

**SECOND AMENDMENT TO GROUND LEASE
AND JOINT USE AGREEMENT**

**By and Between
MILPITAS UNIFIED SCHOOL DISTRICT
And
SAN JOSÉ EVERGREEN COMMUNITY COLLEGE DISTRICT**

**for a
JOINT USE 21ST CENTURY POST-SECONDARY EDUCATION CENTER
MILPITAS, CALIFORNIA**

Milpitas Unified School District, a school district organized and existing under the laws of the State of California (“MUSD”), and San José Evergreen Community College District (“SJECCD”), hereinafter collectively referred to as the Parties, hereby enter into this Second Amendment to Ground Lease and Joint Use Agreement, effective as of April ___, 2017, as set forth below.

RECITALS

WHEREAS, MUSD and SJECCD entered into a Memorandum of Understanding (“MOU”) effective October 9, 2012, setting forth their intent to develop a joint use post-secondary education center on MUSD property, financed by SJECCD bond funds, and operated jointly by the Parties; and,

WHEREAS, on June 11, 2013, the Parties entered into the Ground Lease and Joint Use Agreement, amended by that First Amendment dated May 26, 2015, (collectively referred to as the “Agreement”), pursuant to which MUSD leased a portion of undeveloped land (“the Leased Real Property”) to SJECCD, with a waiver of rent, for the purpose of constructing a Joint Use Education Center (“Joint Use Center”); and,

WHEREAS, the Agreement requires the Parties to meet on a regular basis and make recommendations regarding the use and operation of the Joint Use Center; and,

WHEREAS, in accordance with Article 8 of the Agreement, a Joint Use Committee was duly formed and met to fulfill its obligations summed up in the Report dated August 12, 2015, attached hereto as Exhibit 1 to the Second Amendment, and made a part hereof; and,

WHEREAS, the Joint Use Committee recommended certain revisions to the Agreement in order to clarify specific terms and conditions; and

NOW, THEREFORE, THE PARTIES AGREE TO AMEND THE AGREEMENT AS FOLLOWS:

I. ARTICLE 1--SATISFACTION OF LEASE OBLIGATIONS:

Section 1.3, “Title Documents”, is amended by adding the following sentence to the end:

The Parties acknowledge that their respective obligations with regard to title documents, including a Title Report, have been fully satisfied.

Section 1.4, “Possession”, is amended by adding the following new sentence to the end:

The Parties acknowledge that their respective obligations with regard to possession of the premises have been fully satisfied.

II. ARTICLE 5--IMPROVEMENTS:

Section 5.3.2, "Educational Program Committee", is deleted and replaced by the following:

5.3.2 Educational Program Committee. The Educational Program Committee shall be comprised of at least four (4) members with equal representation from the Parties. The Educational Program Committee is charged with providing educational program recommendations to the Joint Use Committee for the design, implementation, and measurement of educational programs. The Educational Program Committee shall work with the Operations Committee to ensure that resources, logistics, academic calendars, course offerings and other operational aspects for the delivery of effective educational programs are in place.

III. ARTICLE 7—OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY:

Section 7.2, "Ownership of Personal Property", subsections 7.2.1 and 7.2.2 are deleted and replaced by the following:

7.2.1 SJECCD as the owner of the Joint Use Center will include in the construction project the initial purchase of furniture, fixtures and equipment ("FF&E") and shall grant MUSD the use of the furnished facilities at no cost for the duration of the Agreement.

7.2.2 SJECCD shall inventory and maintain records of all capital assets including FF&E. The repair and/or replacement of all FF&E will be considered Operating Expenses as defined in Article 10 of the Agreement.

IV. ARTICLE 8—JOINT USE AND OPERATION

Section 8.3, "Use of Classrooms", subsection 8.3.7, is deleted and replaced by the following:

8.3.7 Annual use and operational cost decisions shall be determined by the Parties with recommendations to the Joint Use Committee from the Operations and Educational Program Committees.

Section 8.4 is deleted and replaced by the following:

8.4 Operations Committee.

8.4.1 Members. The Parties shall establish a joint operations committee prior to the opening of the Joint Use Center comprised of at least four (4)

members, with equal representation from the Parties (“Operations Committee”). The Operations Committee shall administer the day-to-day operations of the Joint Use Center.

8.4.2 Responsibilities. The Operations Committee shall meet on a quarterly basis, or more often as necessary, and shall schedule one of those meetings prior to the beginning of each school year to make recommendations regarding the usage of the Joint Use Center. The Operations Committee shall work collaboratively with the Educational Program Committee and take into consideration each Party’s Use Percentage and any other requirements of this Agreement in making such recommendations, including, but not limited to: (i) scheduling; (2) course offerings; (iii) coordination of equipment and materials; (iv) space utilization; and, (v) tracking operating expenses. Notwithstanding any other provision of this Agreement, SJECCD reserves the right to cancel any post-secondary course which does not attract sufficient total enrollment by a designated date each semester in order to meet SJECCD’s ongoing course cancellation standards.

The Operations Committee shall provide a written report of its recommendations, which may include minutes of its meetings with detailed action and information items; and, concerns and comments to the Joint Use Committee after each meeting. The Operations Committee shall also issue a written report to the Joint Use Committee summarizing the annual operating expenses for the previous Fiscal Year no later than one hundred twenty (120) days after the end of the Fiscal Year.

8.4.3 Collaboration and Cooperation. As an integral part of its efforts, members of the Operations Committee agree to maintain the collaborative working relationship expressed as one of the goals of the MOU and further agree to cooperate in maximizing the use of the Joint Use Center for the benefit of the community.

8.4.4 Resolution of Issues. In the event the Operations Committee cannot resolve a particular issue, the Joint Use Committee shall meet and confer to mediate a resolution. The Parties agree, however, that each Party has ultimate sole control of the educational programs it offers at the Joint Use Center.

8.4.5 Annual Schedule. The Operations Committee shall publish an annual use schedule for the Joint Use Center developed collaboratively which is distributed to both Parties prior to the start of each school year.

Section 8.5 is deleted and replaced by the following:

8.5 Joint Use Committee

8.5.1 Members. The parties shall establish a joint use committee comprised of four (4) members, two (2) selected by MUSD and two selected by SJECCD ("**Joint Use Committee**").

8.5.2 Responsibilities. The Joint Use Committee shall remain in existence as an executive committee and shall meet as needed, but no less than once per year, to receive reports from the Operations Committee and the Educational Program Committee, and to provide information to the governing bodies of both Parties.

8.5.3 Collaboration and Cooperation. As an integral part of its efforts, members of the Joint Use Committee agree to maintain the collaborative working relationship expressed as one of the goals in the MOU and further agree to cooperate in maximizing the use of the Joint Use Center for the benefit of the community.

8.5.4 Resolution of Issues. The Joint Use Committee shall have the authority to issue interpretations of the Agreement. Any disputes regarding the Joint Use Committee's interpretation of the Agreement shall be resolved in accordance with Article 18 of the Agreement, "Dispute Resolution".

8.5.5 Annual Schedule. The Joint Use Committee shall publish an annual use schedule for the Joint Use Center developed collaboratively and distributed to both Parties prior to the start of each school year ("**Annual Schedule**").

Section 8.6 is deleted and replaced by the following:

8.6 Educational Programs.

8.6.1 Post Secondary Programs. The educational programs to be offered by SJECCD at the Joint Use Center will be post-secondary, with an emphasis on general education courses appropriate to the first two years of university requirements. Course hours will be within the framework of 9:00 a.m. to 9:00 p.m. or later depending upon SJECCD's program needs, Monday through Saturday.

8.6.2 MUSD's Accelerated Learning. Educational programs offered by MUSD during normal high school hours, 7:30 a.m. to 3:30 p.m., will be secondary and will be determined by MUSD.

8.6.3 Enrollment of MUSD Students. To the extent allowed by applicable law, during the term of this Agreement, including any extended term, MUSD students who are eligible for and enroll in the accelerated learning programs will have an enrollment preference in post-secondary courses offered at the Joint Use Center, in the manner described in section 8.3.5.

Section 8.7 is deleted and replaced by the following:

8.7 Use of the Joint Use Center by Third-Parties. Subject to constraints imposed by the use of bond money and applicable law, the Operations Committee shall make the Joint Use Center available for outside groups to rent or use under the Civic Center Act through the use of a permit or license when not otherwise in use by the Parties. Fees and rental revenue from use by third-parties shall first be accounted for as part of the Joint Use Center operation and shall be applied to recover direct and indirect Operational Expenses associated with the support of such activities or events. SJECCD will be in charge of space utilization and rental administration (“Rental Administrator”). As the Rental Administrator, SJECCD will provide a coordinator for scheduling use by third-parties (“Rental Coordinator”). The Rental Administrator and Rental Coordinator shall work together to create rental applications, fee schedules and rental use agreements for use in renting the site to third-parties. The reasonable costs associated with the Rental Administrator and Rental Coordinator shall be charged to the Joint Use Center’s Operational Expenses. The net rental income generated from this activity shall be split between MUSD and SJECCD according to the Use Percentage.

New subsection 8.8 is added as follows:

8.8 Compliance with Law. During the term of this Agreement, both parties shall comply with all applicable statutes, ordinances and regulations governing use of the Premises and Joint Use Center. If any license, permit or other governmental authorization is required for the lawful use or occupancy of the Joint Use Center, the Parties shall cooperate to procure and maintain it throughout the term of this Agreement.

V. ARTICLE 9—MAINTENANCE AND REPAIR

Section 9.1.1., “Maintenance: Normal Wear and Tear”, “SJECCD Obligations” is deleted and replaced by the following:

9.1.1. SJECCD Obligations. SJECCD shall be responsible for the routine maintenance of the building and the associated infrastructure. Incidents outside of routine maintenance will be charged to Operational Expenses and are subject to the Use Percentage. SJECCD shall be responsible for the disposal of hazardous material waste resulting from instructional activities in accordance with local, state and federal guidelines. SJECCD’S safety procedures shall be followed in all labs.

VI. ARTICLE 10—OPERATING EXPENSES

Section 10.1, “Operating Expenses” is deleted and replaced by the following:

10.1 Operating Expenses. Operating Expenses shall be shared by the Parties according to the Use Percentage set forth in Article 8 of the Agreement. As defined in the Agreement, Operating Expenses shall include utilities (gas, electricity, water, sewer, and garbage/trash removal), security costs, telecommunications costs, and any other expenses payable to a third-party and attributable to the operation of the Joint Use Center.

SJECCD shall provide and supervise ongoing custodial services, and such costs shall be included in the Operating Expenses of the Joint Use Center.

MUSD shall provide and supervise ongoing grounds services, and such costs shall be included in the Operating Expenses of the Joint Use Center.

Operating Expenses associated with the authorized rental or use of the Joint Use Center by a third-party in accordance with Article 8 of the Agreement will be accounted for in the rental fee schedule and paid by the third-party.

In the event a Party believes it is necessary to incur Operating Expenses which are considered to be a one-time, non-continuing cost, the Party initiating such cost shall provide the other Party advance notice of at least five (5) business days of its' interest and intention to incur such cost and seek consent from the other Party to the expenditure, which consent shall not be unreasonably withheld.

Security services, including alarm monitoring services, are included in the Operating Expenses. If legally permitted under SJECCD's union agreements, the responsibility of responding to an alarm will be contracted to a third-party service. If not, SJECCD's Campus Police Services will have that responsibility.

Section 10.2, "First Year Operating Expenses", is deleted and replaced by the following:

10.2 First Year Operating Expenses. SJECCD shall pay the Operating Expenses of the Joint Use Center as defined in Section 10.1 of the Agreement. At the end of the first Fiscal Year, SJECCD shall invoice MUSD, and MUSD shall reimburse SJECCD, for such Operating Expenses based on the Use Percentage. The Joint Use Committee or its designee(s) shall maintain records of the Operating Expenses.

Section 10.3, "Subsequent Years' Operating Expenses", is deleted and replaced by the following:

10.3 Subsequent Years' Operating Expenses. For each subsequent Fiscal Year, MUSD shall pay to SJECCD on or before the fifteenth day of July and on or before the first day of December, a good faith estimate of Operating Expenses based on the previous Fiscal Year and any other applicable information. Projected amounts of Operating Expenses for each Fiscal Year shall be determined in advance and the estimated figures shall be provided to the Joint Use Committee and to each Party in written form prior to the beginning of each Fiscal Year.

Section 10.4, "Annual Statement", is deleted and replaced by the following:

10.4 Annual Statement. No later than one hundred twenty (120) days after the conclusion of each Fiscal Year, the Operations Committee shall provide to the Joint Use Committee a written statement showing in reasonable detail the actual Operating Expenses for the previous Fiscal year ("Annual Joint Use Center Operating Expense Statement). The Operating Committee may request additional backup information from either Party in order to create the Annual Joint Use Center Operating Expense Statement. Any additional sum due from MUSD to SJECCD shall be due and payable thirty (30) days from MUSD's receipt of such statement. If the amounts paid by SJECCD pursuant to this Section 10.4 exceed the Operating Expenses for the previous Fiscal Year, the difference shall be credited against future Operating Expenses; provided that, if the term of this Agreement has expired, MUSD shall accompany the statement with payment for the amount of such difference.

VII. Reservation. All other terms and conditions of the Agreement, as amended, not expressly altered by this Second Amendment shall remain in full force and effect.

Milpitas Unified School District

By: _____
Name: Cheryl Jordan
Title: Superintendent

Date: _____

San José Evergreen Community College District

By: _____
Name: Dr. Deborah Budd
Title: Chancellor

Date: _____

San José City College

By: _____
Name: Dr. Byron Breland
Title: President

Date: _____