

**PURCHASE AND SALE AGREEMENT BETWEEN
THE CITY OF MILPITAS
AND
MILPITAS UNIFIED SCHOOL DISTRICT**

(Portion of McCandless Property)

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This Purchase and Sale Agreement (“Agreement”) is entered into as of the 21st day of October, 2014, (“Effective Date”) by and between 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 of the State of California (“CITY”).

Recitals

- A. **WHEREAS**, CITY is the owner in fee simple of certain vacant real property consisting of approximately 10.90 acres on the corner of McCandless Drive and Penitencia Creek East Channel, located in the City of Milpitas, County of Santa Clara, as further depicted and described in **Exhibit A** of this Agreement (the “CITY Property”).
- B. **WHEREAS**, DISTRICT desires to purchase approximately 6.70 acres of the CITY Property as more particularly depicted and described in **Exhibit B** (the “School Property”) for the development of a public elementary school serving grades kindergarten through 6th grade.
- C. **WHEREAS**, the CITY Property, located in the McCandless/Centre Pointe region of the "Transit Area," has been designated as Park and Open Space under the City’s Zoning Code, which does not allow the School Property to be used for a public school, but, as permitted under Government Code section 53094, the DISTRICT's governing board will exempt the DISTRICT from the zoning restriction prior to the close of escrow.
- D. **WHEREAS**, DISTRICT desires to purchase the School Property and CITY desires to sell the School Property on the terms and conditions in this Agreement for the total amount of Twenty Million Seven Hundred Seventy Thousand Dollars (\$20,770,000.00) (6.7 acres at \$3,100,000.00/acre).
- E. **WHEREAS**, DISTRICT and CITY, as adjacent property owners, also desire to enter into a joint use agreement prior to the close of escrow under which DISTRICT and CITY shall jointly share the use of property for a soccer field and other possible uses ("Joint Use Agreement).
- F. **WHEREAS**, CITY desires to sell the School Property and DISTRICT desires to purchase the School Property on the terms and conditions in this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

Section 1. Purchase and Sale.

Subject to the terms and conditions in this Agreement, CITY agrees to sell and DISTRICT agrees to purchase the School Property.

Section 2. Purchase Price and Inspection Period.

(1) Purchase Price

(a) Total Compensation. The total compensation to be paid by DISTRICT to CITY for the School Property shall be made in cash, at the rate of Three Million One Hundred Thousand Dollars (\$3,100,000.00) per acre for 6.7 acres, for a total of Twenty Million Seven Hundred Seventy Thousand Dollars (\$20,770,000.00) (“Purchase Price”) on date of closing.

(b) Deposit. The sum of Fifty Thousand dollars (\$50,000.00) shall be deposited into an escrow account ("Escrow") by DISTRICT, to be opened at Chicago Title Company located at 12156 Saratoga-Sunnyvale Road, Saratoga, CA 95070, (408) 973-1900 (Phone) (408) 973-8778 (Fax), Attention: Lori Young, Escrow Branch Mgr., e-mail: younglo@ctt.com (referred to in this Agreement as either “Title Company” or "Escrow Holder”) within ten (10) days of the Effective Date of this Agreement (“Deposit”). The Deposit shall be applied to the Purchase Price upon satisfaction of all conditions by the parties under this Agreement at the Close of Escrow. The Deposit shall be returned to DISTRICT if the Agreement and the Escrow are terminated due to non-satisfaction of any of DISTRICT's conditions, or for any other reason whatsoever other than DISTRICT's default, and thereafter neither party shall have any further rights or obligations except as otherwise stated in this Agreement. The Deposit shall be paid to CITY as liquidated damages pursuant to subsection (d) below if Escrow fails to close as a result of a default by DISTRICT and if CITY is not otherwise in default.

(c) Balance of Purchase Price. DISTRICT shall deliver the balance of the Purchase Price to Escrow Holder in cash by wire transfer of immediately available funds, prior to the Close of Escrow and, in any event, a sufficient time to permit disbursement of such funds on the Closing Date under applicable law and Escrow Holder's standard practice.

The full lump sum amount of purchase price must be deposited with the Title Company prior to closing. Title Company shall transfer the funds from the purchase to CITY at time of closing.

(d) **LIQUIDATED DAMAGES.** IF ESCROW FAILS TO CLOSE DUE TO DISTRICT’S BREACH OF THIS AGREEMENT AND PROVIDED CITY IS NOT IN MATERIAL BREACH, CITY WILL BE DAMAGED AND WILL BE ENTITLED TO COMPENSATION FOR THOSE DAMAGES. SUCH DAMAGES WILL, HOWEVER, BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN. DISTRICT AND CITY WISH TO AVOID THE COSTS AND LENGTHY DELAYS WHICH WOULD RESULT FROM THE FILING OF A LAWSUIT. THEREFORE, IF ESCROW FAILS TO CLOSE DUE TO DISTRICT’S BREACH UNDER THIS AGREEMENT, THEN CITY SHALL BE ENTITLED TO RETAIN DISTRICT’S DEPOSIT. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369. BY INITIALING THIS PROVISION IN THE SPACES BELOW, DISTRICT AND CITY AFFIRM THE AGREEMENT IN THIS SECTION. THE ABOVE LIQUIDATED DAMAGES SHALL NOT LIMIT DISTRICT’S OBLIGATIONS OF INDEMNITY, HOLD HARMLESS AND DEFENSE PROVIDED IN THIS AGREEMENT, NOR DOES THE ABOVE LIQUIDATED

DAMAGES IN ANY WAY LIMIT ANY CITY RIGHTS OR REMEDIES IN EQUITY OR LAW UNDER THIS AGREEMENT.

DISTRICT's Initials

CITY's Initials

(2) Inspection Period

(a) Inspection. Subject to subsection (b) below and **Exhibit C** attached hereto, from the Effective Date to the Close of Escrow, DISTRICT shall have the right to conduct all inspections and studies and remove all contingencies to the purchase of the School Property in writing ("Inspection Period"). During and continuing through the Inspection Period, DISTRICT shall be granted the right of entry upon the School Property for the purpose of conducting soils tests, environmental assessments and other engineering or feasibility studies, and physical inspections of any and all kinds concerning the School Property ("Right of Entry"), provided that DISTRICT obtains the required insurance as set forth in **Exhibit C** to the reasonable satisfaction of the City Manager for CITY, prior to any entry on School Property. DISTRICT's right of entry extends to any and all of DISTRICT's agents and/or any and all governmental entities and state agencies requiring access to the School Property to conduct such inspections.

(b) Access to Property During Inspection Period. Subject to its having given CITY reasonable advance notice, DISTRICT, or persons designated by DISTRICT, shall have the right at all reasonable times to enter on the School Property for the purpose of conducting those soil tests, surveys, and studies as DISTRICT may require to ascertain the suitability of the School Property for DISTRICT's purposes. DISTRICT shall repair and replace any damage to the School Property caused by any entry on the School Property by DISTRICT or any persons designated by DISTRICT.

(c) Indemnification. DISTRICT hereby indemnifies, agrees to defend, with counsel acceptable to CITY, and hold CITY, its officers, employees and agents, harmless from any claim, liability, loss, injury, damage or expense, including without limitation, liability for personal death or injury and property damage, to the extent arising directly or indirectly out of, or in connection with, performance of this Section by DISTRICT and/or its agents or employees, excepting only loss, injury or damage to the extent caused by the gross negligence or willful misconduct of personnel employed or retained by CITY.

(d) Approvals and Studies. During the Inspection Period DISTRICT, at its sole cost and expense, shall conduct inspections and studies and obtain approvals or waive requirements listed below, any waiver to be in DISTRICT's sole, absolute and unrestricted discretion.

(i) Title Matters. Review of the Preliminary Title Report, as the same may be supplemented prior to the expiration of the Inspection Period and, subject to CITY'S response to requests for removal of exceptions, approve or waive of any remaining disapproved exceptions.

(ii) School Property Review. Obtain approval of all government requirements for use of the School Property as K-6 school site, after such examination, inspection, investigation and review as DISTRICT considers is appropriate to undertake, including, but not limited to the following:

- Department of Education and Title 5 Review. Approvals by the California Department of Education ("CDE") and any other government agencies with authority over site selection for public schools. Implementation and review of studies required for compliance with California Education Code Section 17521 and California Code of Regulations ("CCR") Title 5, sections 14001-14012 for suitability as a school site, including but not limited to a Phase 1 environmental study, California Department of Toxic Substances Control ("DTSC") review, soils studies, engineering studies, surveys and geological work.
- CEQA Review. Implementation and review of studies required for compliance with the California Environmental Quality Act ("CEQA"), including certification of the required level of environmental document.
- Other Matters. All other matters relating to the condition, value, fitness, suitability or use of the School Site, including any and all matters DISTRICT may deem necessary or appropriate.

(e) AS IS. DISTRICT acknowledges and agrees that the School Property is being sold and accepted in its "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable laws governing the use, occupancy, management, operation and possession of the School Property. Without limiting the foregoing, this Agreement and the sale of the School Property is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the School Property, or any portion thereof of record or not of record. DISTRICT acknowledges and agrees that neither CITY, nor any of their agents have made, and CITY hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the School Property, (ii) the physical, geological, seismological or environmental condition of the School Property, (iii) the quality, nature or adequacy of any utilities serving the School Property, (iv) the present or future suitability of the School Property for DISTRICT's intended uses, (v) the feasibility, cost or legality of constructing any improvements on the School Property, or (vi) any other matter whatsoever relating to the School Property or its use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. For the avoidance of doubt, it is agreed that DISTRICT shall rely solely upon Title Company's CLTA Owner's policy of title insurance, if any, for protection with respect to matters affecting title to the School Property.

If, prior to the expiration of the Inspection Period, DISTRICT, in its sole discretion, determines not to proceed with the purchase of the School Property, DISTRICT shall not be in default and shall have the right to terminate this Agreement by delivering written notice

of such election to CITY and Escrow Holder. In such event, DISTRICT and CITY shall have no further rights or obligations hereunder and Escrow Holder shall refund the Deposit to DISTRICT.

Section 3. Escrow.

(1) Escrow Holder/Title Company Information. For convenience, information regarding Escrow Holder is repeated from Section 2(1)(b).

Escrow Holder: Chicago Title Company
12156 Saratoga-Sunnyvale Road
Saratoga, CA 95070
Phone: (408) 973-1900
Fax: (408) 973-8778

Escrow Officer: Attn: Lori Young, Escrow Branch Mgr.
Email: younglo@ctt.com

(2) Opening of Escrow. An escrow shall be opened by DISTRICT to close the sale of the School Property pursuant to this Agreement at the office of Chicago Title Company (referred to herein as either "Escrow Holder" or "Title Company") immediately upon the Effective Date. The parties shall deliver this fully executed Agreement to Title Company. The parties shall execute any additional instructions requested by Escrow Holder in a manner consistent with the Agreement. All amounts deposited by DISTRICT with Title Company are to be held in escrow in an interest-bearing account with interest credited to CITY. Unless the parties otherwise mutually agree in writing to an extension, the escrow shall close, the School Property shall be transferred, and the Purchase Price paid to CITY on or before, but no later than **October 21, 2015 ("Close of Escrow")**. District agrees to close escrow as soon as legally possible, subject to satisfaction of approvals required for State of California school site authorization.

(3) Deliveries to Escrow Holder. Prior to the Close of Escrow, each party shall timely deliver to Escrow all funds and documents required to complete the Close of Escrow under the terms of this Agreement.

(4) Escrow Fees and Costs.

(a) CITY's Payments. CITY shall pay: (i) fifty percent (50%) of the cost of the Title Policy of a standard CLTA Form Owner's Title Insurance Policy; and (ii) fifty percent (50%) of Escrow Holder's escrow fee or escrow cancellation charge.

(b) DISTRICT's Payments. DISTRICT shall pay: (i) fifty percent (50%) of the cost of the Title Policy of a standard CLTA Form Owner's Title Insurance Policy; and (2) fifty percent (50%) of Escrow Holder's escrow fee or escrow cancellation charge.

(c) Default. Notwithstanding the foregoing, in the event of a default by DISTRICT or CITY, all cancellation and other escrow charges shall be paid by the defaulting party.

(5) Prorations. Escrow Holder shall make the following prorations: Prorations for taxes, assessments, and other expenses, if any, affecting the School Property shall be pro-rated as of the day

prior to the Close of Escrow (“**Proration Date**”). The CITY shall pay all taxes and assessments on the School Property due prior to the Close of Escrow, including, without limitation, all special assessments. With respect to general and supplemental ad valorem real property taxes, because DISTRICT is a public agency, such taxes terminate on the Close of Escrow and therefore such taxes will not be prorated. Escrow Holder shall base such prorations, credits and debits on a proration statement (“**Proration Statement**”) executed by CITY and DISTRICT and delivered to Escrow Holder prior to the Close of Escrow. Escrow Holder shall prepare a Proration Statement within ten (10) days prior to the Close of Escrow and have a copy delivered to CITY and DISTRICT for approval and execution.

Section 4. Conditions to Close of Escrow.

(1) DISTRICT’s Conditions. The Close of Escrow and DISTRICT’s obligation to purchase the School Property pursuant to this Agreement are conditioned on each of the following first occurring:

(a) Governmental Approvals and School Property Review. DISTRICT’s approval or waiver of all aspects of the School Property, including, but not limited to the inspections and approvals listed above during the Inspection Period. DISTRICT shall obtain all requisite approvals from any and all governmental entities with jurisdiction for the use and development of the School Property for a public elementary school serving grades kindergarten through sixth, including but not limited to, all approvals required by the State of California.

(b) Environmental Condition. DISTRICT shall determine that the environmental and physical condition of the School Property is conducive for its intended uses and in conformance with, local, State and federal regulations for said uses.

(c) Title Insurance. Title Company’s issuance of or commitment to issue to DISTRICT a California Land Title Association (CLTA) owner form policy of title insurance in the amount of Twenty Million Seven Hundred Seventy Thousand Dollars (\$20,770,000.00), subject only to the permitted exceptions, together with any endorsements designated by DISTRICT. In the event that DISTRICT elects to obtain an ALTA owner’s policy of title insurance, it shall so notify Title Company. DISTRICT shall be responsible for any additional costs for the ALTA policy, including survey.

(d) Deed. The delivery by CITY to Escrow Holder, of a grant deed, in a form substantially similar to the form attached as **Exhibit D**, conveying the School Property to DISTRICT, subject to any restrictions agreed to by DISTRICT, including but not limited to a deed restriction to run with the land limiting the use of the School Property to public school use, as further described in **Section 10 Power of Termination by CITY**, containing the legal description of the School Property, properly executed and acknowledged (“**Grant Deed**”). The Grant Deed shall be delivered to Escrow Holder no later than ten (10) days prior to the Close of Escrow.

(e) Performance by the CITY. The performance by the CITY of each condition and obligation under this Agreement.

(f) Additional Deliveries. The delivery by CITY to Escrow Holder of such other documents as DISTRICT or the Title Company may reasonably request to enable DISTRICT to consummate the transaction contemplated by this Agreement.

Should these conditions fail to occur, then DISTRICT shall have the right, exercisable by the giving of written notice to Title Company and to CITY, to cancel the escrow and terminate this Agreement and the Deposit shall be returned to DISTRICT.

(2) CITY's Conditions. The Close of Escrow and CITY's obligation to sell the School Property pursuant to this Agreement are conditioned on each of the following first occurring:

(a) Pursuant to Government Code Section 53094, approval by DISTRICT's governing board of a resolution exempting the School Property from restrictions under City's Zoning Code which limit the use of the School Property to "Park and Open Space."

(b) Resolution of Litigation. The final resolution, as solely determined by CITY, of any claims, demands, litigation, or threatened litigation, if any, relating to the (i) proposed sale of the School Property from CITY to DISTRICT, (ii) proposed use of the School Property for educational purposes, (iii) the proposed construction of improvements on the School Property or CITY Property, (iv) environmental clearance for this Agreement or subsequent Joint Use Agreement, or (v) School Property, CITY Property, or Joint Use Area in any other manner whatsoever. For this condition only, and notwithstanding any other language in this Section (2), if the condition described in this subsection (b) fails to be satisfied, the Deposit shall be returned to DISTRICT.

(c) Deposit. The sum of Fifty Thousand Dollars (\$50,000.00) deposited by DISTRICT into escrow with Title Company within ten (10) days from the Effective Date ("Deposit") to be applied to the Purchase Price at the Close of Escrow.

(d) Balance of Purchase Price. The balance of the Purchase Price deposited by DISTRICT into escrow with Title Company ten (10) days prior to Close of Escrow.

(e) Joint Use Agreement. Execution of the Joint Use Agreement relating to the School Property and remaining City Property approved by their respective governing bodies.

(f) Additional Deliveries. The delivery by DISTRICT to Escrow Holder of such other documents as CITY or the Title Company may reasonably request to enable CITY to consummate the transaction contemplated by this Agreement.

(g) Performance by the DISTRICT. The performance by DISTRICT of each condition and obligation under this Agreement.

Should these conditions fail to occur, then CITY shall have the right, exercisable by the giving of written notice to Title Company and to DISTRICT, to cancel the Escrow and terminate this Agreement and the Deposit shall be retained by CITY.

Section 5. Representations and Warranties.

(1) CITY's Representations and Warranties. City makes the following representations and warranties as of the date of execution of this Agreement and, subject to City's right to modify the same by additional disclosures, as of Close of Escrow:

(a) Authority. CITY has full legal right, power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action; and the persons executing this Agreement and other documents on behalf of CITY are the duly designated agents of CITY and are authorized to do so.

(b) Litigation. To CITY's knowledge, there is no litigation pending or threatened against CITY involving the School Property that: (i) arises out of the ownership of the School Property, or (ii) might detrimentally affect the value of the School Property or the use or operation of the School Property or the ability of CITY to perform its obligations under this Agreement.

(c) Ownership of the School Property. CITY is the owner of fee title to the School Property, with full right to convey the same. CITY has not granted to any party any option or right of refusal or first opportunity to acquire any interest in any portion of the School Property.

(2) DISTRICT's Representations and Warranties. DISTRICT makes the following representations and warranties as of the date of execution of this Agreement and, subject to DISTRICT's right to modify the same by additional disclosures, as of Close of Escrow:

(a) Authority. DISTRICT has full legal right, power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action; and the persons executing this Agreement and other documents on behalf of DISTRICT are the duly designated agents of DISTRICT and are authorized to do so.

(3) Real Estate Commissions. Each party represents and warrants to the other party that no brokers have been employed or are entitled to a commission or compensation in connection with this transaction. Each party agrees to indemnify, hold harmless, protect and defend the other party (and its governing board or council members, administrators, managers, agents, successors and assigns) from and against any obligation or liability to pay any other commission or compensation to any other brokers arising from the act or agreement of the indemnifying party.

(4) Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall be deemed remade as of the date of Close of Escrow and shall survive the Close of Escrow.

(5) Disclaimer of Representations and Warranties. There are no representations, agreements, arrangements, or circumstances, oral or written, between the parties relating to the subject matter contained in this Agreement that are not fully expressed in the Agreement, and the

parties have not made and do not make any representation or warranty concerning any matter or thing affecting or relating to the School Property not expressed in this Agreement.

Section 6. Condemnation.

(1) If, prior to the Close of Escrow, all of the School Property is taken by eminent domain, or is the subject of a pending taking which has not been consummated, CITY shall immediately notify DISTRICT in writing of the event. In this event, this Agreement shall be immediately terminated. On termination of this Agreement, neither party shall have any rights or responsibilities to the other, and the Deposit shall be promptly returned to DISTRICT. In this event, any escrow cancellation fees in connection with the termination shall be paid by DISTRICT.

(2) If, prior to the Close of Escrow, a material portion but not all of the School Property is taken by eminent domain, or is the subject of a pending taking which has not been consummated, CITY shall immediately notify DISTRICT in writing of this event. DISTRICT shall then have the right to terminate this Agreement by written notice to CITY delivered within ten (10) days after DISTRICT's receipt of this notice, if DISTRICT reasonably believes that the portion of the School Property subject to being taken would materially and adversely affect DISTRICT's intended use of the School Property. The parties shall proceed to the Close of Escrow pursuant to the terms of this Agreement, without modification of this Agreement, except as necessitated by eminent domain action, and without any reduction in the Purchase Price. If DISTRICT terminates pursuant to this Section, then neither party shall have any rights or responsibilities to the other, and the Deposit shall be promptly returned to DISTRICT. Any escrow cancellation fees connected with this termination shall be paid by DISTRICT.

Section 7. Assignment.

This Agreement shall not be assigned by either party without the prior written approval of the other party.

Section 8. Notices.

All notices to be given under this Agreement shall be in writing and either:

(a) Sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail;

(b) Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with this courier; or

(c) By fax, e-mail, or similar means, if a copy of the notice is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by fax, e-mail or other similar means provided that a transmission report is generated reflecting the accurate transmission of the notices, as follows:

To DISTRICT: Milpitas Unified School District
Attention: Cary Matsuoka, Superintendent
1331 East Calaveras Blvd
Milpitas, CA 95035
Email: cmatsuoka@musd.org

To CITY: City of Milpitas
Attention: Thomas C. Williams, City Manager
455 East Calaveras Boulevard, 3rd Floor
Milpitas, California 95035
twilliams@ci.milpitas.ca.gov

These addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt by the parties of the notice as provided herein. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

Section 9. Indemnification.

(1) DISTRICT's Indemnification. DISTRICT agrees to indemnify and hold CITY free and harmless from any losses, damages, costs, or expenses (including attorney's fees) resulting from any inaccuracy in or breach of any representation or warranty of DISTRICT and any breach or default by DISTRICT under any of DISTRICT's covenants or agreements under this Agreement.

(2) Survival. The provisions of this Section 9 shall survive the Close of Escrow, expiration or earlier termination of this Agreement.

Section 10. Power of Termination by CITY.

CITY agrees to sell the School Property under the terms and conditions herein for the specific purpose of DISTRICT's construction and operation of a public school serving Milpitas students. The Grant Deed, a form of which is attached hereto as Exhibit D, reserves to GRANTOR a power of termination in the School Property as such powers are described in California Civil Code Section 885.010 et seq., which shall become enforceable should DISTRICT cease using the School Property as described in this Section (unless such cessation is due to a natural disaster or act of God).

Section 11. Entire Agreement.

This instrument contains the entire agreement of the parties; any previous understandings of the parties regarding the subject matter of this Agreement are expressly declared void and are superseded by this Agreement. Any revisions or amendments to this Agreement must be in writing, signed by both parties and approved by both governing bodies.

Section 12. Time of Essence.

Time is of the essence for each condition, term, and provision in this Agreement in which time is a factor. Days, unless otherwise specified, shall mean calendar days.

Section 13. Severability.

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

Section 14. Waivers.

A waiver or breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

Section 15. Construction.

Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to and incorporated by this reference.

Section 16. Governing Law.

This Agreement shall be governed and construed in accordance with California law.

Section 17. Venue.

In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Section 18. Binding on Successors.

This Agreement inures to the benefit of and is binding on the parties, their respective heirs, personal representatives, successors, and assigns.

Section 19. Delegation of Authority.

The City Manager or the City Manager's designee has the authority, on behalf of CITY, to execute all documents necessary to complete the purchase and sale of the School Property. DISTRICT has the legal ability to enter into this Agreement and DISTRICT's signatory(ies) to

this Agreement is/are duly authorized to execute all documents necessary to complete the purchase and sale of the School Property. The parties represent and warrant that they have the legal power, right, and authority to enter into this Agreement and the instruments referenced herein and no authority of any third party is required.

Section 20. Further Assurances.

Each of the parties agree that they will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to the Close of Escrow, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

Section 21. Exhibits.

References herein to exhibits are to Exhibit A, Exhibit B, Exhibit C and Exhibit D attached hereto, which exhibits are hereby incorporated by reference.

- Exhibit A. Legal Description and Plat Map of CITY Property
- Exhibit B. Legal Description and Plat Map of School Property
- Exhibit C. Insurance Requirements
- Exhibit D. Grant Deed with Power of Termination

Section 22. Termination of Joint Use Agreement.

If this Agreement is terminated, including for the failure of the Conditions of Escrow to be satisfied, then the Joint Use Agreement shall also be terminated and neither DISTRICT nor CITY shall have any further obligations thereunder.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

The parties have executed this Agreement as of the latest date below.

“DISTRICT”

Milpitas Unified School District, a school district organized and existing under the laws of the State of California

Its: Superintendent

By: _____

Name: Cary Matsuoka

Title: Superintendent of Milpitas Unified School District

Date: _____

APPROVED AS TO FORM

By: _____

Kathleen J. McKee, Esq.
District Real Estate Counsel

“CITY”

CITY OF MILPITAS, a municipal corporation

By: _____

Name: Thomas C. Williams

Title: Milpitas City Manager

Date: _____

APPROVED AS TO FORM

By: _____

Michael J. Ogaz, Milpitas City Attorney

EXHIBIT A

CITY PROPERTY*

Legal Description

the following described property in the City of **Milpitas**, County of **Santa Clara**, State of **California**:

PARCELS 2 AND 3 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS, PAGE(S) 41, 42 AND 43.

EXCEPTING FROM THE NORTHERLY 50 FEET OF PARCEL 3:

ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND, PROVIDED HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS OF THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTED THEREON, AS RESERVED IN THE GRANT DEED EXECUTED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 24, 1975 IN BOOK B788, PAGE 512 OFFICIAL RECORDS.

***Plat map for City Property will be inserted prior to Close of Escrow.**

EXHIBIT B
SCHOOL PROPERTY*

Legal Description

An approximately 6.7 acre portion of:

the following described property in the City of **Milpitas**, County of **Santa Clara**, State of **California**:

PARCELS 2 AND 3 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS, PAGE(S) 41, 42 AND 43.

EXCEPTING FROM THE NORTHERLY 50 FEET OF PARCEL 3:

ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND, PROVIDED HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS OF THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTED THEREON, AS RESERVED IN THE GRANT DEED EXECUTED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 24, 1975 IN BOOK B788, PAGE 512 OFFICIAL RECORDS.

* The exact area will be determined after soil testing and other studies conducted by District. A plat map and legal description of the approximate 6.7 acres will be inserted prior to Close of Escrow and replace the above legal description.

EXHIBIT C

INSURANCE REQUIREMENTS

DISTRICT, at DISTRICT's sole cost and expense, shall procure and maintain for the duration of the Inspection Period insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, the performance of the services hereunder by DISTRICT, its officers, employees, agents or consultants.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

There shall be no endorsement reducing the scope of coverage required above unless approved in writing by the CITY's City Manager.

B. Minimum Limits of Insurance

DISTRICT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by CITY's City Manager. At the option of CITY, either the insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors, or DISTRICT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's City Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. CITY, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of DISTRICT; products and completed operations of DISTRICT; premises owned, leased or used by DISTRICT; and automobiles owned, leased, hired or borrowed by DISTRICT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. DISTRICT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of DISTRICT's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by DISTRICT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that DISTRICT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten

(10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's City Manager.

F. **Verification of Coverage**

DISTRICT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: twilliams@ci.milpitas.ca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the City Manager):

City of Milpitas – City Manager
Thomas C. Williams
455 East Calaveras Blvd, 3rd Floor
Milpitas, CA 95035

G. **Consultants**

DISTRICT shall include all subconsultants as insured under its policies or shall obtain separate certificates and endorsements for each subconsultant.

EXHIBIT D (FORM OF GRANT DEED)

RECORDING REQUESTED BY:

MILPITAS UNIFIED SCHOOL DISTRICT,
a public school district organized and existing
under the laws of the State of California

AND WHEN RECORDED MAIL TO:

MILPITAS UNIFIED SCHOOL DISTRICT
1331 East Calaveras Blvd
Milpitas, CA 95035
Attn: Cary Matsuoka, Superintendent

ASSESSOR'S PARCEL NO: **086-41-016, 086-41-017, 086-41-018** (ABOVE SPACE FOR RECORDER'S USE ONLY)

NO DOCUMENTARY TAX DUE
EXEMPT PER REVENUE AND TAX CODE 11922

GRANT DEED WITH POWER OF TERMINATION

For valuable consideration, receipt of which is hereby acknowledged,

**CITY OF MILPITAS, a municipal corporation of the State of California
("GRANTOR")**

hereby grants to

**MILPITAS UNIFIED SCHOOL DISTRICT, a public school district organized and
existing under the laws of the State of California ("GRANTEE")**

all that real property described in **Exhibit A** and depicted on **Exhibit B** attached hereto and made a part hereof, in the City of Milpitas, County of Santa Clara, State of California, ("**Property**") which conveyance is made expressly subject to the following covenants, conditions, and restrictions:

This Grant Deed reserves to GRANTOR a power of termination in the Property as such powers are described in California Civil Code Section 885.010 et seq. and further set forth in **Exhibit C, attached hereto**. The power of termination shall become enforceable should GRANTEE cease using and operating the Property for a public school serving Milpitas students (unless such cessation is due to a natural disaster or act of God).

Date: _____

CITY OF MILPITAS

By: _____

Title: _____

EXHIBIT A TO GRANT DEED*
LEGAL DESCRIPTION

An approximately 6.7 acre portion of:

the following described property in the City of **Milpitas**, County of **Santa Clara**, State of **California**:

PARCELS 2 AND 3 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS, PAGE(S) 41, 42 AND 43.

EXCEPTING FROM THE NORTHERLY 50 FEET OF PARCEL 3:

ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND, PROVIDED HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS OF THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTED THEREON, AS RESERVED IN THE GRANT DEED EXECUTED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 24, 1975 IN BOOK B788, PAGE 512 OFFICIAL RECORDS.

* The exact area will be determined after soil testing and other studies conducted by District. A legal description of the approximate 6.7 acres will be inserted prior to Close of Escrow and replace the above legal description.

EXHIBIT B TO GRANT DEED
DEPICTION OF PROPERTY

PLAT MAP
(WILL BE INSERTED PRIOR TO CLOSE OF ESCROW)

PUBLIC AGENCY CERTIFICATE OF ACCEPTANCE

(Government Code section 27281)

This Certificate of Acceptance certifies that the interest in real property conveyed by the Grant Deed dated _____ from the City of Milpitas, a municipal corporation of the State of California ("Grantor"), is hereby accepted in the form to which this Certificate of Acceptance is attached, by the undersigned on behalf of the Board of Trustees of the Milpitas Unified School District ("Grantee"), pursuant to the authority conferred by California Education Code section _____ and the resolution of said Board of Trustees adopted on _____. Grantee consents to recordation thereof by its duly authorized officer.

GRANTEE

MILPITAS UNIFIED SCHOOL DISTRICT

By: _____
Cary Matsuoka, Superintendent

EXHIBIT C to Grant Deed
Power of Termination

A. GENERAL.

1. Conditions Subsequent. The sale of the School Property to District is made expressly subject to the following conditions subsequent that: (i) District shall construct and operate a public school on the School Property on or before October 21, 2019, provided District, at its sole discretion, may extend the date to October 21, 2024 with written notice to City, and the parties may further extend the date by written agreement; and (ii) that any future use of the School Property shall only be for a public school operated by the Milpitas Unified School District serving Milpitas students (each, a “Condition” and collectively “Conditions”).

2. Reservation of Power of Termination. The sale of the School Property reserves to City a power of termination in the Property as such powers are described in California Civil Code Section 885.010 et seq, as may be amended or replaced in the future. The power of termination shall become enforceable should District cease using and operating the School Property for a public school serving Milpitas students (unless such cessation is due to a natural disaster or act of God).

B. EXERCISE OF POWER OF TERMINATION.

1. Civil Code Section 885.050. Exercise of the power of termination shall be carried out pursuant to the requirements of Civil Code section 885.050, as amended or replaced.

2. Notice and Cure Period. In the event of a default of a Condition, CITY shall provide written notice to District of the alleged default and the manner in which District can cure the default. District shall have a period of twenty (20) business days after receipt of written notice (the “**Notice Period**”) to cure such default. During the Notice Period, District shall have the right to cure any such default. If the default takes longer than twenty (20) business days to cure, so long as District has begun the cure within the twenty (20) business days and continues it to completion, District shall not be in default.

3. Failure to Cure. Upon the failure to cure a default as described above, City may exercise the power of termination by delivering notice thereof in writing to District and recording such notice (“**Notice of Exercise**”). The delivery and recording of the Notice of Exercise shall apply to re-vest in City, the School Property together with any and all improvements thereon and rights or interests appurtenant thereto on the terms and conditions set forth in this Exhibit. In the event the City exercises its power of termination within forty (40) years beginning from the date the school commences instruction to students, the City and District agree that any re-vesting of the School Property from the District back to the City shall be at absolutely no cost to City, including

no cost for the real property, improvements or otherwise in any manner whatsoever. In the event the City exercises its power of termination after forty (40) years, the parties shall negotiate the price the City will pay for the School Property.

4. Notice. The Notice provisions of the Purchase and Sale Agreement dated October 21, 2014, to which this exhibit is attached, shall apply.