

JOINT USE AGREEMENT 1:

Opening Outdoor School Facilities for Use During Non-School Hours

Developed by the National Policy & Legal Analysis Network to
Prevent Childhood Obesity (NPLAN)

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This model agreement serves as a template for communities to use to develop their own joint use agreement. Before undertaking a joint use project, the parties must research their state and local law to determine whether there are any requirements or prohibitions related to developing joint use agreements or whether a joint use agreement is the most advantageous vehicle for opening up school recreation facilities for after-hours use.

Joint Use Agreement 1 is the simplest of the model joint use agreements. It is an agreement between the school district and the local city, town, or county government (referred to generically as “City”), in which the school district agrees to allow the local government to open for community use designated school district outdoor recreation facilities, such as playgrounds, blacktop areas, and playing fields during time, such as weekends and holidays, when the district is not using the facilities.

To implement an effective agreement, the parties must designate the specific recreation facilities to be opened to use and address access, security, maintenance, custodial services, and repairs or restitution. In addition, the agreement should contain a procedure for resolving disputes and an allocation of costs, risks and insurance.

The model agreement provides comments explaining the different provisions in the agreement. The language in the agreement written in *italics* provides different options or explains the type of information that needs to be inserted in the blank spaces in the agreement.

*Prepared by the National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN)
www.nplanonline.org.*

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Joint Use Agreement 1: Opening Outdoor School Facilities For Use During Non-School Hours

AGREEMENT BETWEEN THE _____ COUNTY SCHOOL DISTRICT (“DISTRICT”) AND _____ CITY/COUNTY (“CITY”) FOR USE OF SCHOOL RECREATION FACILITIES

Recitals

WHEREAS, State Code section _____ *authorizes/encourages* school districts and cities to organize, promote, and conduct community recreation programs and activities to promote the health and general welfare of the community; and

WHEREAS, the District is the owner of real property in the City, including facilities and active use areas that are capable of being used by the City for community recreational purposes; and

WHEREAS, under appropriate circumstances, these publicly held lands and facilities should be used most efficiently to maximize use and increase recreational opportunities for the community; and

WHEREAS, State Code section _____ authorizes the governing bodies to enter into agreements with each other to promote the health and general welfare of the community and contribute to the enhancement of the recreational opportunities afforded to the children in the community; and

Comments about “Recitals”:

Recitals are a preliminary statement in a contract or agreement explaining the reasons for entering into it, the background of the transaction, or showing the existence of particular facts. Traditionally, each recital begins with the word *whereas*, but that is not required.

NOW, THEREFORE, the District and the City agree to cooperate with each other as follows:

1. Term

This Agreement will begin on _____ and will continue for a period of _____ years, *[and then shall be automatically renewed on a _____ basis]* unless sooner terminated as provided for hereinafter in Section 14.

Comments about “Term”:

The term is the duration of the Agreement. The Agreement should include a specific start and end date. The parties may want to include a provision allowing for automatic renewal of the Agreement.

2. Effective Date

This Agreement shall be effective upon _____ and upon inspection of affected property as described hereinafter in Section 3 by District and City officials.

Comments about “Effective Date”:

The effective date is the date upon which the Agreement will become operative. Often it is the date signed by the responsible officials.

Some school districts may be reluctant to open facilities for after-hour use, fearing property damage. The Agreement designates responsibility for damage repair in section 9. Both parties should inspect facilities before opening them to use to establish an understanding of the condition of the facilities prior to the Agreement.

3. Facilities Covered

The term “Active Use Areas” will be used for purposes of this Agreement to mean the designated fields, playgrounds, and parking lots.

Terms of this Agreement will apply to all Active Use Areas owned by the District as identified on Attachment A to this Agreement. The District and the City shall have the right to add or exclude Active Use Areas during the term of this Agreement, provided that any such change shall be in writing and approved by both the District and the City.

Comments about “Facilities Covered”:

Alternatively, the listing of Active Use Areas could be inserted in this section. It is important that this list be compiled carefully to ensure its accuracy.

4. Permitted Uses of Active Use Areas

The District shall be entitled to the exclusive use of Active Use Areas for public school and school-related educational and recreational activities, including summer school, and, at such other times as Active Use Areas are being used by the District or its agents.

The City shall be entitled to access Active Use Areas to open them for use by the community during daylight hours on weekends and school holidays when the District or its agents are not using the Active Use Areas. Such use shall be referred to as “Public Access Hours.”

Comments about “Permitted Uses of Active Use Areas”:

The parties will tailor these times to best suit the needs of their community. Depending upon whether the school or another provider operates an after school program, the parties may want to open the facilities to use after school on regular school days.

5. Compliance With Law

All use of District and City property shall be in accordance with state and local law. *[Optional: Enumerate applicable state law here.]* In the case of a conflict between the terms of this Agreement and the requirements of state law, the state law shall govern. Any actions taken by the District or the City that are required by state law, but are inconsistent with the terms of this Agreement, shall not be construed to be a breach or

default of this Agreement.

6. Obligations of City

Comments about “Obligations of City”:

In this and the following section, the Agreement should specify the obligations of the two parties in relation to the Agreement. Issues such as access, security, maintenance, and custodial services should be addressed. The parties will tailor these provisions to determine which party is responsible for different tasks according to local law and community needs.

a. Designation of Employee

The City shall designate an employee with whom the District, or any authorized agent of the District, may confer regarding the terms of this Agreement.

b. Access and Security

The City shall provide the staff necessary to open and close the Active Use Areas during Public Access Hours.

c. Inspection and Notification

The City staff shall inspect the Active Use Areas to ensure these sites are returned in the condition they were received. The staff shall ensure the District is notified within _____ hours/days [*insert timing here*] in the event that an Active Use Area suffers damage during Public Access Hours.

d. Supervision

The City shall provide personnel necessary for the direction or supervision of activities sponsored by the City at Active Use Areas. The City shall enforce all District rules, regulations, and policies provided by the District while directing community recreational activities at Active Use Areas.

Comments about “Supervision”:

The City may wish to provide supervised play during Public Access Hours or simply open the Active Use Areas to Public Access without supervision. This model clause provides for supervision.

e. Equipment and Storage

The City shall furnish all expendable materials necessary for carrying out its programs.

f. Custodial

The District shall make its trash receptacles available during Public Access Hours. The City shall encourage community users to dispose of trash in the trash receptacles. If there is a significant increase in trash volume, the City shall provide custodial services necessary to keep the Active Use Areas in a neat, orderly, and sanitary condition at all times during the Public Access Hours.

Comments about “Custodial”:

The parties will need to make arrangements for trash disposal during Public Access Hours.

g. Toilet Facilities

The City shall place temporary, portable, restroom facilities at Active Use Areas at the discretion of the District. It shall be the responsibility of the City to maintain these facilities.

Comments about “Toilet Facilities”:

The parties will need to make restroom facilities available for community users of the Active Use Areas.

7. Obligations of District**a. Designation of Employee**

The District shall designate an employee with whom the City, or any authorized agent of the City, may confer regarding the terms of this Agreement.

b. Access and Security

The District will provide access to the Active Use Areas. The District will provide keys, security cards, and training as needed to the City employee(s) responsible for opening and locking the Active Use Areas for Public Access Hours.

c. Inspection and Notification

The District will inspect each Active Use Area site after Public Access Hours and report any damage to the City’s designated employee within _____ days after inspection. Such notification shall consist of sending written notification by letter, facsimile, or email to the City’s designated employee identifying the Active Use Area, date of detection, name of inspector, description of damage and estimated or fixed costs of repair or property placement.

d. Equipment and Storage

The District shall provide a locked equipment storage facility at a location specified by the District.

Comments about “Equipment and Storage”:

The parties should determine whether to permit the City to maintain a storage facility for equipment it provides during Public Access Hours, the location of the storage, and the conditions for maintaining the storage.

e. Custodial

The District shall make its trash receptacles available during Public Access Hours. The City shall encourage community users to dispose of trash in the trash receptacles. If there is a significant increase in trash volume, the District shall notify

the City's designated employee so the City may provide custodial services necessary to keep the Active Use Areas in a neat, orderly, and sanitary condition at all times during the Public Access Hours.

f. Toilet Facilities

The District will not make restroom facilities available during Public Access Hours, but will permit the City to place temporary, portable, restroom facilities at Active Use Areas at the discretion of the District. It shall be the responsibility of the City to maintain these facilities.

Comments about "Toilet Facilities":

The parties will need to make restroom facilities available to community users. Another option would be to open the school restrooms to community users.

8. Maintenance

[Option One: The District retains responsibility for maintenance of Active Use Areas]

The District shall perform normal maintenance of Active Use Areas at basic level of service subject to normal wear and tear. The District shall notify the City of any known change in condition of the Active Use Areas.

[Option Two: The District retains responsibility for maintenance of playground and blacktop Active Use Areas and delegates to the City the responsibility of maintenance of playing fields.]

The District shall perform normal maintenance of all playground and blacktop [*or other facility*] Active Use Areas at basic level of service subject to normal wear and tear. The District shall notify the City of any known change in condition of the Active Use Areas.

The City shall provide regular maintenance of playing fields [*or other facility*], including to the irrigation and drainage systems and turf around the field perimeter and fences. Such regular maintenance shall consist of _____ [*describe maintenance requirements*].

Comments about "Maintenance":

The parties need to allocate responsibility for maintenance of the facilities. They may wish to select one of these options or draft another option.

9. Restitution and Repair

[Option One: Model clause requiring the City to repair damage.]

The City shall be wholly responsible to repair, remediate, or fund the replacement or remediation of any and all damage or vandalism to the Active Use Areas that occurs

during Public Access Hours.

[Option Two: Model clause requiring the City to notify the District of damage and reimburse the costs to the District of repairing damage.]

The City shall be responsible for making restitution for the repair of damage to Active use Areas during Public Access Hours.

- a. Inspection and Notification** The District shall, through its designated representative, inspect and notify the City of any damage, as described above in subsection 6(c).
- b. Repairs** Except as mutually agreed, the City shall not cause repairs to be made for any building, facility, property, or item of equipment for which the District is responsible. The District agrees to make such repairs within the estimated and/or fixed costs agreed upon. If it is mutually determined or if it is the result of problem-resolution under section 9(d) of this Agreement that the City is responsible for the damage, then the City agrees to reimburse the District at the estimated and/or fixed costs agreed upon.
- c. Reimbursement Procedure** The District shall send an invoice to the City's designated representative within ____ days of completion of repairs or replacement of damaged property. The invoice shall itemize all work hours, equipment and materials with cost rates as applied to the repair work. If the repair is completed by a contractor, a copy of the contractor's itemized statement shall be attached. Actual costs shall be reimbursed if less than estimated and/or fixed costs. The City shall reimburse the District within _____ days from receipt of such invoice.
- d. Disagreements** The City shall retain the right to disagree with any and all items of damage to buildings, facilities, property, or equipment as identified by the District, provided this disagreement is made within _____ days after a first notification.
 - i** The City shall notify the District of any disagreement in writing by letter, facsimile, or email to the District's designated employee. The City shall clearly identify the reasons for refusing responsibility for the damages. Failure to make the disagreement within the prescribed time period shall be considered as an acceptance of responsibility by the City.
 - ii** After proper notification, members of the Joint Use Interagency Team, or other designated representatives of the City and the District, shall make an on-site investigation and attempt a settlement of the disagreement.
 - iii** In the event an agreement cannot be reached, the matter shall be referred to _____ [City official] and _____ [District official], or their designees, for resolution.
 - iv** The District shall have the right to make immediate emergency repairs or replacements of property without voiding the City's right to disagree.

Comments about “Restitution and Repair”:

The Agreement should address responsibility for repairing damaged facilities. The District may want the City to make any repairs or may want to make the repairs using its own personnel or contractors and have the City reimburse the District for the costs. Parties should address: (1) Which party will be responsible for making the repairs; (2) The timeline for making repairs; (3) The method and timeline for making reimbursements; and (4) The method for resolving disputes over repairs/reimbursements.

10. Operational Costs**a. Documentation of Costs**

The City and the District shall maintain records of costs associated with the Agreement.

b. Payment of Overtime

Each party shall bear the cost of any overtime incurred by their employees in carrying out this Agreement.

Comments about “Operational Costs”:

In this section, the parties can allocate any costs associated with the Agreement. The District may wish for the City to pay a nominal rent to the District for the Active Use Areas. The parties may wish to absorb the costs each incur while implementing the Agreement or require one or the other to be responsible for the costs.

11. Liability and Indemnification

[Option One: The model clause below places responsibility on the City to indemnify the District for any liability as a result of personal injury or property damage or damage to District property, unless the damage is caused by the negligence or willful misconduct of District employees.]

The City shall indemnify and hold harmless the District, its Board, officers, employees and agents (collectively, the “School Parties” and individually, a “School Party”) from, and if requested, shall defend them against all liabilities, obligations, losses, damages, judgments, costs, or expenses (including reasonable legal fees and costs of investigation) (collectively “Losses”) as a result of (a) personal injury or property damage caused by any act or omission during the Public Access Hours; or (b) any damage to any District property as a result of access granted pursuant to this Agreement; provided, however, the City shall not be obligated to indemnify the School Parties to the extent any Loss arises out of the negligence or willful misconduct of the School Parties. In any action or proceeding brought against a School Party indemnified by the City hereunder, the City shall have the right to select the attorneys to defend the claim, to control the defense and to determine the settlement or compromise of any action or proceeding, provided that the applicable School Party shall have the right, but not the obligation, to participate in the defense of any such claim at its sole cost. With respect to damage to District facilities, remediation will be provided at the full cost of replacement or repair to the facility, as applicable.

[Option Two: The model mutual indemnity clause below provides for each party to pay for their share of liability.]

- a. The City shall defend, indemnify, and hold the District, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the City, its officers, agents, or employees.
- b. The District shall defend, indemnify, and hold the City, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the District, its officers, agents, or employees.

Comments about "Liability and Indemnification":

An Indemnification Clause is a contractual provision in which one party agrees to be responsible for any specified or unspecified liability or harm that the other party might incur. The District and City have three options: (1) the City can take responsibility for the potential liability; (2) the District can take responsibility; or (3) they can share responsibility with a mutual indemnity clause. Attorneys for the City and District will tailor the indemnity clauses to reflect their state and local law and practice.

12. Insurance

The City and the District agree to provide the following insurance in connection with this Agreement.

- a. Commercial General Liability for bodily injury and property damage, including Personal Injury and Blanket Contractual, with limits of _____ per occurrence _____ aggregate.
- b. Workers' Compensation. Workers' compensation coverage, as required by _____ [state law].
- c. _____ [Other types of insurance required].
- d. Documentation of Insurance. The City and the District shall provide to each other a certificate of insurance each year this Agreement is in effect showing proof of the above coverage. In the event the City or the District is self-insured for the above coverage, such agency shall provide a letter stating its agreement to provide coverage for any claims resulting from its negligence in connection with joint use facilities in the above amounts.

Comments about "Insurance":

Insurance is a contract by which one party (the *insurer*) undertakes to indemnify another party (the *insured*) against risk of loss, damage, or liability arising from the occurrence of some specified contingency. **City and District personnel must confirm with risk managers at both the City and District the nature and extent of insurance coverage maintained by each party so that the Agreement accurately reflects the amount of insurance coverage of each party.** Attorneys for the City and District will tailor the insurance clauses to reflect their state and local law and practice.

13. Evaluation/Conflict Resolution

- a. The City and the District shall establish a Joint Use Interagency Team, composed of staff representatives of the City and the District, to monitor the joint use project and Agreement for its duration. The Interagency Team shall hold conference calls or meetings _____ [*add frequency of meetings here*] to review the performance of the project and to confer to discuss interim problems during the term of the Agreement. If the Joint Use Interagency Team is unable to reach a solution on a particular matter, it will be referred to _____ [*City official*] and _____ [*District official*], or their designees, for resolution.
- b. The Joint Use Interagency Team shall review the Agreement by _____ each year to evaluate the Project and to propose amendments to this Agreement.

Comments about “Evaluation/Conflict Resolution”:

The parties need to have a process by which to address and resolve any concerns or problems that arise during the Agreement and to evaluate the Agreement. The parties can determine what type of communication will best serve their needs in carrying out the Agreement.

14. Termination

This Agreement may be terminated at any time prior to its expiration, for _____ [*add basis here*] upon _____ *days/months/years/* written notice.

Comments about “Termination”:

The termination clause sets forth the conditions upon which either party can end the Agreement before its term expires. The City and District will tailor this clause to reflect what conditions or actions will be sufficient to terminate the Agreement and how much notice each party must give the other before terminating it.

15. Entire Agreement

This Agreement constitutes the entire understanding between the parties with respect to the subject matter and supersedes any prior negotiations, representations, agreements, and understandings.

Comments about “Entire Agreement”:

This clause provides that the Agreement constitutes the sole obligations of the parties. Prior oral or written agreements will not be valid or enforceable.

16. Amendments

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

Comments about “Amendments”:

This clause requires any changes to the Agreement to be made in writing and approved by both parties.

17. Any Additional Provisions Required by State or Local Law**Comments about “Any Additional Provisions Required by State or Local Law”:**

State or local law or practice may require additional clauses in the Agreement.

Signatures