

**AMENDMENT NO. 1 TO
JOINT USE AGREEMENT BETWEEN
MILPITAS UNIFIED SCHOOL DISTRICT AND
CITY OF MILPITAS**

This Amendment No. 1 to the Joint Use Agreement (“Amendment No. 1”) 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”).. The District and City may be referred to individually as a “Party” and collectively as the “Parties.”

The District and City hereby agree as follows:

1. The Joint Use Agreement between the parties dated July 16, 2016, which relates to the premises located at the corner of McCandless Drive and Penitencia Creek East Channel, Milpitas, CA is hereby amended as follows:
 - a. Section 1.3 and 1.4 shall be removed and replaced with the following:
 - i. 1.3 Parking Area. The marked parking spaces along the western border of the McCandless Property (“**West Parking Lot**” or “**Parking**”) consisting of 1.17 acres, as designated on Exhibit B.
 - ii. 1.4 Inclusive Playground. The marked circular area to the west of the Field depicted on Exhibit B, on District Property (“**Playground**”).
 - iii. 1.5 Butterfly Gardens. Landscaping around the North of the Playground, depicted on Exhibit B, on District Property (“**Gardens**”). The Field, Basketball Courts, West Parking Lot, Inclusive Playground and Butterfly Gardens may be referred to individually as the Field, Basketball Courts, Parking, Playground or Gardens, or collectively as the “**Joint Use Property**,” as depicted in its entirety on Exhibit B.
 - iv. 1.6 Access to Joint Use Property. Each Party shall have access to the Joint Use Property according to the terms and conditions of this Joint Use Agreement.
 - b. Section 5.1.3 shall be removed and replaced with:
 - i. 5.1.3 Parking. The West Parking Lot shall be available for use by both the District and City at all times, with the exception of 20 parking stalls next to the Student Loading Zone which will be restricted to 15 minute parking, Monday – Friday until 9:00 A.M.
 - ii. 5.1.4 Playground. District and City shall have use of the Playground for community use at all times.
 - c. Section 5.2.3 shall be removed and replaced with:
 - i. 5.2.3 Parking. The West Parking Lot shall be available for use by both City and District at all times, with the exception of 20 parking stalls next to the Student Loading Zone which will be restricted to 15 minute parking, Monday – Friday until 9:00 A.M.
 - ii. 5.2.4 Playground. City and District shall have use of the Playground for community use at all

times.

- d. Section 7.1 & 7.1.1 shall be removed and replaced with:
 - i. 7.1 Operations Committee. City and District shall each designate an equal number of representatives to meet as an operations committee ("**Operations Committee**") to establish a written schedule for District and City exclusive and special event use of the Joint Use Property ("**Joint Use Schedule**"), coordinate the preparation and execution of a mutually satisfactory Operations and Maintenance Agreement (defined in Section 9.1), establish an annual maintenance schedule to be included in the Operating Agreement (defined in Section 7.3), and discuss any issue related to the Joint Use Property.
 - ii. 7.1.1 Meetings. The Operations Committee shall meet every three years (at a minimum), prior to the beginning of the school year and more often as needed.
- e. Section 9.1 shall be removed and replaced with:
 - i. Operations and Maintenance Agreement. The Operations Committee shall coordinate the preparation and execution of a mutually satisfactory agreement for the maintenance of the Joint Use Property ("**Operations and Maintenance Agreement**"). The Operations and Maintenance Agreement shall define each Party's maintenance obligations for the Field, Basketball Courts, Inclusive Playground, Butterfly Gardens, and Parking, and shall provide that the costs of such maintenance shall be equally split between the Parties, except when such costs are otherwise allocated in this Joint Use Agreement.
- f. In Section 11.5, remove the District's attorney from receiving a copy of any notices. The notices for the City should be replaced with smcharris@ci.milpitas.ca.gov with a copy to the City Attorney at cdiaz@ci.milpitas.ca.gov.

[Signatures on following pages]

Signature Page
for

JOINT USE AGREEMENT

IN WITNESS WHEREOF, this Joint Use Agreement is executed by the City of Milpitas, acting by and through its City Council that has authorized the City Manager to execute, and by the Milpitas Unified School District, acting by and through its Board of Education that has authorized the superintendent or his designee to execute.

CITY OF MILPITAS

MILPITAS UNIFIED SCHOOL DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: CITY ATTORNEY

Date: _____

EXHIBIT A-1
DISTRICT PROPERTY (ELEMENTARY SCHOOL)

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 2 AND A PORTION OF PARCEL 3, AS SAID PARCELS ARE SHOWN ON THE PARCEL MAP OF "MC CANDLESS TECHNOLOGY", FILED FOR RECORD ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS AT PAGES 41-43, SANTA CLARA COUNTY RECORDS, TOGETHER WITH A PORTION OF HOURET DRIVE AS SAID PORTION IS SHOWN AND DEDICATED ON SAID PARCEL MAP OF "MC CANDLESS TECHNOLOGY", BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 2;

THENCE ALONG THE GENERAL EASTERLY LINES OF PARCEL 2 AND 3, THE FOLLOWING SEVEN (7) COURSES:

- 1.) NORTH 0°08'26" EAST, 546.62 FEET;
- 2.) NORTH 68°44'33" WEST, 26.61 FEET THE BEGINNING OF A TANGENT CURVE TO THE LEFT;
- 3.) ALONG SAID CURVE HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 35°05'48", AN ARC LENGTH OF 12.25 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 13°50'22" EAST;
- 4.) ALONG SAID CURVE HAVING A RADIUS OF 46.00 FEET, THROUGH A CENTRAL ANGLE OF 250°11'37", AN ARC LENGTH OF 200.87 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 56°21'15" WEST;
- 5.) ALONG SAID CURVE HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 35°05'48", AN ARC LENGTH OF 12.25 FEET;
- 6.) SOUTH 68°44'33" EAST, 0.35 FEET;
- 7.) NORTH 0°08'26" EAST, 53.88 FEET;

THENCE LEAVING THE EAST LINE OF SAID PARCEL 3, NORTH 89°51'34" WEST, 544.46 FEET TO THE WEST LINE OF SAID PARCEL 3 AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 81°35'01" WEST;

THENCE SOUTHEASTERLY ALONG THE WESTERLY LINES OF SAID PARCEL 3 AND 2, THE FOLLOWING THREE (3) COURSES:

- 1) ALONG SAID CURVE HAVING A RADIUS OF 1,762.00 FEET, THROUGH A CENTRAL ANGLE OF 17°12'47", AN ARC LENGTH OF 529.35 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE LEFT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 64°22'14" WEST;
- 2) ALONG SAID CURVE HAVING A RADIUS OF 682.00 FEET, THROUGH A CENTRAL ANGLE OF 11°38'05", AN ARC LENGTH OF 138.49 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE LEFT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 52°44'09" WEST;
- 3) ALONG SAID CURVE HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF 10°03'25", AN ARC LENGTH OF 70.21 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2, SOUTH 89°51'34" EAST, 269.11 FEET TO THE POINT OF BEGINNING.

CONTAINING 291,853 SQUARE FEET OR 6.70 ACRES, MORE OR LESS.

EXHIBIT A-2
LEGAL DESCRIPTION OF CITY PROPERTY

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 3, AS SAID PARCEL IS SHOWN ON THE PARCEL MAP OF "MC CANDLESS TECHNOLOGY", FILED FOR RECORD ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS AT PAGES 41-43, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 3;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 3, SOUTH 83°45'38" EAST, 573.71 FEET TO THE NORTHEAST CORNER THERETO;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 3, SOUTH 0°08'26" WEST, 295.38 FEET;

THENCE LEAVING SAID EASTERLY LINE, NORTH 89°51'34" WEST, 544.46 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 3 AND THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 81°35'01" WEST;

THENCE ALONG SAID WESTERLY LINE, ALONG SAID CURVE HAVING A RADIUS OF 1,762.00 FEET, THROUGH A CENTRAL ANGLE OF 5°51'39", AN ARC LENGTH OF 180.24 FEET;

THENCE CONTINUING ALONG SAID WESTERLY LINE, NORTH 2°33'20" WEST, 177.24 FEET TO THE POINT OF BEGINNING.

CONTAINING 182,349 SQUARE FEET OR 4.19 ACRES, MORE OR LESS.

EXHIBIT B
DEPICTION OF JOINT USE AREAS

