

ORIGINAL

RD/VP
08/21/02

REAL PROPERTY USE AGREEMENT
BETWEEN
MORELAND SCHOOL DISTRICT
AND
THE CITY OF SAN JOSE

THIS AGREEMENT is made between the MORELAND SCHOOL DISTRICT, a political subdivision of the State of California, ("District"), and the CITY OF SAN JOSE, a municipal corporation ("City") as of the date of full execution by the parties (the "Effective Date").

RECITALS

WHEREAS, the provisions of California Education Code Sections 10900 through 10915, inclusive, support joint action by City and District to organize, promote and conduct programs in order to improve the health and general welfare of the citizens of the City of San José, to cultivate the development of good citizenship, and

WHEREAS, City and District, pursuant to the above-mentioned provisions desire to enter into an agreement for the improvement of and for the use of portions of District's property for public recreation purposes, specifically as a community garden.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this agreement, the parties agree as follows:

SECTION 1. PREMISES/ USE

District agrees to permit City to use a portion of the Latimer Elementary School Site, consisting of approximately Twenty Two Thousand (22,000) square feet, which site is further described as a portion of Assessor's Parcel Number 307-19-024, and more particularly described in the attached **Exhibit A** (the Premises). The parties understand and agree that City intends to develop the Premises as a

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community garden ("Community Garden") and to permit members of the public to maintain garden plots on the Premises. City shall reserve six (6) plots for use by the District to maintain gardens. The plots reserved for the District shall be approximately 100 square feet each and shall be accessible without entering the fenced area of the Community Garden.

SECTION 2. **TERM**

This Agreement shall commence upon approval by both the District governing board and City Council, (Commencement Date) and shall be effective for twenty (20) years, ("Term") expiring at 12:01 AM on the twentieth (20th) anniversary of the Commencement Date. Either party may terminate this Agreement at any time during the Term on one-year advance written notice to the other.

SECTION 3. **RENT**

City shall pay District the sum of \$1 per year for use of the Premises (the Rent).

SECTION 4. **UTILITIES**

City shall arrange and pay for all water, electricity, garbage collection and sewage (Utilities) to the Premises.

SECTION 5. **ALTERATIONS**

City agrees to install, at its sole expense, cyclone fencing and a three-inch water line of sufficient size to service the Premises adequately for the proposed use. Cyclone fencing shall not be placed around those sections of the Community Garden reserved for District use as set forth in Section 2, above. Although the water line may be used for the Community Gardens on the Premises, it is the intent of the parties that the water line be available for permanent District use as a water source for the Latimer School site. If used for District purposes, the water line shall be separately metered for District use. Except with respect to

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City's installation of the community garden, and all necessary appurtenances thereto, including but not limited to fencing, irrigation and utilities at the Premises, City shall not make any alterations to the Premises without first obtaining the consent of District. Any alterations approved by District shall be made at no expense to District.

SECTION 6. MAINTENANCE

City shall maintain the Premises at all times in good condition and repair, at no expense to District. City agrees that it shall not discharge Hazardous Materials, as defined in Exhibit B to this Agreement, at or onto the Premises.

SECTION 7. DEFAULT AND TERMINATION

- A. If either party fails to perform any of its material obligations under this Agreement, the non-breaching party may terminate this Agreement upon thirty (30) days advance written notice ("Notice Period") to the breaching party, specifying the breach and providing the breaching party with either the opportunity to cure the specified breach or the opportunity to commence to cure the specified breach within the Notice Period in those instances where the specified breach cannot reasonably be cured within the Notice Period. In the event the breaching party fails to cure or to commence to cure the specified breach within the Notice Period, the non-breaching party may terminate this Agreement. In the event that District needs to utilize the Premises for educational purposes, the District may terminate the Agreement upon sixty (60) days written notice, which notice shall indicate to CITY the reason for the termination and the specific educational purpose for which the Premises are required.

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- B. Each party's rights and remedies specified in this Agreement are cumulative and are in addition to their rights and remedies at law or in equity.

SECTION 8. SURRENDER

Upon expiration or sooner termination of this Agreement, City agrees to remove, at District's written request, any improvements made to the Premises and to restore the Premises to its original condition, with the exception of reasonable wear and tear and damage caused by acts of God. If District terminates this Agreement for an "educational purpose" pursuant to Section 7(A), City shall have up to up to one hundred twenty (120) additional days after termination of the Agreement to remove improvements and restore Premises to its original condition.

SECTION 9. INDEMNIFICATION/ INSURANCE

- A. City shall indemnify, defend and hold harmless District, its employees, directors, and agents, from and against any claim, liability, loss or damage, including reasonable attorney's fees and costs, with respect to injury or death to any person or damage to any property arising from the use of the Premises, by City, its officers, agents or employees, or members of the public who are present on the Premises as a result of City's use of the Premises, or the release of Hazardous Materials on the Premises by City, its officers, agents or employees, or members of the public who are present on the Premises as a result of City's use of the Premises. The term "Hazardous Materials" is defined in the attached **Exhibit B**. City's obligation under this subsection shall not apply to any claim, liability, loss or damage to the extent that such claim arises from the acts or omissions of District, its employees, directors or agents, including without limitation, the presence of Hazardous Materials on the

Premises from any cause or source other than the release by City, its officers, agents or employees or members of the public present on the Premises as a result of City's use of the Premises; nor shall it apply to claims arising out of acts of negligence of the District.

- B. The parties recognize that the City is self-insured for purposes of liability. To the extent that City elects to purchase commercial insurance for purposes related to this Agreement, City agrees that the District shall be named as an additional insured, by endorsement if applicable. City shall provide District a certificate of self-insurance if so requested by the District.
- C. The provisions of this section shall survive expiration or sooner termination of this Agreement.

SECTION 10. **ACCESS**

- A. City, its officers, agents, employees, licensees and invitees, shall have all rights of ingress and egress to and from the Premises twenty-four hours each day during the term of this Agreement. The Premises shall be open to the public daily from sunrise to sundown. City shall be responsible for opening and closing the Premises, though the parties acknowledge that the District will hold the keys to the gate accessing the Premises and may access the Premises independent of the City. The City shall also be responsible for ensuring the safety of the Premises during the hours of public access for the term of this Agreement. Throughout the term of this Agreement, City shall maintain the Premises in a manner compliant with all applicable laws, ordinances and regulations (including but not limited to state

and federal access laws.) City shall also take the following measures to ensure that access to the Premises by the City, its officers, agents, employees, licensees and invitees, shall not interfere with the use and operation of Latimer Elementary School:

- Erecting and maintaining in a safe manner a fence around the Premises;
- Keeping the gate to the Premises locked during after the hours of public access;
- Assuring that City staff visit and inspect the Premises at least twice per week. .
- Assuring that the site will be managed on site by a single or group of volunteer managers; and
- Ensuring that CITY use of the Premises shall comply with all applicable local, State and Federal laws and regulations, and that violation by the City of any such applicable local State or Federal law or regulation shall give the District the right to terminate this agreement, notwithstanding any other provision of this Agreement. City agrees that any employee it hires to supervise or otherwise work at the Premises will be screened in accordance with the current District screening requirement policy, which is attached as Exhibit C. District shall be responsible for informing City within five (5) days of any change to these requirements to permit City to comply therewith. City shall permit access to the Premises only by the garden access gate at the north end of the Premises. City shall also maintain and

provide to District an accurate, up-to-date, list of all persons maintaining garden plots or otherwise utilizing the Premises. Within five (5) business days of any changes in the list of persons maintaining garden plots on the Premises. City shall provide the district with a modified list reflecting those changes.

- B. District shall have the right to have its authorized employees and agents enter upon the Premises at any and all reasonable times for the purpose of inspecting the Premises in order to determine City's compliance with the terms of this Agreement.

SECTION 11. **ASSIGNMENT**

City shall not assign or sublet the Premises, in whole or in part, without the prior written consent of District. Notwithstanding the foregoing, the parties recognize and agree that City may enter into use agreements with the community gardeners who garden at the Premises without the written consent of District.

SECTION 12. **NOTICE**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or by prepaid, first class mail as follows:

District: Moreland School District
Office of the Superintendent
4710 Campbell Avenue
San José, CA 95130-1799

City: City of San José
Real Estate Division

84 West Santa Clara Street, Suite 460
San José, CA 95113
Attention: Real Estate Administrator

SECTION 13. **MISCELLANEOUS**

- A. The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. 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 where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

- B. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.

- C. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

- D. Any and all exhibits which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement. This Agreement may only be amended by formal written agreement executed by both parties.

- E. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected thereby and shall remain in full force and effect.

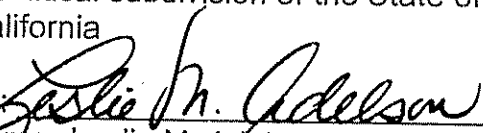
- F. Time is of the essence.

- G. This Agreement including the attached exhibits constitutes the entire agreement between the parties respecting the Premises and City's use and occupancy of the Premises, and correctly sets forth the obligations of District and City to each other. Any agreements or representations respecting the Premises not expressly set forth in this Agreement shall be null and void.
- H. Where this Agreement refers to City and no officer of the City is named, City's Manager shall have the authority to act on City's behalf.
- I. City agrees to comply with all laws, regulations, statutes and ordinances whether local, state or federal in the performance of this Agreement.
- J. This Agreement does not confer on City any property rights or interests in the Premises.

CITY OF SAN JOSE

MORELAND SCHOOL DISTRICT,
a political subdivision of the State of
California

By: 
Assistant to the City Manager

By: 
Name: Leslie M. Adelson, Superintendent

Date: 9-30-02

Date: 9/6/02

APPROVED AS TO FORM:

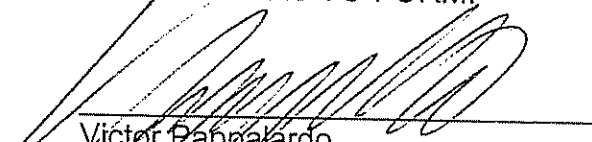
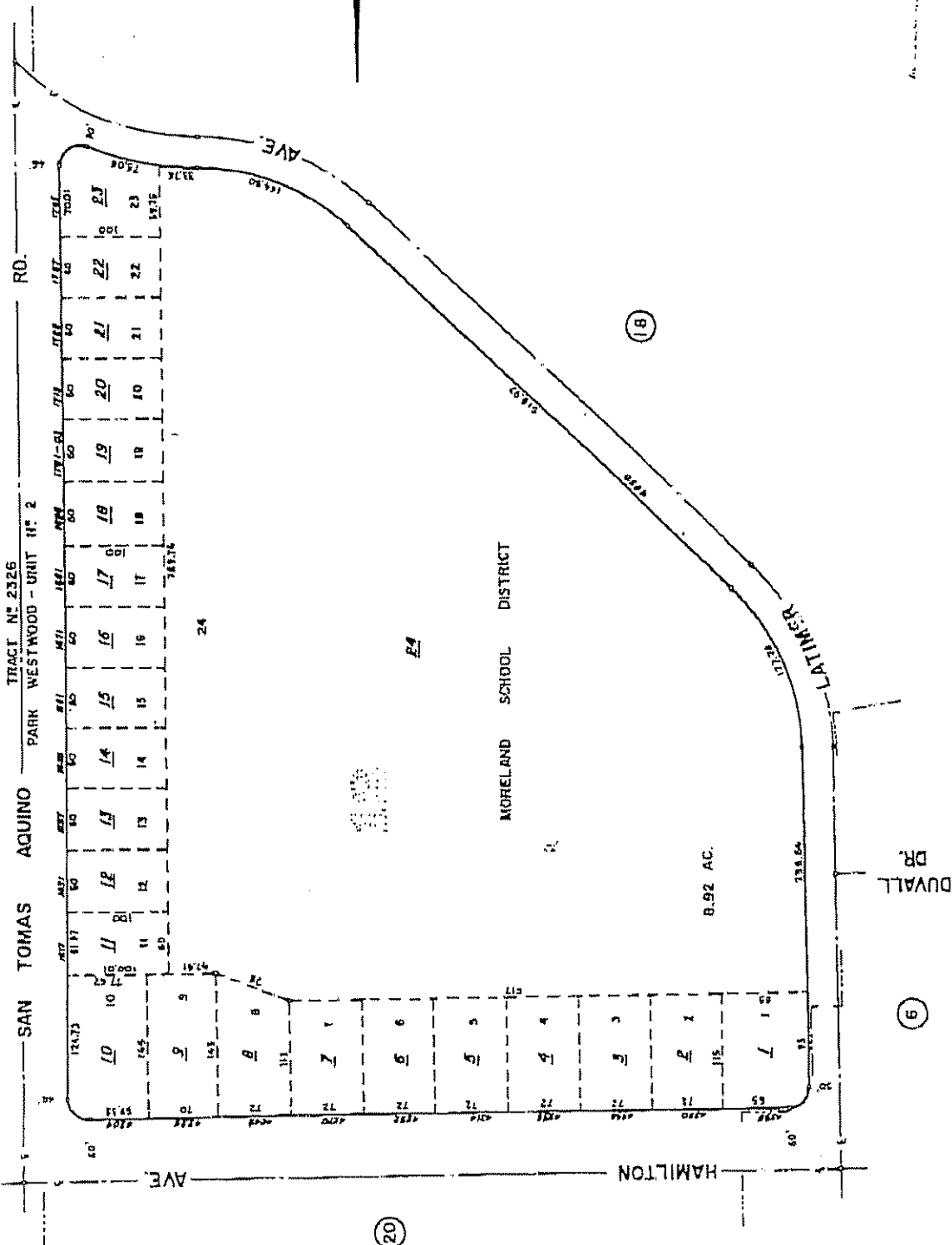

Victor Pappalardo
Deputy City Attorney

EXHIBIT A

OFFICE OF COUNTY ASSESSOR - SANTA CLARA COUNTY, CALIFORNIA

(46)



(20)

(18)

(6)

EXHIBIT B

DEFINITION OF HAZARDOUS MATERIALS

For purposes of this Agreement, the term "Hazardous Materials" shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws (defined below), and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court, and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

The term "Environmental Laws" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

EXHIBIT C

Classified Personnel

BP 4212(a)

APPOINTMENT AND CONDITIONS OF EMPLOYMENT

The Superintendent will recommend the appointment of all regular full-time and part-time and regular hourly employees to the Governing Board. Selection will be based upon competence and will be in accordance with all pertinent Board policies and administrative regulations, laws of the State of California, and regulations of the California Fair Employment Practices Commission.

Appointment of persons nominated for employment shall be made from an eligibility list established by the personnel commission.

Temporary, substitute, short-term and student help may be appointed by the Superintendent or designee. The position and the pay rate shall be reported at a regular meeting of the Board.

Appointment Standards

Applicants for appointment to the classified staff shall fulfill the requirements and meet the standards defined in the job description approved by the Board. In addition, they shall:

1. Submit to fingerprinting within the first ten working days of employment pursuant to Education Code 45125. Any fee for this shall be paid by the district.

(cf. 4212.5 - Security/Credit Check)

2. Submit to a physical examination or proof thereof as required by law and Board policy.

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

3. File a loyalty oath pursuant to Government Code 3100 et seq.

No person shall be initially assigned as an instructional aide without having demonstrated proficiency in basic reading, writing and mathematics skills as required by Education Code 45344.5.

(cf. 4222 - Teacher Aides/Paraprofessionals)

Legal References: (See next page)

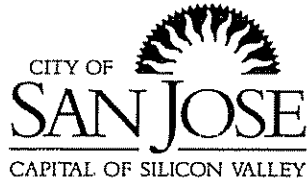
APPOINTMENT AND CONDITIONS OF EMPLOYMENT (continued)

Legal Reference:

EDUCATION CODE

- 44066 Limitation on certification requirements
 - 45103 Classified service in districts not incorporating the merit system
 - 45104 Positions not requiring certification qualifications
 - 45105 Positions under various acts not requiring certification qualifications; classification
 - 45113 Rules and regulations for classified service in districts not incorporating the merit system
 - 45122 Physical examinations
 - 45125 Use of personal identification cards to ascertain conviction of crime
 - 45169 Employee salary dates
 - 45344.5 Demonstrated proficiency in basic reading, writing and mathematics skills
 - 49406 Examination for tuberculosis
- GOVERNMENT CODE
- 3100 et seq. Oaths or affirmation of allegiance for disaster service workers and public employees
 - 12940 et seq. Unlawful employment practices

16 9.24.02
A 9.30.02
C 9.30.02



Memorandum

TO: Peter Jensen
Assistant to the City Manager

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 09-13-02

Approved

Date

9.30.02

SUBJECT: APPROVAL OF A JOINT USE AGREEMENT (JUA) BETWEEN THE CITY OF SAN JOSE (CITY) AND MORELAND SCHOOL DISTRICT (DISTRICT).

RECOMMENDATION

Approve the attached Joint Use Agreement between the City and District for public recreation purposes to use said described school property for the purpose of shared community gardens between the District, General Public and Latimer Elementary students.

CEQA: Exempt, PP02-06-114

BACKGROUND

The proposed site lies within Councilmember LeZotte's District (District 1) and in addition is listed on the Mayor's Budget Priority list. The proposed site has been identified as a prime site to construct a community garden park to service the immediate and surrounding neighborhood. The site consists of twenty-two thousand (22,000) square feet of land and is further described as a portion of Assessor's Parcel Number 307-19-024.

ANALYSIS

PRNS requested the Real Estate Division to negotiate a joint use agreement (JUA) with the Moreland School District for a proposed Community Gardens facility to be constructed on district property. Negotiations occurred over the past few months between the Moreland School District Superintendent and the City, which have resulted in the attached Joint Use Agreement. The JUA received approval by the District's Board on August 27, 2002.

Executing the attached agreement will enable the City to commence improvements to the described property for use as community gardens.

COORDINATION

This joint use agreement has been coordinated with the Office of the City Attorney and the Department of Parks, Recreation and Neighborhood Services.

COST IMPLICATION

City will pay for utility services to the site. Rent for the proposed site has been set at \$1.00 per year. The proposed Term for the JUA is 20 years and may be terminated at any time, by either party, by providing one-year advance written notice to the other party. The City will install cyclone fencing, an irrigation system and a three-inch metered water line for this community garden project. There are no additional costs involving the joint use agreement in addition to customary staff time.

CEQA

Exempt, PP02-06-114.

BUDGET REFERENCE

FUND: 465
APPN: 4289
RC: 072213
AMOUNT: \$605,000
BUDGET DOCUMENT: Appropriation Ordinance 2002-03, Section 2.4, Item 1(g).


Katy Allen
Director of Public Works

DR:hla
dr091302cm.doc

RECEIVED
San José City Clerk
2007 SEP 30 P 3:47



CITY CLERK

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
801 North First Street, Room 116
San José, California 95110
Telephone (408) 277-4424
FAX (408) 277-3285

October 8, 2002

MORELAND SCHOOL DISTRICT
4710 Campbell Avenue
San Jose, CA 95130-1799
Attn: Leslie M. Adelson, Superintendent

RE: GRANT AGREEMENT

Enclosed is an executory copy of the above-referenced agreement which was approved by the City Manager of the City of San Jose, on Sept. 30, 2002.

Patricia L. O'Hearn
City Clerk

Cecilia Delgado
Legal Support Division

Enclosure