

JOINT USE AGREEMENT 4:

Joint Use of District and City Recreation Facilities

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

Support for this document was provided by a grant from the Robert Wood Johnson Foundation.

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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 wider use.

Joint Use Agreement 4 is a model agreement between the school district and the local city, town, or county government, in which the school district and local government agree to open all or designated recreational facilities to each other for community and school use. Thus, the school district agrees to allow the local government to open for community use designated school district indoor and outdoor recreation facilities, such as gymnasiums, playgrounds, blacktop areas, and playing fields during time, such as weekends and holidays, when the district is not using the facilities. It also allows for third parties, such as youth organizations or youth sports leagues, to operate recreation programs using school facilities. In turn, the local governmental entity opens its facilities for district use.

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

The model agreement assumes the district has existing policies and procedures regulating third-party use of district facilities that address access, fees, insurance requirements, and use of facilities. The agreement requires that third-party users comply with those existing policies and procedures. If the district does not have existing policies addressing the requirements for third-party use, the district or the district and city together will need to enact those policies and procedures.

The model agreement provides comments explaining the different provisions in the agreement. The language 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)
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Joint Use Agreement 4: Joint Use of District and City Recreation Facilities

AGREEMENT BETWEEN THE _____ COUNTY SCHOOL DISTRICT (“DISTRICT”) AND _____ CITY/COUNTY (“CITY”) FOR USE OF 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, the City is the owner of real property in the City, including facilities and active use areas that are capable of being used by the District for school 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 enhance 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 19.

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 16. 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. Cooperative Agreement

As provided herein, the District and the City hereby agree to cooperate in coordinating programs and activities conducted on all their respective properties and in all their respective facilities listed on Attachment A (“District Property”) and Attachment B (“City Property”). The District and the City shall have the right to add or exclude properties during the term of this Agreement, provide that any such change shall be in writing and approved by both the District and the City. Reference to District Property or City Property in this Agreement shall include the facilities and the property upon which the facilities are located. As used in this Agreement, “Owner” shall mean the party to this Agreement that owns a particular property and/or facility covered by this Agreement, and “User” shall mean the other party using the Owner’s property and/or facility under the terms of this Agreement. “Public Access Hours” shall mean the hours during which the City or third parties use District Property.

4. Permitted Uses

Comments about “Permitted Uses”:

Generally, communities reserve use of each facility first to the Owner, then to the User, and then allow access to third parties based on a hierarchy of priorities.

The parties will determine how to allocate use of the properties, schedule the properties, and what payment each will require.

a. District Property

i District Use

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

ii City Use

At all other times and subject to the schedule developed by the City and the District, the City and third parties authorized by the City will be entitled to use

District Property, without charge, [*or list payment or reference to payment schedule*] for community recreational and educational purposes for the benefit of District students, the District, and the City at large. The City’s obligations under this Agreement shall apply to third parties using District Property. The City shall be responsible for ensuring that third parties comply with all obligations under this Agreement when using District Property. The City shall enforce all District rules, regulations, and policies provided by the District while supervising community recreational activities on District Property. In planning programs and scheduling activities on school grounds, the security, academic, athletic, and recreational needs and opportunities of school-aged children will be the highest priority and be adequately protected.

Comments about “City Use”:

This section provides that the City is responsible for the actions of third parties using the District facilities and presumes that the City will be responsible for scheduling third-party use of facilities (See section 7 below.) Alternatively, the parties may wish to allocate responsibility and scheduling to the District.

iii Third-Party Use

The City and the District agree that in providing access to District Property for use other than by the District or the City, the following priorities for use shall be established:

Category 1	Activities for youth
Category 2	City adult programs or activities.
Category 3	Other adult programs or activities

Comments about “Third-Party Use”:

If the District and City plan on opening access to their property to third parties they should establish priorities for use after a careful review of state and local law. Both the City and District may have other laws, regulations or policies that establish procedures for third party access by permit or other procedure. It is important to ensure that this Agreement conforms to those local laws or regulations or to amend those laws and regulations so that the priorities and procedures established in the Agreement are consistent with the laws and regulations.

b. City Property

- i** The City shall be entitled to priority use of City Property for the regular conduct of park, recreation, and community service activities and/or programs sponsored by the City.
- ii** At all other times and subject to the schedule developed by the City and District, City will permit District to use City Property, without charge, for District educational and recreational activities and/or programs.

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. Communication

a. Designation of Employees

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

b. Joint Use Interagency Team

The District and the City shall establish a Joint Use Interagency Team (“Interagency Team”), composed of staff representatives of the District and the City, to develop the schedule for use of District and City Property, to recommend rules and regulations for the District and City to adopt to implement this Agreement, to monitor and evaluate the joint use project and Agreement, and to confer to discuss interim problems during the term of the Agreement.

- i The Interagency Team shall hold conference calls or meetings _____ *[add frequency of meetings here]* to review the performance of the joint use 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 _____ *[District official]* and _____ *[City official]*, or their designees, for resolution.
- ii The Joint Use Interagency Team shall review the Agreement by _____ each year to evaluate the joint use project, determine changes to the schedule, and to propose amendments to this Agreement.

Comments about “Communication”:

The parties will need a process by which to schedule use of properties, develop rules for implementing the Agreement, address and resolve any concerns or problems that arise during the Agreement, and evaluate the Agreement. The parties can determine what type of communication will best serve their needs in carrying out the Agreement. The parties will have developed some type of work group/communication method in developing the plan that they may wish to continue to use to address issues that arise during the operation of the Agreement.

7. Scheduling Use of Property –

Comments about “Scheduling Use of Property”:

Depending upon the size of the District and City and the number of properties and potential users involved, the arrangements may require a great deal of planning and specificity. The parties may

wish to include the general practice and procedures in the Agreement and elaborate more specifically in an attached exhibit or other document.

Before entering into the Agreement, the District and City will have developed a process for scheduling properties. The Agreement will address how to continue and/or change the procedures for the subsequent term of the Agreement.

Generally, the City and District develop a master schedule establishing District and City use of facilities. [Although each party could require the other to apply for use just as a third party would, the purpose of the Agreement is to facilitate use so that the parties need not do that for each use of property.] Then, the parties need to allocate use of the facilities to third parties. The primary ways to schedule third-party use is to have the City schedule third-party use of all facilities or to have each Owner schedule third-party use of its own facilities.

a. Master Schedule

The District and City shall develop a master schedule for joint use of District and City Property to allocate property use to the District, City, and third parties. The Interagency Team shall schedule regular _____ [*frequency of meetings*] meetings or at such other times as mutually agreed upon by the District and City. At these meetings, the District and City will review and evaluate the status and condition of jointly used properties and modify or confirm the upcoming _____ [*year/season/etc.*] schedule.

b. Scheduling of City Property

The City shall have the responsibility for scheduling the use of City Property when the City and the District are not using the Property.

c. Scheduling of District Property

[Option One: The City will be responsible for scheduling third party use of District Property.]

The City shall be responsible for scheduling third party use of District Property using the priorities established in section 4(a)(iii). The use of District facilities shall be in accordance with the most recent regular procedures of the District for granting permits for the use of school facilities, as set forth in the District's policy _____, attached hereto as Attachment C and incorporated herein by reference, as it may be amended from time to time, or as otherwise provided by this Agreement.

[Option Two: The District will be responsible for scheduling third party use of District Property.]

The District shall be responsible for scheduling third party use of District Property using the priorities established in section 4(a)(iii). The use of District Property shall be in accordance with the most recent regular procedures of the District for granting permits for the use of school facilities, as set forth in the District's policy _____, attached hereto as Attachment C and incorporated herein by

reference, as it may be amended from time to time, or as otherwise provided by this Agreement.

Comments about “Scheduling of District Property”:

Having one entity responsible for scheduling all third-party use of the public properties benefits the public by reducing duplicative administrative costs, and making it easier for third-party users to access the facilities. There may be circumstances, however, where a district may want to retain scheduling responsibilities.

8. Documentation and Allocation of Operational Costs

Comments about “Documentation and Allocation of Operational Costs”:

In this and the following section, the parties may allocate any costs and revenue associated with the agreement. The parties should agree on the type and nature of costs and revenue to record and the methodology to measure and allocate them.

a. Tracking Use of Facilities

The District and the City shall each track use of their respective Properties under this Agreement.

b. Documentation of Costs

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

c. Payment of Overtime

Each party shall bear the cost of any overtime incurred by their employees in carrying out this Agreement. Each party shall provide to the other party an accounting on an annual basis of all overtime costs incurred as a result of overtime duties carried out by their respective employees.

Comments about “Payment of Overtime”:

The parties can allocate the overtime costs as they choose, consistent with any overriding state or local laws.

9. Fees and Charges

Comments about “Fees and Charges”:

State law may limit the ability to charge fees to community users of public property. Consult with legal counsel before establishing fees.

a. Fees

The ____ [*City or District depending upon who will be responsible for scheduling*] may charge rental fees to third-party users of District Property to cover any administrative and maintenance costs which the District or the City may incur. Any

fees and costs shall be assessed according to District policy.

b. Documentation of Fees

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

c. Annual Review of Benefits

The District and City shall annually review the exchange of benefits based upon hours of use, costs, fees, and charges, [*or capital investments*]. Any compensation for an imbalance in joint use programming costs shall occur through balancing the exchange of future benefits [*or substitute another method for allocating fees and benefits*].

Comments about “Annual Review of Benefits”:

The parties should determine a way to allocate the costs and fees of the joint use project. The parties may wish to simply divide the fee proceeds or reallocate costs by making improvements or using offsets of costs in future years.

10. Improvements

- a. The District shall obtain prior written consent of the City to make any alterations, additions, or improvements to City Property; the City shall obtain prior written consent of the District to make any alterations, additions, or improvements to District Property.
- b. Any such alterations, additions, or improvements will be at the expense of the requesting party, unless otherwise agreed upon.
- c. Each party may, for good cause, require the demolition or removal of any alterations, additions, or improvements made by the other party at the expiration or termination of this Agreement. “Good cause” includes reasons of health, safety, or the District’s need to use the District Property for educational purposes or the City’s need to use City Property for municipal purposes.

Comments about “Improvements”:

The parties should determine whether they wish to be able to make “improvements” (beneficial changes to the owner’s property made by or for the benefit of the user) to the properties, and if so, whether they want to address improvements in this Agreement or another one.

11. Interagency Training

The District and the City shall operate a joint training and orientation program for key personnel implementing this Agreement. [*Enumerate categories of staff required to attend training and topics to be included in the training.*] The District and the City shall be responsible for ensuring their employees attend the training.

Comments about “Interagency Training”:

To assure the success of the Agreement and program, key personnel must understand the purposes and procedures required under the Agreement.

12. Supervision , Security, and Inspections**a. Supervision and Enforcement**

Each User shall train and provide an adequate number of competent personnel to supervise all activities on the Owner’s Property. The User shall enforce all of the Owner’s rules, regulations, and policies while supervising activities or programs on the Owner’s Property.

b. Security

The Owner shall provide the User with access to the Owner’s Property. The Owner will provide keys, security cards, and training as needed to the User’s employee(s) responsible for opening and locking the Owner’s Property while supervising activities or programs.

c. Inspection and Notification

The User shall inspect the Owner’s Property after use to ensure these sites are returned in the condition they were received. The User shall ensure the Owner is notified within _____ hours/days [*insert timing here*] in the event that Owner’s Property suffers damage during User’s use. Such notification shall consist of sending written notification by letter, facsimile, or email to the Owner’s designated employee identifying the damaged property, date of detection, name of inspector, description of damage, and estimated or fixed costs of repair or property replacement.

Comments about “Supervision, Security and Inspections”:

The parties may wish to include more specific requirements in the text, by reference to existing requirements, or in an attachment.

13. Supplies

The User shall furnish and supply all expendable materials necessary to carry out its programs while using the Owner’s Property.

14. Maintenance , Custodial Services, and Toilet Facilities**a. Maintenance**

The User agrees to exercise due care in the use of the Owner’s Property. The User shall during the time of its use keep the Owner’s Property in neat order.

[Option One:]

The Owners shall be responsible for the regular maintenance, repair, and upkeep of

their respective Properties.

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

The District shall perform normal maintenance of all indoor Property, playground and blacktop *[or other facility]* properties at basic level of service subject to normal wear and tear. The District shall notify the City of any known change in condition of these Properties.

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]*.

The City shall be responsible for the regular maintenance, repair, and upkeep of City Property.

b. Custodial

The Owner shall make its trash receptacles available during the User's use of Owner's Property. The User shall encourage community users to dispose of trash in the trash receptacles during Public Access Hours.

c. Toilet Facilities

The City shall place temporary, portable, restroom facilities at the District's Outdoor Properties at the discretion of the District. It shall be the responsibility of the City to maintain these facilities.

Comments about "Maintenance, Custodial Services, and Toilet Facilities":

The parties need to allocate the responsibility for maintaining the properties and facilities. We offer two samples, but depending on the proposed uses of District and City properties, the parties may wish to assign maintenance responsibilities differently.

15. Parking

During Public Access Hours, the District shall make available for public parking the parking facilities listed in Attachment D to this Agreement.

16. Restitution and Repair

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

The User shall be wholly responsible to repair, remediate, or fund the replacement or remediation of any and all damage or vandalism to the Owner's Property during the User's use of that Property.

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

The User shall make restitution for the repair of damage to the Owner's Use Areas during User's use of Owner's Property.

- a. Inspection and Notification** The User shall, through its designated employee, inspect and notify the Owner, of any damage, as described above in subsection 12(c).
- b. Repairs** Except as mutually agreed, the User shall not cause repairs to be made for any property, facility, building, or item of equipment for which the Owner is responsible. The Owner 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 16 of this Agreement that the User is responsible for the damage, then the User agrees to reimburse the Owner at the estimated and/or fixed costs agreed upon.
- c. Reimbursement Procedure** The Owner shall send an invoice to the User's designated employee 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 User shall reimburse the Owner within _____ days from receipt of such invoice.
- d. Disagreements** The User shall retain the right to disagree with any and all items of damage to buildings or equipment as identified by the Owner, provided this disagreement is made within _____ days after a first notification.
 - i** The User shall notify the Owner of any disagreements in writing by letter, facsimile, or email to the District's designated employee. The User 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 User.
 - ii** After proper notification, members of the Joint Use Interagency Team, or other designated representatives of the City and 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 Owner shall have the right to make immediate emergency repairs or replacements of Property without voiding the User's right to disagree.

Comments about “Restitution and Repair”:

The parties will tailor this provision to best suit their needs. The Owner may want the User to make any repairs or may want to make the repairs using its own personnel or contractors and have the User reimburse the Owner 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.

17. Liability and Indemnification

[Option: 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. Attorneys for the City and District will tailor the indemnity clauses to reflect their state and local law and practice. The District and City have three options: (1) they can share responsibility with a mutual indemnity clause; (2) the City can take responsibility for the potential liability; or (3) the District can take responsibility.

18. Insurance

The District and the City 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 District and the City 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 District or the City 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.

19. 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.

20. 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.

21. 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.

22. 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