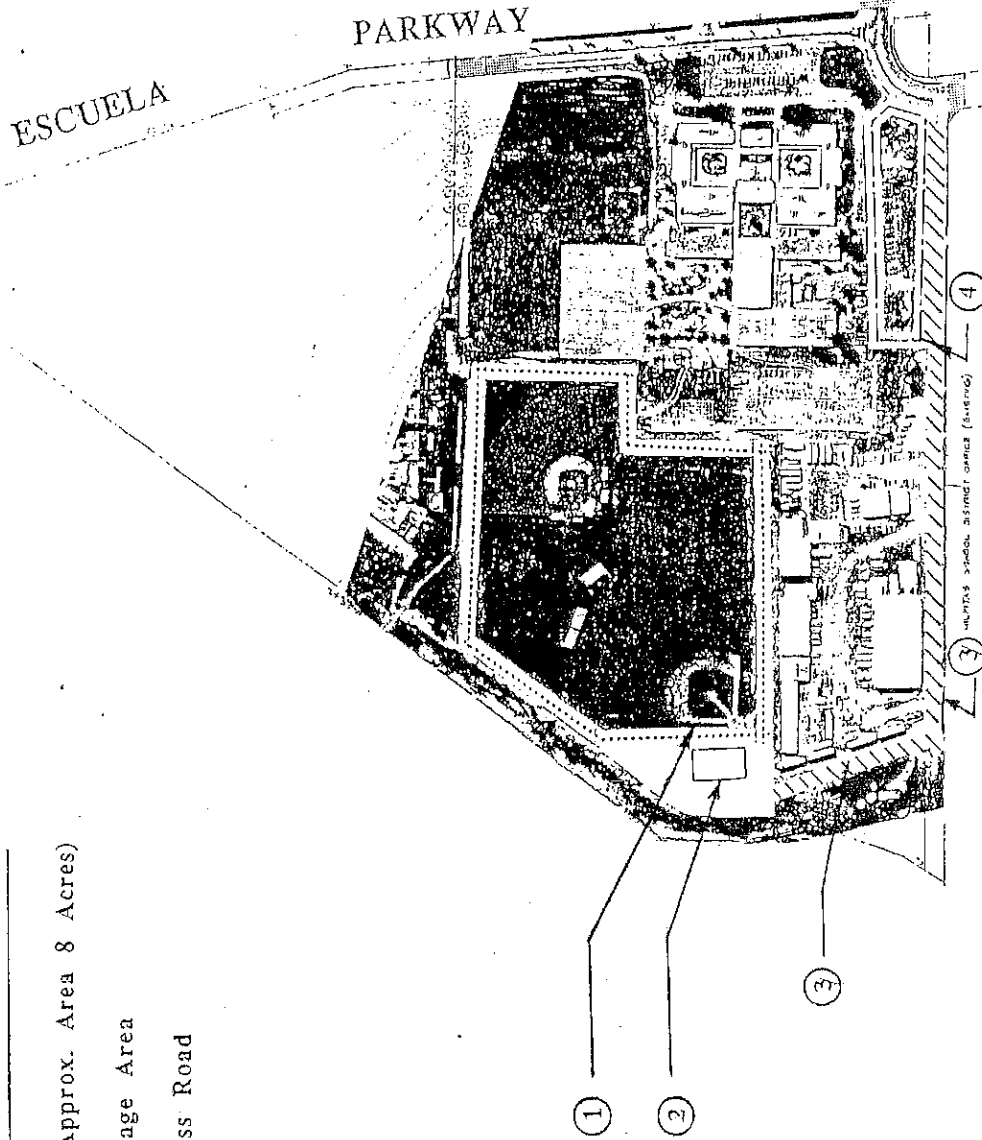
CITY OF MILPITAS

By:   
City Manager

Date: 2/5/10

# 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)



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

EXHIBIT 'A'  
THOMAS RUSSELL SCHOOL  
MILPITAS