

Playing Smart

Maximizing the Potential of School and Community Property Through Joint Use Agreements



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Thanks to Our Funders

Support for the document was provided by a grant from the Robert Wood Johnson Foundation and The Kresge Foundation.

Some material in this toolkit was adapted from research funded by The California Endowment.

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Acknowledgments

Thanks to the individuals who carefully reviewed and provided valuable feedback on various sections of this toolkit: Amy Ackerman, Marice Ashe, Chelsea Cipriano, Amy Dickinson, Susan Elizabeth, Karla Hampton, Gillian Hersh, Tia Hodges, Jim Hunn, Karen Kramer, MJ Kurs-Lasky, Ana Lasso, Danielle Marshall, Martin Martinez, Brian Pettit, Mike Raible, Carrie Spector, Jeff Vincent, Jonathan Wells, Wallace Whittier, and Ben Winig.

Additional thanks to the following people who shared their experiences to help create the case studies featured in this toolkit:

- David Moran, Assistant City Manager, City of Greenbelt, Maryland
- Myrna Johnson, Executive Director, Boston Schoolyard Initiative
- Martha Pierce, Education Advisor to the Mayor, City of Boston
- Matt Wilder, Head of Media, City of Boston
- Modie Cox, Executive Director, Winning Because I Tried (Niagara Falls, New York)
- Sherry L. Shepherd-Corulli, City Government of Niagara Falls, New York
- Thomas DeSantis, Senior Planner, City of Niagara Falls, New York
- Charles Walker, City Councilman, City of Niagara Falls, New York
- Patricia Travis, Youth Bureau, City of Niagara Falls, New York
- Mike Rankin, City Attorney, City of Tucson, Arizona
- Gary Scott, Manager, Tucson Parks and Recreation Department
- Michael Raible, Executive Director, Planning and Development, Charlotte-Mecklenburg Schools, North Carolina
- Jonathan Wells, Program Manager, Capital Facilities, Charlotte-Mecklenburg Planning Department, City of Charlotte, North Carolina
- Jim Ventress, Executive Director, Santa Clarita Valley Boys & Girls Club

Thanks to those who provided documents and other materials (including sample agreements) that were cited, excerpted, or reprinted in this toolkit:

- Leta Mach, Council Member, City of Greenbelt, Maryland
- David E. Moran, Assistant City Manager, City of Greenbelt, Maryland
- Michael Raible, Executive Director, Planning and Development, Charlotte-Mecklenburg Schools, North Carolina
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Graphic design by
Karen Parry | Black Graphics

Photos by:
Lydia Daniller (cover, pages 3, 4, 6, 8, 9, 14, 19, 20, 23, 28, 33, 35, 39, 40, 42, 46, 50, 52, 54, 55, 57, 58, 65, 66, 67, 70, 72, 73, 101)
KaBOOM! (pages 7, 12, 13, 36, 63, 76, 80, 91, 112, 123, 124, 128, 129, 130, 145, 153, 168)
Robert S. Ogilvie (pages 5, 82)
Peter R. Russo (page 31)

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Introduction

In many communities, it's hard to find safe places for children and their families to exercise and play. Public schools might have a variety of recreational facilities – gymnasiums, playgrounds, fields, courts, tracks – but they often close their property to the community after school hours.

School administrators point to various reasons for locking up their facilities after hours, including concerns about costs, vandalism, security, maintenance, contract issues, and liability in the event of injury.

Most states have laws that encourage or even require schools to open their facilities to the community for recreation or other civic uses. Still, even when school officials are informed of these requirements – and even if they're sympathetic to the community's desire to use the grounds – they may be reluctant to comply, given the concerns cited above.

The good news is that local governments can partner with school districts and other agencies through joint use agreements to address these concerns. A joint use agreement is a formal agreement between two separate government entities, often a school district and a city or county, setting forth the terms and conditions for the shared use of public property.

In St. Petersburg, Florida, the city's "Play 'n' Close to Home" initiative is using joint use agreements to help meet its goal of bringing a public playground within half a mile of every resident. The first joint

use playground opened at an elementary school; the city agreed to maintain the 1.6-acre playground on school property in exchange for public use outside school hours between sunrise and sunset.¹

In Seattle, the city and school district have implemented a more complex joint use agreement to centralize the scheduling of all school and city recreation facilities, making them more accessible and easier to reserve. In other communities around the country, schools and cities have partnered to build new recreational facilities for schools and neighborhoods.²

Joint use agreements allow school districts to share with local government the costs and responsibilities incurred by opening their facilities. Subject to overriding state and local laws, the agreements can allocate to local government some or all of the responsibility for costs, security, supervision, maintenance, repairs, and potential liability. Beyond simply working with schools, cities also have begun to explore agreements with nonprofits, hospitals, and local universities in an effort to increase the available resources. Although this toolkit focuses primarily on partnerships with schools, many of the issues and strategies



apply to a broader spectrum of joint use agreements.

With thoughtful planning, joint use agreements can play an important role in increasing recreational opportunities for children and their families. In the case of schools, parents and community members can get involved by urging school officials (including school board members) and city or county officials to pursue a joint use agreement that would make school facilities more widely accessible.

About This Toolkit

This toolkit shares what we have learned from successful agreements, offering guidelines and templates for other communities looking to expand their access to school recreational facilities.

Chapter 1 lays out the research between poor health and limited access to recreational facilities, and introduces joint use as a concept.

Chapter 2 looks at ways to foster support for joint use at the state and local level, and provides a step-by-step checklist for negotiating and developing a joint use agreement.

Chapter 3 profiles several joint use initiatives to illustrate how different communities across the country have negotiated and implemented agreements.

Chapter 4 provides an overview of the most common strategies for financing joint use agreements.

Chapters 5 and 6 offer guidance on how to overcome obstacles that may arise in negotiating and enforcing a joint use agreement.

Appendix 1 features model agreement language for four basic types of joint use agreements, designed to serve as templates for other communities.

Appendix 2 provides a model resolution that a city or county could use to create a joint use task force.

Appendix 3 provides sample language and other material from joint use agreements referenced in this toolkit to show how different communities have articulated and resolved issues that emerge during negotiations.

In an era of budget shortfalls, expanding access to facilities that already exist is one of the most promising ways to bring new resources to neighborhoods that need them most. This toolkit will help community leaders develop the know-how to establish and sustain joint use agreements for years to come.





The Relationship Between Joint Use Agreements and Physical Activity

Nearly a third of American children and adolescents³ – and two-thirds of American adults⁴ – are overweight or obese. Over the past few decades, obesity rates have soared for all age groups, doubling among preschoolers and more than quadrupling among children ages 6 to 11.⁵

To counter rising rates of obesity and related diseases, Americans are urged to eat healthier foods and lead more active lives. For many, however, it's difficult to follow this advice where they live. Walking and bicycling are dangerous on roads designed for cars driving at high speeds. Schools and shopping districts are too far from homes for children and their families to reach on foot. Parks, playgrounds, and other outdoor recreation areas are often remote, inaccessible, or poorly maintained – if they exist at all. For too many communities, these factors combine to make healthy choices all but impossible.

Addressing Inequity in Opportunities for Physical Activity

Barriers to recreational opportunities are particularly pronounced in lower-income neighborhoods. Health challenges, and in particular the risk of overweight and obesity, do not affect all of us equally. Disparities in overweight and obesity prevalence exist in many segments of the population, based on race and ethnicity, gender, age, and socioeconomic status.⁶ The very same communities that are at greater risk for

overweight and obesity have far fewer parks and open spaces. A national study of 20,000 young people in the United States found that resources for physical activity – including public parks and recreation facilities, as well as private facilities – were distributed inequitably, with non-white and lower-income neighborhoods twice as likely as higher-income white neighborhoods to lack even one facility for physical activity.⁷ Communities with higher poverty rates and higher percentages of African-American residents have significantly fewer parks and green spaces.⁸ In addition, substantial research supports the commonsense contention that young people, particularly adolescents, who do not have safe places for participating in positive activities during after-school hours are more likely to engage in potentially dangerous activities such as drug use, risky sexual behaviors, and gang involvement. Access to safe recreational facilities is one critical element to solving this problem.

Indeed, parents rank safety as the number one factor in deciding whether and where their children can play.⁹ Because children are more likely to be physically active when they're outside,¹⁰ outdoor safety is important.¹¹ A lack of safety outdoors is a



challenge for children living in lower-income neighborhoods. One study in Boston found that playgrounds in neighborhoods with higher poverty rates and higher percentages of African-Americans were less safe than those in other neighborhoods, not only with regard to having well-designed and maintained equipment but also with regard to security from crime.¹² The safety concern is borne out in obesity statistics: one recent study found that children whose parents perceived their neighborhoods as especially unsafe were four times as likely to be obese as children living in neighborhoods perceived as safe.¹³

Safe playgrounds offer children living in disadvantaged neighborhoods the potential for physical activity. Playgrounds are sites of high physical activity in a diverse range of neighborhoods.¹⁴ In rural areas, playgrounds attract children more than nearby fields do.¹⁵ In inner-city neighborhoods, safe playgrounds increase the number of children engaging in physical activity. One intervention in an impoverished urban neighborhood in New Orleans showed that keeping a schoolyard with a play structure open after school hours and providing adult supervision increased the number of children who remained outside and active after school by 84 percent.¹⁶

The Promise of Joint Use Agreements

In recent years, increasing access to existing recreational facilities at schools has emerged as one of the most promising strategies for building more opportunities for activity. This promise is rooted in the realization that even the most poorly designed and underserved neighborhoods include schools. In an era of budget shortfalls, maximizing access to existing facilities – rather than trying to construct new ones – is the most efficient

and economical use of public resources. Although this toolkit focuses on school recreational facilities, joint use agreements can be used to maximize other community assets, such as libraries, theaters, and community gardens.

When the school day ends, school facilities are often closed to community residents who might otherwise use them. Understandably, school districts lock their facilities because they lack the capacity and funds to run programs, and they may have concerns about additional legal or maintenance costs that might arise from the use of school property outside regular school hours. At the same time, communities across the country are expressing a growing desire for safe, accessible, and affordable places for activity – and some are demanding access to what are, in fact, public resources. As a formal legal document, a joint use agreement can facilitate community access to school facilities and grounds.

What Is a Joint Use Agreement?

A *joint use agreement* refers to a written agreement between a school district and one or more public or private (nonprofit) entities, allowing public access to school property and detailing the shared responsibility for maintaining the facilities. Implicit in the agreement is that public, and in some cases private, resources will be pooled to expand community access and use public space more efficiently.

Joint use agreements can be written for various types of facilities; this toolkit focuses solely on indoor and outdoor school recreational facilities, such as gymnasiums and playgrounds. These agreements can range from informal or “open” public use to organized after-school and weekend athletic activities for adults and youth.



National Support for Joint Use Agreements

Community use of public school facilities and grounds is as old as public education itself. Schools have historically been the site for all kinds of community events and public meetings. There is typically an assumption that communities can get access to their schools, especially outside of regular school hours. Nationally recognized authorities – such as the White House Task Force on Childhood Obesity,¹⁷ the American Academy of Pediatrics,¹⁸ and the Institute of Medicine¹⁹ – have recommended joint use of school facilities as a strategy to increase physical activity opportunities in underserved communities.

Child health and physical activity advocates are not alone in their support for joint use. In the 2000 report *Schools as Centers of Community: A Citizen's Guide for Planning and Design*, the U.S. Department of Education recommends joint use as an important strategy in its school design principles.²⁰ Building Educational Success Together (BEST), a national collaborative of educational equity and school facility advocates, promotes joint use in its model policies to support high-performing schools.²¹ The community school movement, aimed at bringing providers of student health and other support services into school buildings, applies the joint use concept.²² Urban planners and community developers have also advocated for joint use schools, particularly those connected to the smart growth movement.²³ The National Trust for Historic Preservation recommends joint use in establishing schools as centers of communities.²⁴ All of these perspectives point to the potential for multiple benefits of joint use – improving educational outcomes, increasing community amenities and physical activity, using public resources more efficiently, and more.²⁵

A few states, including North Carolina,²⁶ Maryland,²⁷ and California, also have promoted joint use. In recent statewide school construction bonds, California has created a pot of capital funds for building or renovating school facilities to support joint use. Additionally, both the California Department of Education and the Division of the State Architect encourage joint use in their state agency documents.²⁸ However, no state appears to



Joint use partnerships are not simple to implement, and they must be thoughtfully crafted. Even the seemingly straightforward act of unlocking school playgrounds on weekends takes time, money, administrative oversight, and political support.

have established a robust policy or funding framework to fully support, incentivize, or guide local joint use efforts.²⁹

A 2006 study found that only 29 percent of the nation’s public and private schools provided open access to their physical activity spaces and facilities outside of normal school hours.³⁰ Moreover, it appears that in lower-income areas there is less access to schools, suggesting a disparity in community access.^{31, 32}

As this toolkit illustrates, however, there are many bright spots across the country from which to learn and build upon. For example, a 2006 survey of California school districts found that nearly 60 percent already have some form of joint use in place, and half reported that they were in the process of building new schools that will incorporate some type of joint use facility.³³

What Are the Barriers to Creating Joint Use Agreements?

In some localities, community access has become more difficult due to school district concerns over liability and vandalism, budget cuts in facilities maintenance and staffing, and increased use by schools or school-connected groups. Joint use partnerships are not simple to implement, and they must be thoughtfully crafted. Even the seemingly straightforward act of unlocking school playgrounds on weekends takes time, money, administrative oversight, and political support to plan, fund, and implement; programs also can require ongoing coordination, communication, and cooperation among partners who have little or no history of working together.³⁴

One study conducted in four communities in the United States found that safety, insurance, and liability concerns are key barriers.³⁵ Joint use agreements can help address these and other concerns by clearly articulating each partner’s financial, legal, and operational responsibilities. But there is no one-size-fits-all approach. As the case studies in this toolkit illustrate, the terms of these agreements will vary depending on community needs and characteristics.

Communities can put joint use agreements to work for more than school recreational facilities, expanding access to libraries, parks, and other city and county properties. Developing and nurturing joint use agreements creates a win-win for students and the entire community. This toolkit breaks down the elements of a strong joint use agreement and provides information about how to overcome potential barriers to implementation.

Joint Use Terminology*

JOINT USE**	The use of school district facilities by a non-district entity.
SHARED USE	When a school space is used by the school during school hours and by a non-school user after hours (for example, a classroom for instruction during the school day and for program activities after school).
DEDICATED USE	When a school space is exclusively available to the outside entity during the school day and after school (for example, an after-school office or storage area).
CIVIC USE	The occasional joint use of school buildings and grounds by individuals or groups (for example, for voting, community meetings, special events, or as emergency shelters, as well as casual use by the public for recreational purposes).
REAL ESTATE JOINT USE	Use, either shared or dedicated, where the user seeks no relationship with the school or its families but desires access to the school facility.
DROP-IN USE	When the space is made available for informal, drop-in activities. In this case, the user does not reserve the space in advance. Usually, spaces are made available for drop-in use during specified hours.
ONE-TIME USE	When a school space is available to the outside entity during the school day and/or after school for a specific period of time on a single day. Typically, the user has reserved the space in advance.
REPEATED USE, SHORT TERM	When a school space is available to the outside entity during the school day and/or after school for a specified number of hours over a longer period of time (e.g., multiple days, weeks, or months).
JOINT DEVELOPMENT	Two or more entities partnering to plan, site, design, and/or build a new school or renovate an existing school to better support the joint use of the building and/or land.

Joint User Types

INDIVIDUALS	Persons, generally residents of a community, who have access to exterior spaces (such as play equipment, athletic fields, or courts) and open space for personal use.
CIVIC GROUPS	Individuals or organizations who seek occasional use of school buildings and grounds for activities or events such as polling, community meetings, and special events.
OTHER PUBLIC AGENCIES	Public agencies that are not part of the school district and may offer programs, need to lease space, and/or seek joint development with ongoing joint programming.
PRIVATE NONPROFIT ORGANIZATIONS	Nonprofit groups using school buildings and/or grounds for programs such as after-school activities, health clinics, or adult education classes.
PRIVATE FOR-PROFIT CORPORATIONS	For-profit groups using school buildings and/or grounds for education-related work, such as a private testing service, or unrelated work purposes, such as private offices.

* The definitions are taken from the following document: 21st Century School Fund and Center for Cities & Schools (March 2010). *Joint Use of Public Schools: A Framework for a New Social Contract*. Washington, DC: 21st Century School Fund. Available at http://citiesandschools.berkeley.edu/reports/2010_JU_Concept_Paper.pdf

** Note that school-based joint use agreements are the primary focus of this toolkit, but joint use agreements can also be put in place with other local government agencies as well as with nonprofit and private organizations.

The Center for Cities & Schools at the University of California, Berkeley is an action-oriented policy and technical assistance do-tank whose mission is to promote high-quality education as an essential component of urban and metropolitan vitality to create equitable, healthy, and sustainable communities for all. To learn more, visit: <http://citiesandschools.berkeley.edu>.



Getting Started

Joint use agreements are not a simple undertaking: the scope and terms must be planned carefully, and garnering support from decision-makers at various levels is key. This chapter looks at ways to foster support for joint use at the state and local level, and provides a checklist of practical issues to consider when developing a joint use agreement.

Building Support at the State and Local Level

State and local policymakers can help promote joint use initiatives by providing funding and policy support. Creating a joint use task force helps ensure coordination and ongoing communication among local agencies, community groups, and other stakeholders. State agencies can develop grant programs to fund joint use policy development, or participate in state-level strategic planning efforts.

Here are some examples of policy strategies at the state and local level that support joint use:

- ▶ The Arkansas Department of Education runs the Arkansas Joint Use Agreement (JUA) grant program, a competitive pool of funding for local joint use initiatives funded by the Arkansas Tobacco Excise Tax. These grants help schools adopt and implement joint use policy and form collaborative partnerships to maximize resources while increasing opportunities for physical activity. Funds are available each fiscal year based on Tobacco Excise Tax appropriations or until funds are expended.³⁶
- ▶ In May 2008, California advocates established the Joint Use Statewide Task Force (JUST), which includes representatives of public health agencies, civil rights groups, urban planning agencies, local elected and appointed officials, park and recreation agencies, local school boards, academic researchers, and community-based organizations. In addition to promoting community access to school playgrounds through joint use agreements, JUST's mission also includes providing a venue to discuss these local and regional efforts and to develop long-term, sustainable actions at the state level. JUST's website provides an online forum to facilitate this ongoing discussion and provide technical support.³⁷
- ▶ In 2010, Public Health – Seattle & King County secured two Communities Putting Prevention to Work (CPPW) grants from the American Recovery and Reinvestment Act of 2009 for obesity prevention efforts. The grants were directed in part to increase equitable access to safe and attractive school facilities outside of the school day for physical activity and recreation.³⁸
- ▶ In North Carolina, by joint resolutions, the City of Charlotte and Mecklenburg



County created a joint use task force (JUTF), which provides a comprehensive and coordinated picture of the community’s capital facilities. These resolutions endorsing joint facility planning and use were later adopted by the Charlotte-Mecklenburg Board of Education, the local community college board, and the county library board. Today, planning staff from more than two dozen government agencies, along with representatives from nonprofit organizations, meet monthly to develop collaborative joint use agreements and to coordinate long-term facility master plans.³⁹

Many communities across the country address joint use in their official land use planning documents, known variously as *general plans*, *comprehensive plans*, *development plans*, *land use plans*, *master plans*, and *urban plans*. Some communities even have specific joint use elements in these plans. (For example, Florida requires that every comprehensive plan address intergovernmental coordination; Highlands County’s comprehensive plan requires that the county and the school board negotiate in good faith to enter and revise joint use agreements regarding the use of existing facilities for parks and recreation.⁴⁰) General plans are public documents, which are typically available on a city or county’s website and are usually updated every ten years or so. Advocates for joint use and healthy built environment policies should get involved in their community’s general plan update as a way to influence the long-term vision and character of their community.⁴¹

Checklist: Practical Issues to Consider When Developing a Joint Use Agreement

This checklist can serve as a starting point for agencies and community groups looking to enter into a joint use agreement. It focuses on agreements between cities and schools, but the same considerations apply to other entities that want to enter into these types of agreements. The checklist is included at this point in the toolkit to provide readers with an overview of the issues that can arise at each stage of the joint use agreement process. Many of the topics highlighted in this checklist are discussed in more detail in chapters 4, 5 and 6. Of course, not all of the issues will apply to all situations, and there may be issues unique to particular communities that are not included here.



Checklist

- | | |
|---|---|
| <input type="checkbox"/> Identify community and school needs. | <p>To assess the community's needs for additional recreational opportunities, identify:</p> <ul style="list-style-type: none">▶ Underserved communities (such as lower-income communities lacking neighborhood parks and community centers)▶ Unmet recreation or physical activity needs, including assessing health problems among schoolchildren that could be addressed by more physical activity▶ Locations in the community where recreation and physical activity needs can be met by school facilities▶ The types of recreation facilities required to meet these needs (e.g., outdoor vs. indoor)▶ The time of day that access is needed (e.g., weekend, evening) <p>To assess school needs, identify:</p> <ul style="list-style-type: none">▶ Students' unmet physical education and recreation needs (ones the city might meet)▶ Facility needs (for improvements, maintenance support, scheduling assistance) |
| <input type="checkbox"/> Identify potential properties. | <p>Inventory facilities to determine what is available. Assess the suitability of these properties for joint use, taking into consideration the condition of the property and the degree of support from local families and school personnel. Identify the facilities that best serve unmet needs (by location, facility type, or other factor), and describe the facilities, structures, equipment, and other resources to be shared. Describe the services and programs the joint use project will provide.</p> |
| <input type="checkbox"/> Identify partner organizations. | <p>Identify the organizations and nonprofits – such as YMCAs and sports leagues – that would benefit from use of the facilities, and then build relationships with them, perhaps inviting them to sit on a joint use task force or participate in the negotiations.</p> |
| <input type="checkbox"/> Build relationships with the appropriate decision makers. | <p>Identify supportive decision makers (school board members, city council members, other public officials) and build relationships with them. Work with them to assess whether other important decision makers support or oppose joint use, and figure out a strategy for winning over any potential allies. In other words, find out who your allies are, and mobilize them to get others on board.</p> |
| <input type="checkbox"/> Make sure the concept is approved. | <p>The school board and the governing entity of the city, county, or town should first approve the <i>concept</i> of developing a joint use agreement.* Appealing to these entities' interests – and ensuring those interests will be represented in the joint use agreement – is critical to securing this approval.</p> |
| <input type="checkbox"/> Select negotiators. | <p>Identify the employees from each partner entity who will be responsible for developing the agreement. They should be knowledgeable about the facilities and proposed programs, and they should have enough experience to develop informed recommendations on behalf of their organization.</p> |

* Depending on the state and locality, a city, county, or town could enter into a joint use agreement with a school district or community college district. For purposes of this document, we will use "city" to refer to the local government and "district" to refer to the school or community college district.

Checklist

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| <input type="checkbox"/> Agree upon the scope of the agreement. | Which facilities on each property should be included in the agreement? Will other organizations (“third parties”) be allowed to operate programs at these facilities? Will city properties also be open to school use? Should scheduling be consolidated for multiple facilities? These are some of the issues to consider and resolve when establishing the scope of the agreement. |
| <input type="checkbox"/> Inspect proposed facilities. | Both parties should examine the facilities together to establish and document the baseline conditions. |
| <input type="checkbox"/> Identify and reach agreement on issues involving use. | All parties need to agree on operational and management issues, including: <ul style="list-style-type: none">▶ Which users have priority access for different facilities (i.e., the earliest opportunity to reserve the facility)▶ Which entity will be responsible for scheduling use, and how changes/cancellations will be accommodated▶ Whether and what type of security is needed, and which employees will need access▶ Who is responsible for providing equipment, and where the equipment will be stored if needed; how the storage area will be secured, and who will have access to it▶ The type of supervision necessary for the way the property is going to be used, and which party will be responsible for providing supervision▶ The type of custodial services and equipment needed (e.g., trash containers), and who is responsible for providing it▶ Whether to allow access to existing toilet facilities, and who is responsible for maintenance; whether portable/temporary facilities are needed, and who is responsible for providing them▶ Whether to provide access to parking facilities▶ Who is responsible for regular property maintenance, and which party will provide any additional maintenance if needed▶ The manner and frequency for inspecting properties, and the protocol for notifying designated employees of damage (including whom to contact, by what means, and deadlines for contacting and responding)▶ The method and responsibility for repairing property, the method for calculating the repair costs, and how to allocate those costs |
| <input type="checkbox"/> Work with risk management and legal counsel throughout the process of negotiating and drafting the agreement. | Allocate liability risk, and determine whether and what type of indemnification to require. Determine the types and amounts of insurance to require (consistent with legal and risk management requirements) and the types of documentation to exchange or require. Ensure the agreement is consistent with existing state and local law and regulations, permitting procedures (amending if necessary), and fee procedures or structure (amending if necessary). |
| <input type="checkbox"/> Identify and resolve employment issues. | Extending the facilities’ hours of operation likely means both the school district and the city will require some of their employees to work additional time. Consult with legal counsel to resolve any employment-related issues by, for instance, amending labor agreements or determining whether some of these duties can be covered by volunteers. |

Checklist

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|--|---|
| <input type="checkbox"/> Develop a communication protocol. | One of the most important elements of a successful joint use agreement is ensuring that all parties communicate effectively during its term. Establish a way for identified employees to communicate regularly about the agreement, and set up a process for resolving disagreements regarding any aspect of it. |
| <input type="checkbox"/> Identify and reach agreement on issues involving third-party use. | If third parties (such as youth organizations or youth sports leagues) will be allowed to use the facilities, the district and the city need to agree on various operational and management issues. The agreement will need to establish the priority of uses for third-party programs and the protocol for scheduling. The district and city will also need to ensure that third-party permitting or lease procedures are adequate; this includes making sure resources are allocated according to identified priorities, as well as addressing issues regarding access, fees, insurance and risk management, and liability. |
| <input type="checkbox"/> Agree upon improvements and improvement protocol. | Consider whether and how the parties will allow each other to make improvements to the property. Determine how to allocate the associated costs and ownership of the improvements. |
| <input type="checkbox"/> Agree upon how to determine and allocate costs. | Calculate the costs of sharing the facilities, and determine how to allocate these equitably. Be sure to identify which components of costs to measure, and the methodology to use to determine costs. For example, an agreement might identify the square footage of the area affected by the agreement and spell out the share of costs for maintenance, operations, and utilities each partner will bear. |
| <input type="checkbox"/> Determine the term of the agreement, methods of evaluation, and the renewal process. | In addition to determining the length or duration of the agreement, include acceptable reasons for canceling or terminating it before the term ends. Identify exactly how and when the agreement will be evaluated and the data to collect. Establish the process and conditions for renewing the agreement. |
| <input type="checkbox"/> Identify training needs and develop a training plan. | Determine whether agency personnel need training to carry out the agreement, including instruction on any new procedures or duties assigned to employees. Determine who is responsible for conducting any training, and identify the employees who need to participate. |
| <input type="checkbox"/> Develop exhibits to the agreement. | These can include a list of properties subject to the agreement, an inventory of the conditions of the properties, hours of use, operating rules, insurance documentation, and forms for third-party users to complete. |
| <input type="checkbox"/> Receive formal approval. | Once the governing entities formally approve the agreement, the work of overseeing its implementation begins. |

Crafting a successful joint use agreement is not a simple process. It requires a lot of thought, work, and cooperation, and it can take some effort to reach agreement on the range of issues involved. Successful joint use collaborations will take the time to define the resources being governed and clearly articulate each partner's roles and responsibilities. This type of comprehensive and open process will result in an effective agreement and minimize any potential conflict, ensuring that the benefits of the partnership outweigh the challenges.

Calculating Fees

One reason school districts cite for not recovering the costs involved in joint use is that they are unsure what to charge users. In most states, state law dictates whether schools may charge fees for use of their property. State laws may also specify how much schools may charge – for example, requiring free use for school-related groups or allowing nonprofit users only to recoup direct costs. (For more information about state laws addressing user fees, see the *Fifty-State Scan of Laws Addressing Community Use of Schools* at www.nplan.org/nplan/products/community-use-charts.)

The Center for Cities & Schools at the University of California, Berkeley, in partnership with the 21st Century School Fund, has developed a set of tools for implementing and sustaining joint use and joint development of public school facilities, including a School Facilities Joint Use Cost Calculator.⁴² Assuming use of the tool is consistent with the law in your state, the joint use cost calculator can help address the following issues:



Identify the elements of the cost of maintaining school district facilities



Calculate full cost of ownership on a per-square-foot and per-hour basis



Determine policy decisions school districts need to make about which users to subsidize



Create fee structure options for various non-school users, based on the real cost of ownership

The goal of this tool is to help stakeholders maximize the use of public educational assets for school and community benefit. For more information, visit <http://citiesandschools.berkeley.edu/joint-use.html>.



Case Studies

Joint use agreements vary greatly in scope, shaped largely according to the character of the community they are designed to serve. This chapter looks at how joint use agreements expanded opportunities for exercise in six very different communities across the nation.

Boston, Massachusetts

Population	617,594
Development pattern	High-density city
Population density	12,760 per square mile of land
Median household income	\$39,629
Partners involved	City of Boston Boston Public Schools Boston Schoolyard Funders Collaborative Boston Schoolyard Initiative

Many Boston schoolyards were paved over in the 1950s when city leaders discovered that asphalt cuts down maintenance costs. This left many of the city’s schools – which serve roughly 56,000 students, 72 percent of whom are eligible for free or reduced lunch – without any available green space. Many of the playgrounds built after the 1950s were set on top of asphalt surfaces.

Today, a large-scale partnership between the city, private donors, a schoolyard nonprofit, and the public school system is improving play opportunities for Boston’s children. Launched in 1995, the partnership uses informal agreements to guide its efforts.

In 16 years, 81 schoolyards have been revitalized into vibrant spaces that encourage both playing and learning; a multi-subject curriculum helps educators teach math, writing, science, and more using these playgrounds. More than 25,000 children have been reached, and the spaces are open for neighborhood enjoyment. And all that asphalt? More than 130 acres have been reclaimed.

“I was amazed at how well the original documentation works,” says Myrna Johnson, the executive director of the Boston Schoolyard Initiative. “One of the guiding documents – the first task force



report written in 1995 – continues to guide our work. There are no hard-copy versions around anymore, but I have a scanned version, and I hold onto it like the Bible.”

The task force report came about in the early 1990s when the Boston Globe Foundation wanted to award grants to community groups to improve the city’s environment. Its executive director, Suzanne Maas, established the Urban Land Use Task Force to gather input from private and public health, housing, and community organizing groups, along with school administrators, community members, environmental advocates, health professionals, and other funders. Schoolyards quickly surfaced as one of the group’s five top priorities.

The local philanthropy community also got involved, spearheaded by the Boston-based The Philanthropic Initiative (TPI). With private foundation and individual funding sources, constituent support, and organizational backing, the Boston GreenSpace Alliance (a nonprofit dedicated to protecting the city’s parks and open spaces) reached out to Mayor Thomas Menino in 1994 and asked him to use his political clout to further their cause.

The groups decided to establish the Boston Schoolyard Initiative (BSI), which would work directly with schools to design and complete projects. It would be supported by a private entity, the Boston Schoolyard Funders Collaborative (BSFC). BSI launched in 1995 as part of a five-year initiative. The mayor committed \$10 million in city funds over five years to the initiative.

From the beginning, BSI envisioned these playgrounds as both play and educational spaces. “Their proximity to schools cries out for a higher degree of interactivity, and they offer us the opportunity to combine recreation, creative play, and academic learning,” BSI notes in its literature.

The features of each space are colorful, interactive, and unique to that particular community. All use engaging focal points geared toward both students and local residents. Some spaces may feature brightly colored artwork. In some schools children elect to have maps of the globe painted on the asphalt. Each of the redesigned playgrounds includes built structures and play equipment. Some include natural elements like boulders, trees, grass, and other plants.

Features in the schoolyards are integrated into the curriculum. Tracks around the school offer math teachers the opportunity to teach students about circumference. Timing children as they run around the track can teach students how to calculate miles per hour.

Every three years, the groups meet to select which schools will receive new schoolyards, and how much money each group will contribute. A memo then goes to the mayor’s office for his approval, but the working group makes the choices and then moves forward with the plans.

“Our relationship with Boston is rather informal,” Johnson says. “We have an application and review process that helps us make decisions involving the city, Boston Public Schools, and the Boston Schoolyard Funders Collaborative – the three groups that make up the Boston Schoolyard Initiative. But there are really no legal documents guiding the collaboration.

“In some ways it’s an asset, because it allows us to be very flexible,” she adds. “Joint use agreements are now in vogue. But these projects were always designed to serve the broader community, not just the school. So the joint use approach is just built into the process.”

The BSFC pays for staffing the initiative and is increasingly supporting capital costs, plus a planning grant for schools. The city currently contributes about \$3 for every \$1 in private funding on the capital side. But when you include private funding for educational programming, the ratio is closer to \$2 to \$1.

The yearly capital investment in the BSI is estimated at \$1.1 million from the city and \$300,000 from the Funders Collaborative. The BSFC also invests at least \$150,000 annually in education programs.

The original plan was for a five-year public commitment. But with continued support from both private funders and the public, the program is ongoing. BSI currently has three projects in the planning phase; when construction is complete, nearly 90 Boston schools will enjoy creative outdoor play spaces.

With the schoolyard renovation process going smoothly, BSI is able to focus increasingly on curriculum development. Communities across the country are now modeling their own curriculum after the city’s innovative approaches.

“Boston has led the way on making curriculum connections between science and writing,” Johnson says. “I think it’s very exciting – we’re harvesting the power of the schoolyard to deepen student learning.”

Greenbelt, Maryland

Population	21,456
Development pattern	High-density small city
Population density	3,586 per square mile
Median household income	\$46,328
Partners involved	Two homeowners' associations One homeowners' cooperative (similar to an HOA) City of Greenbelt

Greenbelt was the first U.S. federal housing project. It was designed in 1935 as a complete city, with businesses, schools, roads, and recreational facilities, and built as part of President Franklin D. Roosevelt's Emergency Relief Appropriation Act. The original plan emphasized a pedestrian-friendly downtown, along with playgrounds, ball fields, and open space, most of which still exists.

From its inception, Greenbelt has valued civic engagement. The first families to live in Greenbelt were chosen based on income criteria as well as a demonstrated willingness to participate in the life of the community. In 1953, when the federal government turned over the housing portion of the town to the citizens, Greenbelt formed a housing cooperative and continued to function collaboratively, forming a cooperative baby-sitting pool, nursery school, and kindergarten.

With the privatization of Greenbelt's homes, some of the playgrounds became city property while others became the property of new homeowners and the housing cooperative. There were a number of small separate playgrounds that overlapped both city and housing co-op property lines.

In the 1980s, the city and the housing cooperative, now named Greenbelt Homes Inc. (GHI), formalized a joint use agreement for playgrounds. Previous understandings regarding playground ownership lines and maintenance responsibility between the city and GHI had been informal.

As part of this joint use agreement, the city agreed to be responsible for playground maintenance, and GHI took responsibility for mowing grass and trash removal. In exchange for the city providing maintenance, playgrounds were opened to the broader public from dawn until dusk.

The city gradually added new construction and additional homeowners' associations (HOAs). By 2000, HOAs owned 25 of the 66 playgrounds in Greenbelt. When the city began discussing a plan to renovate existing playgrounds within GHI – but not within other HOAs – the new HOAs argued that GHI should not get preferential treatment.

The city soon agreed to create joint use agreements with all HOAs in Greenbelt. The result has been a significant increase in both the quality of and access to play space in the city.



In keeping with its culture of collaborative decision-making, the city took three years to create the memorandum of understanding (MOU). The process of meeting with HOAs, community members, and council members was “long, intense, and complicated,” says assistant city manager David Moran, but it created MOUs that are “still working out very well.”

One of the smartest decisions, he said, was hammering out agreements at an administrative level with people who do the actual playground maintenance. They made sure that each agreement addressed things unique to each playground – a particular type of fencing or signage, for example.

The updated agreement was modeled after the 1987 joint use agreement, but more comprehensively addressed insurance and liability concerns. It also detailed cost-sharing. The city covers 75 percent of anticipated costs for new equipment, new surfacing materials, and periodic replenishment of surfacing, and the HOA covers 25 percent. The HOA is solely responsible for landscaping, trash, lighting, fencing, and benches.

The agreements have encouraged HOAs to invest their own funds in the play spaces. For example, one HOA invested just a few thousand dollars in the two decades before the joint use agreements. Since the agreements, the HOA has spent more than \$150,000.

The HOAs are pleased with the joint use agreements. The city was intentionally designed so that clusters of homes basically surround an HOA’s playground. But even given this development pattern, anyone who might want to use another HOA’s playground – for whatever reason – can now do so.

“The city gets upgraded playgrounds with access for everyone, and it’s a pretty good deal for the HOAs, which contributes to its success,” Moran says. “You don’t have people griping when you’re offering them a 75 percent grant program. They find a way to make it work.”

Here is the generic agreement language the city uses to establish the joint use agreements with the HOAs:

Excerpt

PLAYGROUND USE AND MAINTENANCE AGREEMENT

This AGREEMENT is made this _____ day of _____ by and between the City of Greenbelt, Maryland, a body corporate and politic in the State of Maryland (hereinafter “City”) and _____ (hereinafter Playground Owner).

WITNESSETH:

WHEREAS, the City desires to provide public access to playgrounds throughout the City and ensure that the playground equipment and surfacing is consistent with generally accepted guidelines such as Consumer Product Safety Commission (CPSC) and Americans with Disabilities Act (ADA) guidelines, and;

WHEREAS, the City is willing to maintain playground equipment and surfacing at privately owned playgrounds in exchange for long-term public access, and;

WHEREAS, the Playground Owner is willing to grant an easement allowing long-term public access in exchange for City maintenance of playground equipment and surfacing, and;

WHEREAS, this Agreement provides for such a relationship.

NOW THEREFORE, in consideration of the mutual covenants contained herein including execution of an easement document, the parties agree as follows:

1. This agreement covers the playground(s) described as follows:
[insert description of playground(s)]
2. As City staff and financial resources allow and at its sole discretion, the City agrees to:
 - A. maintain/modify existing playground equipment
 - B. maintain/modify surfacing materials
 - C. purchase and install new equipment
 - D. purchase and install new surfacing materials

The above work must be done Monday through Friday between the hours of 7:00am and 6:00pm. Work outside of these hours requires permission from the Playground Owner.

3. The City will inspect the playground and play equipment on a regular basis. At a minimum, inspections will be conducted annually.
4. Playground Owner will be required to reimburse the City for twenty-five percent (25%) of the total cost (equipment, materials & labor) for the items listed below. The City is responsible for any equipment maintenance and repair costs.
 - A. new playground equipment
 - B. new surfacing materials
 - C. periodic replenishment of surfacing materials
5. The City will determine playground equipment and surfacing needs based upon generally accepted guidelines such as those established by the CPSC and ADA, available staff and funding resources, and playground needs throughout the City. The City shall consult with the Playground Owner before adding or

replacing any play equipment or surfacing, but decisions by the City regarding surfacing and equipment will be final. Owner agreement is desired, but not required.

6. The City may not eliminate any playground equipment or playgrounds without obtaining the written permission of the Playground Owner. This provision does not apply to playground equipment deemed hazardous under the aforementioned guidelines.
7. The City shall be responsible for procuring and maintaining liability insurance on the playground and related playground equipment as described above and shall add Playground Owner as an additional insured. The Playground Owner shall be responsible for maintaining appropriate liability insurance on the playground.
8. The Playground Owner is responsible for maintaining the grounds, landscaping, trees, trash receptacles, trash collection, fencing, benches, lighting, etc. Failure to do so shall, after thirty (30) days written notice by the City, terminate this Agreement, at the sole discretion of the City. Where required, fences and benches must meet generally accepted guidelines such as those established by the CPSC.
9. The Playground Owner agrees to give an easement to the City allowing for equipment installation, equipment maintenance and public access as needed. The easement must be executed within thirty (30) days of the execution of this agreement. Failure to do so nullifies this agreement. The easement term must be for 20 years.
10. Playground must be available to the public 7 days a week, from dawn to dusk, 365 days per year. Playground Owner must allow the City to install a sign at the playground indicating that the playground is City maintained and open to all City residents.
11. This agreement shall be in effect for a period of 20 years.
12. If a Playground Owner wishes to terminate this Agreement prior to the end of Agreement term, they must petition the City Council in order to do so. The Playground Owner will be required to reimburse the City for any improvements made to the playground on a prorated basis. City Council may terminate at its sole discretion.
13. If a Playground Owner wishes to terminate this Agreement at the conclusion of the Agreement term, they must give the City ninety (90) days written notice prior to the end of the easement term.
14. If the City wishes to terminate this Agreement, it must give the Playground Owner ninety (90) days written notice. A playground must be in compliance

with generally accepted guidelines such as those established by the CPSC in order for the City to terminate the Agreement.

- 15. Six (6) months prior to the end of the Agreement term if the City wishes to renew this Agreement it must notify the Playground Owner in writing along with any proposed changes to the agreement and/or easement.
- 16. In the event of a default by Playground Owner of any duty herein, City may, at its discretion, cancel this Agreement and remove any equipment placed upon the playground by the City.
- 17. This Agreement contains the entire agreement between the parties.
- 18. This Agreement shall be binding upon the parties hereto their heirs; executors; personal representatives and assigns.
- 19. This Agreement shall be construed pursuant to the laws of the State of Maryland.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and date first above written.

WITNESS: **CITY OF GREENBELT, MARYLAND**

_____ by: _____
Judith F. Davis, Mayor

WITNESS: **PLAYGROUND OWNER**

_____ by: _____
President



Niagara Falls, New York

Population	50,193
Development pattern	High-density small city
Population density	3,956 per square mile
Median household income	\$31,336
Number of kids under age 18	10,387
Partners involved	City of Niagara Falls Niagara Falls Housing Authority Winning Because I Tried Niagara Falls Police Athletic League Summer Basketball Tournament

Like many small cities across the country, the city of Niagara Falls is home to large pockets of lower-income, at-risk communities. Many of these neighborhoods had basketball courts, but time – along with vandalism and other illicit nighttime activities – took its toll.

The city was “spending a lot of money to maintain marginal courts where people didn’t want them anyway, and we were getting complaints from neighbors who lived nearby,” says Thomas DeSantis, the city’s senior planner. “We wanted to use all of that money to create one large-scale park with actual programming. It led to a much more elegant solution that let us do more things than anybody thought we’d get.”

That solution was Legends Basketball Park, a 4.5-acre, inner-city, state-of-the-art basketball park. It boasts indoor courts, outdoor courts with stadium lighting and bleachers, locker rooms, and an auditorium. The city works with local community groups to offer programming for both youth and adults – from finance workshops to exercise classes to health and wellness fairs. Four joint use agreements were essential to making Legends work where other basketball courts had failed.

City councilman Charles Walker was a central figure in forging the partnerships that created Legends. One-fifth of Niagara Falls’ population is 18 years old or younger, and he dreamed of offering kids a safe place to play basketball that would overcome the stigma of courts leading to trouble. “The idea was not just to do a park, but to get the community to start programming there for kids and adults”

Councilman Walker created a committee to brainstorm ways to make safe courts a reality. As committee members – city staff, business leaders, and residents – talked about their goals, they realized the answer was a new court that engaged the entire community. Working with the city, the committee first established a joint use agreement with the school board to use the field at Harry Abate School as a city park.

The city invested \$280,000 in Legends, and acquired an additional \$35,000 in donations from local businesses and individuals, including a state senator. Another \$30,000 came from tax revenue from a nearby casino.



The councilman's committee then integrated a mentorship program. The 2011 Community Intervention Initiative was a 12-week program developed by local basketball star Modie Cox, who runs a national program called Winning Because I Tried (whose motto is "no workshop, no jump shot"). Kids arrived after school, met with five volunteer mentors, heard a guest speaker – topics ranged from health, personal finance, conflict resolution, and other essential life skills – and then got to play in three games that evening. "Niagara Falls is a poverty-stricken community," Cox says. "It's very easy to get yourself in trouble because there aren't a lot of opportunities."

To even Cox's surprise, the mentoring was a hit. Sixty kids signed up, and 45 completed the program – a relatively high retention rate. Cox describes one young man who mouthed off at his teammates. After talking with Cox, he decided not to stalk off and drop out, instead agreeing to apologize to the entire group and sit out that night's game. He became a model participant and finished the program.

In June 2012, the city will induct its first local athlete into the Legends Hall of Fame. "So kids will see people – maybe even their own grandfather – honored for their athletic ability and support to the community," Walker says, "and hopefully it will help them stay focused and want to make it up there themselves."

More than 60 public and private organizations, including the city school district, police department, and the housing authority, are regularly involved in Legends programming. During basketball games and tournaments, public concerts, and wellness fairs, representatives from these groups provide health care, education, and employment opportunity information.

Niagara Falls has often used informal (or "handshake") agreements to expedite new programming. But Legends Basketball Park required some of the city's first formalized joint use agreements.

The first was between the city and the Niagara Falls Housing Authority. The Housing Authority provides an indoor gymnasium facility. The city pays the Authority to use the facility and provides insurance, and the Authority is indemnified.

The second agreement was between Winning Because I Tried Enterprises and the city. The group provides mentoring services, during which the city is covered by the group's insurance in the event of injury.

The city and the Police Athletic League created the third partnership. The league holds its annual Beat the Streets Basketball Tournament at the court, and it provides a certificate of insurance that indemnifies the city.

Finally, the city and two individuals who operate the Summer Basketball Tournament established a fourth agreement. The Summer Basketball

Tournament provides a certificate of insurance, and the city pays the organizers to help hold the tournament.

The joint use agreements help build community engagement, Walker says, and have generated an active volunteer presence at the courts. “These adults are talking to the kids about having ownership over the park, so they end up wanting to take care of it.” During the first year, Walker says, there was virtually no crime reported at the park.

Legends has been such a success that Niagara Falls is investing in additional infrastructure: a path for rollerblading, soccer nets, and exercise equipment around the walking track. Walker says they will likely add intervention programs from other community groups.

Niagara Falls provides an excellent example for communities who encounter public resistance around play spaces. City leaders demonstrated their willingness to tackle difficult issues head-on by developing a youth intervention program and offering broad-based programming targeted to neighbor’s needs. The result is a vibrant park that offers inner-city youths and their families a safe, state-of-the-art opportunity for play.

Santa Clarita, California

Population	151,088 (2000 U.S. Census)
Development pattern	Edge city
Population density	3,159 per square mile
Median household income	\$79,004
Partners involved	Santa Clarita Valley Boys & Girls Club William S. Hart Union High School District Los Angeles County Parks and Recreation City of Santa Clarita Parks and Recreation Department

Santa Clarita is the fourth-largest city in Los Angeles County, located about 35 miles northwest of downtown Los Angeles. About ten years ago, as the student population was growing and facilities were becoming crowded, the Santa Clarita Valley Boys & Girls Club partnered with the William S. Hart Union High School District to construct and share a new 27,000-square-foot building with classrooms and a gymnasium.

Both the nonprofit and the school district are “entrusted with a lot of kids,” says Jim Ventress, executive director of the Santa Clarita Valley Boys & Girls Club. “We all agreed that these were *our* kids, it’s *our* community.”

The Boys & Girls Club had already been partnering, since 1982, with the city and county parks and recreation departments for access to park facilities. The nonprofit owned a satellite building near the junior high school, but the building was getting too small to accommodate the club’s after-school programs. “We had to grow,” Ventress says. “Our building was only 2,800 square feet. You’d get 30 to 40 kids in there and you’d be full.”

The Boys & Girls Club had always included the school superintendent on its local advisory board (as well as the highest-ranking law enforcement and parks and recreation department staff), so the partners had a strong working relationship from the start. In fact, the superintendent’s role on the board provided the critical impetus for the decision to build the facility on the middle school campus. “As a board member, he was also on the facilities committee, and we instructed the committee to go out and find a location,” says Ventress. They looked at various sites, some of which were smaller than what the club wanted and others that were way out of its budget.

Meanwhile, the school district – outgrowing its own facilities – had set up portable classrooms on the middle school campus, and the superintendent discovered that his middle school gym didn’t meet state criteria for a school gymnasium, Ventress recalls. “So we sat down and started talking with a couple other board members from the Boys & Girls Club, the school board, the principal, and eventually some state architects to see if we could put this building with classrooms and a gym on the school property.”

A combination of funding made the \$6 million project possible. The school district received money from the state (\$1.3 million in construction



bond money) and matched it with \$1.1 million of its own. The district also used more than \$1 million in state funds earmarked for public-private partnerships (via SB 1795), and secured almost \$1 million of additional funding from several local private foundations to support the project. The local chapter of the American Youth Soccer Organization (drawing funds from the national chapter) also provided funds to support the project, as did the PTA, which also wrote letters of support to the school district and the foundations the partners had approached for grants.

The new building opened six years ago. The school now uses the classrooms and gym at the new facility during school hours, and the Boys & Girls Club operates its own programs after school. The club and the middle school students have separate entrances to the facility – one part of the building is owned by the club, and the other part is jointly owned – but the school has access to the club portion of the facility when needed.

Besides constructing the new building, this joint use project included renovating and “unlocking” outdoor athletic facilities at the middle school, making them available for unstructured community use during non-school hours. Restrooms were also built for community use; they are attached to the new gymnasium but can be left open even if the rest of the building is locked.

In 2007, the school district’s Citizen’s Oversight Committee in Santa Clarita – a cross-section of the community, including school district staff as well as parents and other residents – issued a report calling the partnership with the Boys & Girls Club “a model for joint use,” citing examples of how the project has reduced the schools’ overall costs.

Ultimately, the partnership was just “common sense,” Ventress says. “Why put a Boys & Girls Club five miles away because that’s where the property is cheap? The kids are already there at school. If you give them a big clubhouse on campus, they’ll show up.”

Tucson, Arizona

Population	520,116
Development pattern	Low-density city
Population density	2,500 per square mile
Median household income	\$30,981
Partners involved	City of Tucson Tucson Unified School District Tucson Police Department

Tucson has a park deficit. The city averages 6.2 acres of park per 1,000 residents – about half the national average. And Tucson ranks last in the nation for available parkland among cities with low population density. At the same time, Tucson’s population is rapidly increasing.

School board member Bruce Burke recalls community members advocating for access to their local high school tennis court so they could practice on weekends. Concerned about liability and maintenance issues, school officials told the group – and many others – they would have to find other places to play.

Nevertheless, the school’s fields and playgrounds were heavily used at nights, on weekends, and during the summer. Roger Pfeuffer, a retired superintendent of the city’s largest school district, publicly described helping his grandchildren hop their school’s playground fence.

In 2007, Rodney Glassman ran for Tucson City Council, making schoolyard access a central campaign issue. After his election, his staff identified neighborhood schools as “low-hanging fruit” – a way to quickly increase play space with little up-front cost.

“We have over 100 elementary, middle, and high school campuses with grass fields, but they’re surrounded by chain link fences and closed after 3 p.m. and on weekends, and all summer long,” says Councilman Glassman. “My goal was to leverage the community resources that already existed and provide the opportunity for neighbors to enjoy them.”

Councilman Glassman suggested joint use agreements between the city and Tucson Unified School District (TUSD) – the largest of the city’s 14 school districts – to open these spaces to the community after school hours.

Tucson set a goal to have a park or play space within a half-mile of every resident. The city also conducted a play space audit to identify available play spaces and determine areas in need of development.

The city’s parks department had a long track record of forming joint use agreements with the school districts for specific construction projects. But elected officials were promoting a new type of agreement that would open up play spaces for after-school and summer use.



Under the plan, TUSD would be responsible for maintenance and upgrade costs at all school playgrounds and fields throughout the school year. The city would take over maintenance and equipment costs during summer months. In exchange, the schools would open gates or take down fences and make these spaces available to the public after school hours and on weekends.

The up-front expenses were minimal – typically just minor repairs or resurfacing. Adding the sites to the city’s summer maintenance responsibilities would cost about \$4,000 a year per schoolyard.

There were some initial safety and liability concerns. Some parents and school administrators were worried that removing barriers to playgrounds would increase loitering, graffiti, vandalism, underage drinking on school grounds, and incidents of people not picking up after their dogs in areas used by children. The Tucson Police Department agreed to do regular patrols at each schoolyard covered by a joint use agreement, and its role was written into the agreement. This arrangement encouraged community buy-in.

The city attorney helped the parties form an intergovernmental agreement in the form of a memorandum of understanding (MOU), and the city and TUSD started identifying schools to include. Because of budget limitations, the agreement was limited to 12 school sites: two TUSD elementary schools in each of the city’s six wards. The parks department and TUSD selected schools that were furthest from other parks and playgrounds.

The agreements are working out well. “The play equipment and fields get a lot of use after school hours,” says Gary Scott, a manager in the city’s parks and recreation department. “One feature of our joint use agreement that truly benefits the community is that we built sustainability into it by establishing a term of 25 years, so the current arrangement will be in place for at least that long.”

They’ve also seen a reduction in vandalism, which school officials and city staff attribute to higher usage rates. “When the playgrounds were locked up and infrequently used, kids were sneaking in, and that’s when they would do the damage,” says Annemarie Medina, the mayor’s constituent advocate. “Now, knowing anyone can walk in at any time, they must be afraid of getting caught if they are doing something wrong, so they don’t do it. That was a nice by-product of the joint use agreements.”

By leveraging existing play opportunities, Tucson expanded play opportunities at relatively little cost. Each of the city’s six wards now has two additional playgrounds, located specifically in communities with the largest deficit of play space. “We’re recapturing our neighborhoods for our kids,” Glassman says. “It sends the right message.”

Hernando, Mississippi

Population	10,580
Development pattern	Low-density city
Population density	936 per square mile
Median household income	\$43,217
Partners involved	State of Mississippi City of Hernando Hernando Public Schools One private landowner

Mississippi has an obesity problem. More than a third of adults in the state are obese, and both the Trust for America's Health and the Robert Wood Johnson Foundation named Mississippi the most obese state in the country in 2010.

The state's feeble economy makes it challenging to address these issues. Many communities can barely afford to create walking trails or athletic fields, much less indoor play spaces that can be used year-round. State economist Darrin Webb recently told state lawmakers that Mississippi will probably be struggling financially through at least 2014, due to unemployment resulting from the loss of manufacturing jobs, plus a high state debt.

With more than a quarter of the population under 18, the state faces a challenge: promoting physical activity with limited financial resources. Joint use agreements offered one solution.

In 2010, Mississippi gave grants to 20 communities to encourage them to create joint use agreements that would open public schools to the community after school hours and on weekends. The program was funded by the Centers for Disease Control and Prevention (CDC) through its Communities Putting Prevention to Work initiative.

"Many of our communities don't even have a park or a walking trail or a gym, especially in rural Mississippi," says Shea Lewis, the state health department administrator who runs the joint use agreement program. "Even many of our bigger towns don't have a gym. So communities have been really excited about this initiative, and they've embraced it with open arms."

The timing couldn't have been better for the city of Hernando. The city started a youth basketball program in 2008, and had a handshake agreement with Oak Grove Elementary School to open its gymnasium after school for practice and games. With participation growing by 30 percent every year, the city quickly developed a second agreement with Hernando Middle School.

By 2010, participation was booming, and the city needed to quickly and inexpensively find more gymnasium space.



City parks department staff approached Hernando High School. Principal Freddie Joseph had some reservations about liability and vandalism, and his concerns convinced the city that it had outgrown the handshake agreements. “When we got to three agreements, we really had to make a formal agreement,” says Melissa Zizman, the assistant director of the parks department. “Once everything was spelled out, nobody would have any confusion.”

The principal’s reservations – plus the newly available state grant money – provided a catalyst for creating the city’s first joint use agreements with its public school system.

Under the state’s joint use agreement incentive program, each of Hernando’s three schools received \$3,750 to purchase new gymnasium equipment. Like every other community participating in the state program, Hernando city and school staff had to meet a number of benchmarks:

1. Attend a training in developing joint use agreements, led by the National Policy & Legal Analysis Network to Prevent Childhood Obesity (a program of Public Health Law & Policy)
2. Attend an empowerment meeting
3. Provide regular progress reports
4. Provide the state with notes from the school and city council meetings that involved joint use agreements
5. Write up a success story once the program was in place
6. Provide their legal and operating budgets to the state
7. Clarify how they’d use the grant money to increase accountability and success

Shea Lewis conducts regular site visits to all the communities, both to collect data and offer technical assistance. “Most of my schools are using the money for equipment,” Lewis says. “One built a fitness cluster in their playground. Another built a walking trail at their elementary school.” In Hernando, the grants went toward weight-lifting equipment, padding for gym walls, and basketballs.

Everything has run fairly smoothly, Zizman says. The schools and city agree on a use schedule, with schools having priority. The schools issue keys to the parks department so that the director, the assistant director, the program coordinator, and the basketball league director are responsible for locking and unlocking the gymnasium. The schools have copies of the city’s insurance policy and rules, and if damage happens while the city is using



the gym, the city will repair it if the city is at fault; if not, city staff will let the school know so they can be aware of the issue.

“The formal legal agreement was a little more daunting than we anticipated,” Zizman says. Circulating drafts of the agreement among the city board of aldermen, the city attorney, the board of education, and the board’s attorney took six months from the start until signing. “But we all agreed that even if we didn’t have a formal agreement signed before basketball season started, the schools would let the verbal agreements stand as we worked out the details.”

One sticking point, she says, is that the schools wanted to name which city staff would be responsible. The city preferred using titles in case people changed jobs. The final agreement listed names for the senior parks staff but identified everybody else by titles.

The agreement will need to be renewed after every school year. The short-term approach works best for Hernando because the community isn’t sure how big its programs will be from year to year.

The city’s youth basketball program (ages 8–17) was the first to benefit. A men’s basketball league started using the gyms in spring 2012. Other sports – both youth and adult leagues – can use the gymnasiums in future years if they need the space.

The city/school agreements weren’t Hernando’s first experience with formal use agreements. Since 2009, the city has had a formal agreement with a private landowner in the city. He has a field that is currently for sale but goes unused otherwise, and the city needed space for its fall soccer league. The legal document in place asserts that the city can use the field until it is sold. The parks department maintains the grounds and keeps it up to the owner’s standards. The city must notify the owner of its usage schedule, but this can be done verbally. The owner is indemnified while the city uses the property but is responsible for what happens outside of the programs. The city’s soccer program has increased by 50 people each year since the agreement was put in place.

Unlike many communities, which build their joint use agreements after rounds of public input, Hernando didn’t publicize the new agreements with the city’s schools. “Most people think it’s just the schools being friendly and letting us use their gym,” Zizman says. “But without the joint use agreements, we wouldn’t have the league.”

During the process, the schools asked what they would get out of the agreements. At first, the schools thought they would be facing a greater hassle with maintenance and safety issues, getting little in return. The city reminded the schools that the parks department waives fees to the city’s parks and pavilions for school field trips.

And Zizman maintains that the schools benefit in terms of public relations. “A lot of taxpayers say, ‘Why can’t my kids use the gym after hours?’ From a public relations perspective, the joint use agreements enable 300 kids and their parents to benefit from a school that would otherwise be locked.”



Financing Joint Use

As the idea of joint use gains broader appeal and acceptance, a critical question tends to arise: How do we pay for it?

In this chapter,⁴³ we look at traditional sources of funding, such as bonds and grants, as well as emerging funding mechanisms like lease-purchase agreements and advertising rights. We also show how these various financing options can support different components of a joint use venture – from infrastructure and facilities construction to ongoing maintenance and daily operations to program staff and equipment.

Different funding streams generally finance different aspects of joint use. For example, some funds can be used to build new facilities while others can be used for renovation; some funds can only be used for capital expenditures while others can cover operational costs. Typically, a joint use endeavor will be funded by combining financing from a variety of sources.

To leverage these funds, it's helpful to form partnerships with organizations that, together, have access to a variety of funding streams and can pool these resources. This type of coordinated effort is especially critical when developing a capital infrastructure project. Working together from the inception of the project to visualize the joint use potential of a

facility can present funding opportunities that might not be available if joint use is an afterthought to the facility's design, construction, and use.

The various funding options, with all their complexities and limitations, can be overwhelming. Start by focusing on the real needs of the particular joint use program you want to create. Sometimes, expanding joint use opportunities in your community may be more about forming relationships to “unlock a gate” or resolving concerns about legal liability than about amassing the funds to build a new facility. When financial resources *are* needed for a joint use venture, finding the money will always require creative thinking. This chapter is designed as a basic primer to help you learn about different financing mechanisms and how they can be used to fund a joint use project.

Financing Options

General Fund Revenue

Even in challenging economic times, states, cities, and school districts can allocate general funds to finance all aspects of joint use ventures, including site acquisition, facility construction, building repairs/improvements,



Summary Table

Financing Joint Use Facilities and Programs

This table lists the different financing methods described in this chapter and identifies which can be used for capital costs (e.g., site acquisition, facility construction and/or renovation) and which are available to support programmatic costs (e.g., ongoing maintenance and operational expenses). Although many of the financing options described in this chapter are for capital or infrastructure development, the actual amount of money available for construction is quite limited, and competition for these financial resources can be intense.

Note that the table presents a generalized summary of funding sources, listed in the order in which they appear in this chapter. In your community there may be specific funding programs, grants, taxes, and so on that do not correspond with this summary (for instance, there might be a private foundation grant that is available to cover operational costs). The intent of this table is to help you focus on those aspects of joint use you are most interested in and locate the information in the chapter that is most relevant to your community's needs.

Funding Source	Capital Costs*	Programmatic Costs**
General fund revenue	X	X
Dedicated tax revenue	X	X
General obligation bonds	X	
Revenue bonds	X	
Qualified Zone Academy Bonds	X	
Federal grants	X	X
State grants	X	X
Private foundation grants	X	X
Development fees/impact fees	X	
Development agreements	X	X
Developer incentives	X	
Special purpose districts	X	X
Redevelopment agency funding	X	
Public-private partnerships	X	X
Fee-based revenues	X	X
Sale/lease of surplus property	X	X
Adopt-a-park/adopt-a-school		X
Donations	X	X
Naming and advertising rights	X	X
Concession	X	X

* Capital costs include such things as site acquisition, facility construction, renovation, and/or repair.

** Programmatic costs include ongoing maintenance and operational expenses.

and operational costs. As policymakers are faced with difficult budgetary decisions, advocates must be able to articulate how directing financial resources to joint use programs can be a cost-effective method to satisfy community demand for recreational and educational activities.

Creating a reserve account for capital improvements, renovations, and ongoing maintenance expenses may also seem like a difficult goal in these economic times, but this should be an element of any sound facility management and funding program. Working toward budgets that include support for and the revitalization of joint use programs and facilities is important to ensure the long-term success of such projects.

When envisioning other ideal future funding sources, advocates of joint use should keep in mind that implementing policies that encourage healthy lifestyles can reduce a community's medical and health care costs. Therefore, they may be able to make the case that local government should channel its health care savings to fund efforts that promote health and prevention.

Dedicated Tax Revenues

Local government can use its ability to levy taxes to create a dedicated revenue stream that supports joint use projects. Depending on a local government's legal authority to raise taxes, elected officials or voters could decide to add a new tax or increase an existing one. Revenue could be raised by imposing or increasing a sales tax, transient occupancy tax, real estate transfer tax, admission tax, or alcohol or cigarette tax, among others. These additional funds would be earmarked to finance capital improvements and/or operations and maintenance costs to support community use of school facilities.

In addition, school districts in many states have the authority to generate a dedicated tax revenue stream to fund school activities and infrastructure. To do so, school districts seek voter approval to add a special tax or levy by sponsoring a ballot measure in a districtwide election. If the tax is approved, the property owners and/or residents of that specific school district are the ones to pay the additional tax and the funds are used only in that district. These special taxes can take the form of increases in property tax or income tax⁴⁴ and can last



Implementing policies that encourage healthy lifestyles can reduce a community's medical and health care costs. This can help make the case that local government should channel those savings to fund efforts that promote disease prevention.

for a set number of years or continue indefinitely. State law may impose limitations on the maximum amount of funding a district may request, the frequency with which such requests may be made, how long the special tax may be imposed, and what percentage of voters are needed to approve the ballot measure.

While these revenue-generating options are theoretically possible, they may not be practical. For example, in some states, school districts may not have independent taxing authority or may be limited in their ability to generate revenue through special taxes or levies because of caps on property tax or state restrictions on how much debt a local district may incur.⁴⁵ Moreover, raising local taxes can be a difficult strategy to pursue in communities that lack property or income wealth. And raising taxes at all may not be politically feasible.

Bonds⁴⁶

General Obligation Bonds

The most common means of financing schools and other public facilities has been through general obligation bonds issued by school districts or other local government agencies.⁴⁷ The bonds are sold to the public with the promise of repayment with interest, and the proceeds from the bond sale are used to finance the capital costs of the project. Issuing general obligation bonds usually requires voter approval from a simple majority of the electorate – and sometimes even a supermajority – to pass the bond measure.

States may also issue general obligation bonds to support joint use of schools. The bond revenue can be used to fund competitive grant or loan programs that local school districts may use to finance facility improvements for joint use projects.⁴⁸ (A description of grant programs follows at the end of this chapter).

In many communities, raising taxes can be difficult. Many voters no longer have school-age children, so they have little incentive to support bond measures for school facilities improvements and the tax increases that result.⁴⁹ If, however, the bond campaign can emphasize that funds will be used to construct or renovate school facilities for shared community uses – such as a school-based senior citizen center or a school/community swimming pool – voters may be

more likely to support the measure, because they see the improvements as benefiting themselves and the broader community.⁵⁰

Revenue Bonds

A revenue bond is another option to fund capital costs of an income-generating joint use project. Like a general obligation bond, a revenue bond is issued by a government entity, but it differs in that it can only be repaid from the revenue generated by the specific project it was issued to finance (e.g., tolls from a bridge, ticket sales from a local stadium, parking fees from a public parking lot).⁵¹ A revenue bond is an appropriate funding mechanism only when a feasibility study has been done to verify that the project will generate enough income to pay back the bond debt obligation.

Qualified Zone Academy Bonds

Qualified Zone Academy Bonds (QZABs)⁵² can be used to pay for renovations, repairs, and other improvements needed for a joint use program.⁵³ The major benefit of this federal program is that the school districts issuing QZABs pay *no interest*. Instead of the school district paying back the amount of the bond plus interest to the bondholder (as is the case with a general obligation or revenue bond), the federal government actually issues a tax credit to the bondholder in lieu of the interest the bondholder would otherwise have received. This amounts to an interest-free loan for the district and can save up to half of the project costs.⁵⁴

Each state's education department receives an annual allocation of QZABs from the federal government that can then be issued to local school districts.⁵⁵ Since the funds are very limited, a school district must apply to the state for authorization to issue the bonds, and each state's application process and criteria are different. Schools or districts with 35 percent or more of their students eligible for free or reduced-price school meals or districts located in empowerment zones or enterprise communities⁵⁶ may apply for this federally sponsored program. A school or district must raise at least a 10 percent match from community partners, such as a business or nonprofit organization, which can be cash or in-kind. A school district has 15 years to pay back the QZAB, which it could do through its general operating budget or via a voter-approved general obligation bond.

Grants

Federal, state, county, business, or private foundation grants are available to improve recreational spaces, renovate school property, or provide services for community residents. Soliciting grant funds can be an opportunity for government departments, school districts, and nonprofits to form partnerships and apply jointly to a grant program that might not otherwise be available to them individually. For example, a nonprofit organization and a city parks department can partner to apply to a private foundation that traditionally does not fund local government agencies.

Although grants can be a good way to get the joint use process started, they are not a sustainable funding strategy. Grants tend to be awarded through a competitive process, with funding priorities changing from year to year. Grant criteria are often narrowly focused as to the scope of the program or services eligible for funding, and many times require the applicant to raise matching funds. While grants may be a great source of one-time or short-term funding, managing the funds may take substantial administrative overhead. So grants are usually best used in conjunction with other sources of funding to create an ongoing joint use program.

Federal Grants

Several federal grant programs make funds available for recreational facilities, community schools, or student enrichment activities. The amount of funding available through each program varies from year to year, depending on congressional appropriations. Here are some of the federal grant programs that may be available to finance elements of a joint use program:⁵⁷

Land and Water Conservation Fund

This fund has helped state and local agencies develop outdoor recreational sites, including thousands of community playgrounds, parks, soccer fields, and baseball diamonds.⁵⁸ Seventy-five percent of the total funds distributed to the states through this program have helped finance “close-to-home recreation opportunities” for youth, adults, senior citizens, and disabled residents.⁵⁹ Funds are allocated to each of the states to purchase parklands and develop recreational facilities. To find out which department oversees these grant funds in your

A State Grant Opens the Door

An inspiring example of how a nontraditional partnership can create community recreational space comes from the small, rural town of Earlimart, California.

There are no parks where children can play in Earlimart, and for years neighborhood advocates had their eyes on an empty lot in the middle of town – a few dry, dusty acres of land owned by the local school district. They identified a \$2 million grant that could fund the transformation of the lot into an appealing recreational destination filled with trees, play space, picnic tables, and walking paths. But to apply for the grant, the school district and the county needed to sign an agreement detailing future plans for the property, including a provision that the district would relinquish control of the property for a couple of years while the county took over the development process. This was no small task, because the district and the county resource management agency had a long history of mutual distrust.

The county resource management agency had the charge and know-how to oversee the development of the land, as well as an interest in developing a drainage system on the property to absorb excess water, process pollutants, and prevent flooding after major storms. But because the land was owned by the school district, the county could not take on the project without a formal agreement. The district already faced a number of pressing challenges, including low test scores, so developing a park was not high on its to-do list. The district also was reluctant to take on the responsibility for costs or injuries associated with community use.

Community advocates helped identify ways for the district to share the costs and responsibilities of developing and maintaining the land through a joint use agreement. The school superintendent agreed to host regular meetings with county resource management agency staff, elected officials, and other community advocates to discuss how to move forward.

Finally, after years of tireless organizing and sometimes difficult negotiations, the school district and county signed an agreement and submitted a strong application to the state parks and recreation department for the \$2 million grant. As this toolkit went to press, they were awaiting final word on the award.

state, see the National Park Service website at www.nps.gov/ncrc/programs/lwcf/contact_list.html.

21st Century Community Learning Centers Program

The primary goal of this program is to create community learning centers that provide academic, artistic, cultural, and recreational enrichment activities during non-school hours for students who attend low-performing schools and live in high-poverty areas. The centers also must offer literacy and other educational services to the students' families. Activities funded through this program include remedial education, arts and music programs, tutoring services, computer literacy programs, and recreational opportunities. Funds are allocated to each state's department of education, which then awards funds through a competitive grant program to eligible entities, including school districts, county offices of education, and community-based organizations. Priority is given to applications from partnerships of two or more eligible entities. For due dates, applicant requirements, and award criteria for your state, go to the U.S. Department of Education's website at www2.ed.gov/programs/21stccclc/contacts.html#state.

Community Facilities Grants Program

The U.S. Department of Agriculture Rural Development offers grants to rural areas and towns with populations up to 20,000 to develop essential community facilities.⁶⁰ Funds may be used to build, enlarge, or improve schools, libraries, hospitals, medical clinics, and community centers, and can include equipment purchases. Grants are available to local governments (towns, counties, special-purpose districts) as well as to nonprofit organizations and tribal governments. For more information about this program, see www.rurdev.usda.gov/HAD-CF_Grants.html.

Community Transformation Grants

The new national health care reform law (the Patient Protection and Affordable Care Act of 2010) authorizes funding for innovative chronic disease-prevention initiatives through the Community Transformation Grants program. This program will enable communities to implement programs and policies that help reduce chronic disease rates and address health inequities by creating healthier school environments, encouraging physical activity, increasing access to nutritious foods,

and improving community safety. State and local governments, nonprofit agencies, national networks of community-based organizations, and Indian tribes are eligible to apply. Twenty percent of funding is set aside for rural and frontier areas.⁶¹ For more information about the program, see www.cdc.gov/communitytransformation.

Community Development Block Grants

This rather flexible program provides annual grant allocations to states, urban counties, and qualified cities to fund a broad array of community development activities that benefit low- and moderate-income families, including building public facilities, improving neighborhood conditions, and investing in parks and recreational opportunities. For more information about this program, see the U.S. Department of Housing and Urban Development website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs.

State Grants

Most states have some type of grant program to help local school districts finance facility construction/renovation or program operations and ongoing maintenance. Types of funding vary widely from state to state and can take the form of direct aid, matching grants, loans, and assistance with debt service (bond repayments).⁶² Here are examples of two state grant programs that specifically fund community use of schools:

Arkansas

The Arkansas Department of Education has established a competitive grant program that funds schools to implement joint use policies and agreements that maximize opportunities for physical activity. This program supports collaborative partnerships between schools and local government agencies or community-based organizations. Funded by the state's tobacco tax (the Arkansas Tobacco Excise Tax, Arkansas Act 190 of 2009), the program is a coordinated effort of the Arkansas Department of Education, the Department of Health, and the Arkansas Center for Health Improvement. To learn more about the program, see www.arkansascsch.org/apply-it-in-your-school/584cob1fb838fc7e23da42ce07caf9b3.php.

California

The California Office of Public School Construction (within California's Department of General Services) has grant funds to finance the construction or modernization of indoor school facilities (such as multipurpose rooms, gymnasiums, or child-care facilities) for joint use. To receive grant funding, a school district or county office of education must enter into a joint use agreement with another governmental agency, a nonprofit organization, or a public institution of higher education. In addition, the school district/county office of education must demonstrate that the facility will be used to the maximum extent possible for both school and community purposes. A 50/50 match of state funds is required by the local entities. This grant program is funded through general obligation bonds issued by the state. Nearly \$190 million has been granted to schools to build nearly 250 joint use facilities throughout the state.⁶³ For more information about the program, see www.dgs.ca.gov/opsc/Programs/jointuseprogram.aspx.

Private Foundation Grants

National, state, or local community foundations may have grants available that could be used to support joint use programs. Schools may wish to partner with community-based organizations or other government agencies to solicit grant funding from a wider spectrum of private foundations and thus gain access to funds that would not otherwise be available. To begin your search for possible grant opportunities, search the Foundation Center's grant-maker database at <http://foundationcenter.org/findfunders>.

Development-Generated Options

Even with the significant downturn in new housing development, cities and counties may want to collect development-generated revenues in anticipation of future growth. New housing developments generate an increased demand for community amenities such as recreational opportunities and school facilities. To meet this demand and offset the costs, local jurisdictions might look to housing developers to help fund or build new parks, schools, and other public facilities.

Development Fees or Impact Fees

Development fees or impact fees⁶⁴ are paid by developers of new construction projects and are used to help fund the public infrastructure needed to serve the additional population brought to the community as a result of the new development. Fees can be used for capital improvements such as roads and sidewalks, transit systems, schools, parks and recreational facilities, libraries, and water and sewer systems. Development fees can be levied against residential, commercial, and industrial projects, with residential impact fees generally assessed as a per-dwelling-unit fee and nonresidential development fees based on the square footage of the building project.

The collected fees cannot be used for operation, maintenance, repair, alteration, or replacement of existing facilities and cannot just be added to



general revenue. The funds can only be used to build the type of facility or infrastructure the fee was specifically created to finance. While development fees can be an additional source of funding for infrastructure projects, remember that these fees can only be used for capital improvements in the newly developed area. Fees cannot be used to mitigate preexisting shortages or deficiencies in facilities built prior to the development, nor can they be used to improve or renovate existing infrastructure (except when the new development significantly impacts the capacity or adequacy of these facilities).

Impact fees are only levied upon new developments and are one-time payments made by the project developer, generally collected when the building permit is issued. The amount of the fee must be clearly linked to the costs associated with the additional infrastructure necessitated by the development and cannot be set arbitrarily. Even with this requirement, fee amounts vary tremendously according to jurisdiction and state.

State laws establish whether or not impact fees may be charged, and if so, what levels of government may levy them and for what purposes.⁶⁵ Note that while most states allow jurisdictions to levy impact fees to fund parks, only a handful allow impact fees to help finance schools.⁶⁶

When a jurisdiction is able to collect an impact fee to fund parks, recreational facilities, or schools, sufficient amounts must be collected from each new development to cover the actual costs of creating, operating, and maintaining the sites. To do this, communities should conduct a comprehensive impact fee study to ascertain the real costs of adding infrastructure capacity to meet increased demands of new development. These estimates should be reviewed and updated every five years to reflect changing needs.

Development Agreements

A development agreement is a contract between a project developer and the city/county; it enables both parties to get something more than either would be able to achieve individually under the standard land use regulatory process and impact fee regime. Development agreements may also be an attractive approach for

jurisdictions that lack the authority to impose impact fees on new development.

In a development agreement, the developer promises to pay fees for or build a certain type of facility. For example, the developer could promise to dedicate land for a park and recreational facility, build the infrastructure, and provide funding for ongoing maintenance and operational expenses. Through such an agreement, the city or county can receive larger fees or have more land or infrastructure provided by the developer than would be allowable under a regulatory-based development fee structure. This is because the developer has voluntarily entered into an agreement, so neither party is acting under a regulatory framework that has legally mandated limitations. In return for the developer's legally binding promises, the local jurisdiction agrees to provide benefits to the developer, such as density, zoning, or parking bonuses and allowances. Builders may also get a promise from the city/county that they may build the project regardless of any zoning or other regulatory changes that might go into effect during the lifetime of the project and that might otherwise make it impossible to go forward with the development.

Developers use these agreements as a way to gain security and avoid the potential risk of zoning or other changes that might threaten the completion of a multiyear, multiphase, multimillion-dollar project. Local governments can use them to ensure that the public facilities and amenities that made the project attractive will be developed and will not fall victim to external factors such as a failed bond referendum or curtailed capital program. Local governments can also use these agreements to better coordinate a pool of resources from various developers and thus guarantee funding, land set-asides, and infrastructure construction for public improvements.

Incentives

Local government may choose to implement policies that reward developers for including parklands and playgrounds, sports facilities, land for schools, and other public infrastructure. For example:

Zoning Bonuses

Cities or counties may grant a developer a zoning bonus by allowing, for example, greater density or larger developed acreage than would normally be permitted under the existing zoning code.⁶⁷ This bonus is given in exchange for the developer providing amenities such as natural open space, pedestrian pathways, parks and playgrounds, community plazas, or other community facilities.

Tax Credits or Rebates

Jurisdictions may offer tax credits or rebates to developers who include land and/or facilities for recreational purposes or community use. A tax credit or rebate could be structured to reduce the developer's tax liability in proportion to the amount of land set aside or the investment in community facilities contained in the new development.

Special Purpose Districts and Assessments

Special purpose districts⁶⁸ can be established to provide a public improvement (e.g., lighting, paving, sewer/water, parks, open space, tree planting) for the benefit of property owners within a defined geographic area. Funds for these improvements are raised directly from the property owners within the boundaries of the special district and are levied as a pro rata charge against the property. Special districts may be created by a request of property owners, through a voter initiative, by a subdivision developer, by a resolution or ordinance adopted by local government, or by a combination of the above. The size of a special district can range from an area within a city to multiple counties. In some instances, a special district is formed as a separate governmental entity that will manage the construction and operation of capital improvements and has the ability to raise funds – through taxes, user fees, or bond financing – directly from the property owners who receive the benefits.

Special purpose districts and property owner assessments are a way to fund land acquisitions, capital improvements, and ongoing maintenance costs associated with parks, open space, and recreational facilities. In California, special districts have long been used to help pay for parks. For example, the Mission Oaks Recreation and Park District (MORPD) near

Sacramento owns and maintains 11 local parks and provides for the maintenance of recreational facilities at four sites on school district property (through a joint powers authority agreement⁶⁹ with the district). The MORPD put forth a ballot measure in 2006 to increase its assessment from \$27 to \$39 per single-family home equivalent, to add a consumer price index adjustment mechanism. Property owners approved the ballot measure, and the assessment funds the maintenance and improvement of the parks and recreation and school sites.

For communities where new residential construction is taking place, special purpose districts to serve these new residents can be created through negotiations with the developer (the primary property owner), and the rate of assessment can be calculated to fund construction of school and park facilities along with annual operating and maintenance costs. To ensure that this type of funding mechanism is put in place when new developments are being approved, public health staff, community leaders, and others who advocate for parks and open spaces should work with planning staff during the development approval process and play an active role in evaluating proposed budgets to ensure that park and school facility costs are included.

Redevelopment Agency Funding

Redevelopment agencies⁷⁰ can bring an array of tools and resources to revitalize distressed neighborhoods and fund infrastructure that can increase recreational opportunities. Redevelopment efforts are overseen by local agencies with the means and expertise to plan and finance a range of projects that could support joint use of public facilities for recreational purposes – from improving street safety to developing space for parks or community centers.

Redevelopment agencies have budgets and income streams that are separate from those of the city or county. They can issue their own bonds and then pay them back by collecting the increase (or *increment*) in property taxes generated in the redevelopment area because of the agency's improvements. These funds can be used to provide loans or grants, acquire or assemble parcels of land, and improve infrastructure. Redevelopment agencies can also negotiate with developers to provide certain types of facilities, such

as parks or open space, in the project area. The agencies may also build or retrofit parks and community recreational facilities to meet the community's needs.

Public health officials and advocates can work with redevelopment agencies to ensure that plans prioritize and fund activities that improve opportunities for physical activity. Redevelopment has a controversial history in many communities, where the legacy of eminent domain – the taking of private property by the government – has strained the relationship between redevelopment agencies and residents. Keeping this history in mind, advocates can still take advantage of opportunities to get involved in the redevelopment process and direct redevelopment resources to support current residents. Indeed, many redevelopment agencies are looking for opportunities to improve relationships with community members, and directing resources toward joint use ventures could be a valuable way to regain public trust.

Public-Private Partnerships

A less traditional means of constructing or renovating public infrastructure is through a public-private partnership where a private developer⁷¹ builds or improves the facilities and then leases them back to the appropriate public entity – a school district or the local government. These partnerships can take many different forms, but typically the private sector partner finances, designs, and constructs the facility and enters into a long-term lease agreement with the government entity for a set period of time, usually 20 to 30 years. At the end of the lease period, under most partnership agreements, the school district or local jurisdiction has the opportunity to become the owner of the facility. Under these types of partnership agreements, the school district or local government pays for use of the facility from its annual operating budget. This is unlike the traditional means of financing capital construction or improvements, which require the public agency to issue a voter-approved bond.⁷²

Some common private-public partnership arrangements are described below. While the following examples show how such partnerships can be structured to build or renovate school facilities, these same approaches apply to other types of public facilities or infrastructure (such as recreational centers, community centers, etc.):

Capital Lease

To build a new school, the developer constructs the facility – which it owns – and then leases it to the school district for a set period of time. At the end of the lease term, the school district may pay a token amount to purchase it. To renovate a deteriorating facility, the school district would sell the property to the developer to undertake the upgrades. Then the developer leases the property back to the district.⁷³

Lease Purchase

These are similar to a capital lease in that the private developer owns the school facility, which it then leases to the school district for 20 to 30 years. In this arrangement, however, the district's lease payments go toward purchasing ownership of the school facility.

Lease-Leaseback

Under this type of arrangement, the school district enters into two leases. First, the district leases property it owns to a private developer (a site lease), usually for a nominal fee. The developer then builds or renovates the desired facilities. The district enters into another lease agreement with the developer, this one to rent back the newly constructed buildings (a facilities lease). This lease also describes the terms by which the district will assume ownership of the property at the end of the lease term.

Additional incentives for public-private partnerships to construct school facilities have come from the federal government through the Economic Growth and Tax Relief Reconciliation Act of 2001, which makes it possible for private developers to issue low-interest, tax-exempt bonds called Qualified Public Educational Facility Bonds to fund public school construction and renovation, thus reducing a developer's overall financing costs.⁷⁴ In addition, states are adopting legislation that explicitly allows and even encourages public-private partnerships for public infrastructure projects.⁷⁵

Depending on the agreement, the private developer can do the design work or design the school facilities with direct district involvement and according to community or state standards. Once construction is complete, the developer can be responsible for maintaining the physical structure while the district provides the core elements – teachers, administrators, and curricula – to

meet all educational guidelines and requirements. In some cases, the developer can also provide additional services, such as janitorial or food service or school transportation.

Such lease arrangements may actually encourage greater community use of the facilities. In some instances, the district may choose to rent the buildings for only the portion of the day/week/year that school is in session, leaving unused classrooms, auditoriums, kitchens, and sports facilities available for rent and use by community members, civic or recreational organizations, adult education service providers, and others. By making the facilities available to the community, the developer is maximizing the use of infrastructure and earning additional income by leasing used space.⁷⁶ This joint use may even make it possible to incorporate computer centers, music studios, commercial kitchens, or recreational facilities into school construction or renovation, since the developer will be able to recoup costs from both the district and outside users through lease agreements.

Proponents of public-private partnerships emphasize that projects are regularly delivered on time and under budget, have lower construction costs than comparable public sector projects, result in reduced life-cycle maintenance costs, and enable public agencies to focus on their core mission rather than be distracted by infrastructure or facility construction.⁷⁷

Others, however, warn that the promised cost savings might not actually materialize. For example, transaction costs associated with private-public partnership agreements can be considerably higher than those for issuing traditional bonds because the complexity of these agreements requires extensive work by attorneys and financial advisors.⁷⁸ Moreover, because school districts pay for the leases from their general operating budgets, these leases may actually siphon limited financial resources away from other educational priorities, unlike traditional bonds that add revenue earmarked for specific projects.⁷⁹

Fee-Based Revenues

User fees are a common revenue source for parks and recreation departments, and schools also collect these for use of their facilities. Fees can be charged each time the facility is used, upon registration for lessons or a recreational program, or through an agreement with an organization for regularly scheduled use. These fees can include charging sports leagues for maintenance and lighting costs, as well as charging individuals for using facilities such as tennis courts and pools.

While fees are a component of a revenue strategy, the amount charged is typically inadequate by itself to fully fund a joint use venture. User fees are usually kept low to ensure that most members of the community can afford to take advantage of the programs, and the amount charged does not represent the true cost of using the facility. Also, participation rates are variable, so the amount of money collected may fluctuate from year to year.



Moreover, many school districts and public agencies do not know the true costs of owning and operating their facilities, and therefore do not know how to set accurate rental rates. The Center for Cities & Schools at the University of California at Berkeley has developed two important tools that can help compute these costs and develop appropriate fee structures. The School Facilities Joint Use Cost Calculator, created in partnership with the 21st Century School Fund, helps determine facility costs on a square-foot and hourly basis, which can then be used to develop fee structures based on the real costs. (See chapter 2 for more about the cost calculator.) The second tool is a report titled *San Francisco's Public School Facilities as Public Assets: A Shared Understanding and Policy Recommendations for the Community Use of Schools*, which outlines the results of a yearlong stakeholder process to develop more effective joint use strategies. Using the calculator tool, the report presents recommendations for developing a sliding-scale fee structure in which different types of users (for-profit organizations, nonprofits, and individuals) are charged different amounts. Such a fee structure can help keep community resources affordable by subsidizing nonprofit and/or individual users while still enabling facility owners to cover their costs. Both of these resources are available at <http://citiesandschools.berkeley.edu/joint-use.html>.

Additional Funding Options

Beyond the funding mechanisms described in this chapter, cities, counties, school districts, and community groups have pursued other ways to raise funds and gather resources to support joint use ventures. Some examples:

Sale or Lease of Surplus Property

The sale or lease of underutilized city-, county- or district-owned land or other facilities can be an important source of revenue.⁸⁰ The money earned from selling the property can be used to acquire new parks or school sites or to construct or renovate recreational facilities. Care should be taken, however, to ensure that the revenues earned from the sale are placed in a special capital fund to serve the intended purpose, rather than merely ending up in the general fund. Revenues from long-term leases can go toward maintenance or underwriting joint use programs. Or surplus parcels owned by one entity can be traded

with another agency to acquire land more suitable for recreational uses. This approach – one that is the spirit of joint use – involves granting the right of first refusal of surplus public facilities to other departments or units of local government so that they could take over the property and put it to suitable public/joint use. Such an arrangement could yield benefits, albeit of a different sort from the financial revenues generated by the sale or lease of the property or facility. However, the laws governing the sale or transfer of publicly owned land can be very complex, and the viability of this approach may depend greatly on political will combined with staff expertise to accomplish a sale or lease of surplus property.

Adopt-a-Park or Adopt-a-School Program

An adopt-a-park or adopt-a-school program is a way to build a core of reliable volunteers who will participate in monthly work parties or other scheduled events to help maintain recreational facilities or community gardens for minimal or no cost. For example, a business or nonprofit group can take responsibility for maintaining a park sports field, a school track, or other community recreational facility in return for public acknowledgment of their important contribution. Likewise, a parents' group or a "Friends of" organization could participate in monthly clean-up days or even agree to monitor and maintain a school or community garden. A sports league could volunteer to help maintain the fields and other facilities in exchange for reduced user fees.

Donations

Private and corporate donations are another way to help support joint use projects. For small-scale improvements or program needs, a school might choose to raise funds through its informal parent and community network or by forming a committee of parents to organize a fundraising event such as a silent auction. For joint use program support, businesses or community-based organizations could be enlisted to sponsor sporting events, sports teams, or youth activities.

To fund a larger facility improvement project, consider a capital campaign. A capital campaign generally has a targeted fundraising goal and timeline and is a highly focused way to raise funds from a variety of private sector sources, including individuals, corporations, foundations, and faith-based organizations. (For more

on capital campaigns, see the National Clearinghouse for Educational Facilities at www.ncef.org/rl/fundraising.cfm.)

In considering fundraising options, remember the value of in-kind contributions as well as monetary donations. Receiving construction materials, expert labor, or other in-kind donations can significantly offset the costs of a facility improvement project.

Naming and Advertising Rights

Another source of private funds is to sell the naming rights for a school or public recreational facility – such as a swimming complex or baseball diamond – to a corporation. Although customary for professional sports stadiums and college athletic facilities, corporate naming of K–12 school recreational sites is still not commonplace. Proponents see it as a way of raising revenue for school and community infrastructure without imposing additional taxes on residents.

Similarly, some public facilities have raised money by making advertising space available, though many oppose this due to concerns about the amount of advertising children see each day and the susceptibility of youth to advertising messages. Paid advertising may include such things as a manufacturer’s logo posted on the scoreboard or billboard space along sports field fences. Just as with naming rights, this practice is more common in professional and collegiate venues. If a public facility chooses to pursue this option, it should take two precautions. First, a set of guidelines should be established to define what types of advertising would be allowed. (For example, advertising for junk food, sugary drinks, tobacco, alcohol, and other products that are unhealthy or illegal for children should not be allowed.) Second, any outdoor advertising should be posted in compliance with local outdoor signage laws.



Concessions

A school or local government agency could contract with an organization to build or operate a recreational facility on publicly owned land, and the organization would have exclusive rights to operate the facility during the concession period. A baseball league, for example, could fund improvements to a city-owned athletic complex that the league would lease for a nominal fee. The length of the lease would be such that the league would be able to capture the value of the improvements it made. While the local government does not incur any costs, the organization with the concession may preclude other groups from using the facilities, unless the lease specifies otherwise. If a public agency chooses to pursue this option, the concessionaire contract should include advertising guidelines, as specified above, as well as requirements to adhere to any healthy food procurement (purchasing) standards established by the school district or local government.

Resource List

For more information about financing joint use programs and school improvements:

- ▶ 21st Century School Fund. *Federal Spending on PK–12 School Facilities*. 2010. Available at: www.21csf.org/csf-home/publications.asp.
- ▶ 21st Century School Fund and Center for Cities & Schools at the University of California, Berkeley. *School Facilities Joint Use Cost Calculator*. Available at: <http://citiesandschools.berkeley.edu/joint-use.html>.
- ▶ Blank M, Jacobson R, Melaville A, et al. *Financing Community Schools: Leveraging Resources to Support Student Success*. Washington, DC: Coalition for Community Schools, 2010. Available at: www.communityschools.org/resources/capacity_building__finance.aspx.
- ▶ Deloitte Research. *Closing America's Infrastructure Gap: The Role of Public-Private Partnerships*. 2007. Available at: www.deloitte.com/view/en_US/us/Industries/US-federal-government/2ea59a17c900e110VgnVCM10000oba42foaRCRD.htm.
- ▶ The Finance Project (a nonprofit research, consulting, technical assistance, and training firm with deep expertise in financing strategies and an extensive online library of publications). Available at: www.financeproject.org.
- ▶ Hassel B, Esser K, and Schroeder J. *Facilities Financing: New Models for Districts That Are Creating Schools New*. St. Paul, MN: Education Evolving, 2004. Available at: www.lisc.org/content/publications/detail/811.
- ▶ National Clearinghouse for Educational Facilities (NCEF): Created by the U.S. Department of Education, the website has hundreds of articles and resources covering all aspects of school facilities, including financing options. Available at: www.ncef.org.



Liability

Liability fears can have a chilling effect on joint use partnerships. Some school districts are reluctant to open school property after hours because of concerns about the legal risks associated with injury or property damage.

The good news? These risks are often exaggerated, and there are many protections available to schools to help limit and manage the risks they do face.

Keep in mind that schools face liability risks all day long: there is always potential for property damage or injury to students, staff, or visitors. Schools already deal with these risks, and the measures they take to protect themselves during the school day – particularly in terms of risk prevention – help them after hours as well.

In this chapter we offer a very basic introduction to liability concepts, intended to help people who aren't lawyers talk about the appropriate role of liability concerns when it comes to expanding access to physical activity. (Liability laws vary greatly from state to state. For more detailed, state-specific information, see www.nplan.org/nplan/products/liabilitysurvey. For information specific to your own situation, contact an attorney in your area.⁸¹)

This chapter provides a summary of general liability concepts and the different kinds of protections that schools are granted under state law, as well as protections schools can put into place contractually to help limit

their liability exposure. We also offer some practical approaches to getting beyond the hurdle that liability can present.

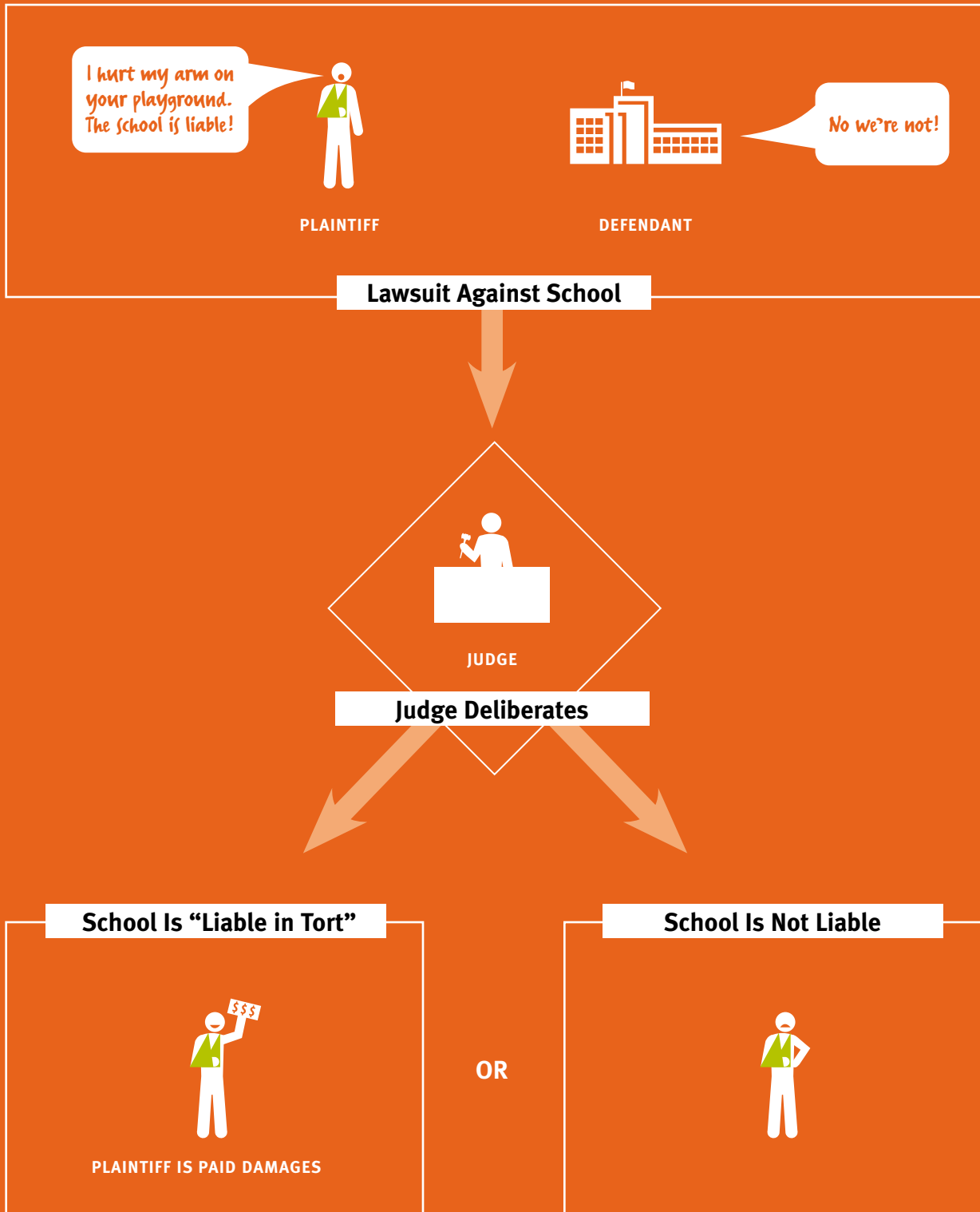
Basic Liability Principles

To understand the concerns schools and other public agencies may have, it is helpful to have a basic grasp of what is known as *negligence tort liability*. A school district or city may be concerned about being *liable*, or legally responsible, for a *tort* – the legal term for property damage or an injury or death.

When people talk about “being sued,” they are usually referring to being sued in tort. In a tort lawsuit, a *plaintiff* (the person injured) brings a lawsuit against a *defendant* (the person or entity the plaintiff believes is responsible for the injury). If the court finds the defendant “liable in tort,” the defendant must compensate the plaintiff for the injury or harm by paying *damages* (money) or changing the conditions that caused the harm. For children and others who are injured because of carelessness on the school's part, the legal system affords an opportunity to right a wrong.



The Tort Lawsuit Process



State law governs injury claims against school districts and other public agencies. Liability laws differ substantially among the states, particularly with regard to the legal protections that state laws afford public schools and other governmental agencies.

In what's known as a *negligence tort lawsuit* – negligence being a type of tort – a plaintiff alleges that a defendant had a responsibility to act with care, violated its responsibility in some way, and caused the plaintiff harm. Although tort law is made by each state, the basic elements of the tort of negligence are the same across all 50 states.

Consider this hypothetical scenario. One rainy day, Sherida Jones, a 12-year-old girl, is riding her bicycle to school while listening to music on her MP3 player. She rides through the school gates, bopping to the music. A small tree branch had fallen during the night, and Sherida doesn't see it. When her front wheel hits the branch, it sends her flying off her bicycle. She lands on the asphalt and breaks her arm. Her family sues the school.

For the school district – the defendant in the lawsuit – to be found “liable in tort” for an accident like this, five factors must be present:

1. Duty: The defendant must have a *duty* – a legal obligation to use care – toward the plaintiff. School districts generally have a legal duty to take reasonable precautions to prevent injuries to those who are legally on their property.

For Sherida (the plaintiff in this case), the school district likely had a legal duty to use care in making sure that the school premises were safe for students. The legal standard of care, how it is measured, and how it is applied to this particular situation would depend on the laws of the state where the accident happened.

2. Breach: The defendant must be *negligent*, having acted unreasonably in exercising its duty of care. In other words, the defendant must have *breached*, or violated, the duty it had to take reasonable precautions to prevent injuries to people who are legally on the property.

To determine whether the school district breached its duty to Sherida, a court would consider (1) the measures the school used to carry out its duty to take precautions to keep its grounds safe and (2) whether those measures were reasonable. What did the school do to prevent injuries on its property? Was there something the school could have done to prevent this accident? Sherida's parents might feel that the school should have cleaned up the schoolyard and removed the branch, because a fallen tree branch presents a hazard to children. But if the branch had fallen during a rainstorm the night before, it might not be reasonable for the school to have inspected within hours of the storm. If the case went to trial, both sides would present facts related to the accident to the court, which would likely include a jury. The jury, with the judge's guidance, would apply the law to the factual evidence presented to determine what constitutes reasonable care in this situation.

3. Causation: The defendant's negligent conduct must have been the *cause* of the plaintiff's injury.

In Sherida's case, there may be multiple causes. Did the school's failure to remove the branch cause the accident? The branch snagged Sherida's bike wheel and caused her to fall off her bike. But was Sherida distracted by listening to her MP3 player while riding her bike? If she had been more focused, would she have avoided the branch? Perhaps her inattention caused the injury. Again, if this case went to trial, the jury would weigh the evidence to determine



whether the school's failure to clean up the yard caused Sherida's accident.

4. Damage: The plaintiff must have suffered a quantifiable injury or *damage* because of the defendant's negligence. In other words, the plaintiff must have been harmed by the conduct or condition about which she is suing.

Here, Sherida fell off her bike and broke her arm. She was injured in the bike accident and likely had to pay to be treated, so she suffered damages.

5. Defenses: The defendant must have no *defense* or *immunity* – that is, a legal reason why the defendant is not liable for the harm. Many states' laws limit school districts' and public entities' liability by giving them immunity or other defenses against lawsuits. (There are also defenses from liability for individuals and private entities.)

If Sherida's bike accident happened in a state with strong legal protections for schools, the school might be immune from liability. This means that even if Sherida's case met all four of the requirements outlined above – the school owed her a duty, it breached its duty by acting negligently, and in so doing caused her to suffer damages – the school district could still be protected from having to compensate Sherida for her injuries. Immunity and other legal defenses will be explored further in the next section.

It is important to remember that most individuals, government agencies, and businesses in the United States face some risk of liability as they carry on their daily lives and business. Generally, the law requires people to conduct themselves with *ordinary* or *reasonable care* when acting – for example, using reasonable care not to injure other people when driving. In the school context, schools must use reasonable care when maintaining their property to prevent students, teachers, staff, and visitors from being injured. A school that leaves a gaping hole in the ground or allows the use of swings that are not securely attached is likely not exercising reasonable care.

Fortunately for advocates pursuing joint use agreements, the measures schools take to exercise reasonable care



Normal measures that schools take to prevent injuries during the school day serve the same purpose after hours. Taking these measures also makes it less likely that a school would be liable if an injury occurs.

during the school day – putting inspection and maintenance protocols in place, training teachers and staff, and following relevant health and safety regulations – serve the same purpose after hours. They decrease the likelihood of an injury – and increase the likelihood that in the event of such an injury, a court would find that the school exercised reasonable care and therefore was not liable.

Legal Protections

All states offer schools and other public entities some degree of legal protection from liability. The level of protection varies widely, both from state to state and according to the specific situation and activity at hand.

This section will introduce three kinds of legal rules that may limit schools' liability exposure: *governmental immunity*, *recreational user statutes*, and *limits on damages*. It is intended as an introduction to these legal concepts, not in any way a comprehensive guide to states' liability laws.⁸²

Governmental Immunity⁸³

Immunity is a global protection from tort liability that is given based on policy considerations broader than any individual situation. Good Samaritan laws are one example of immunity: most states protect citizens from liability if they attempt to help or rescue someone in imminent and serious danger, provided the attempt is not made recklessly. Legislatures want to encourage citizens to help others in an emergency, so they protect those Good Samaritans from liability.

All states have some form of governmental immunity that limits the extent to which public agencies – including school districts, public officials, and sometimes employees – can be found liable for harm they cause.⁸⁴ The idea behind governmental immunity is that it protects the public's funds, because any judgment against a public agency or school district is paid out of the public purse.⁸⁵ The argument on the other side is that governments and public agencies should be accountable for their actions in the same way private citizens are; if they act irresponsibly and cause harm, they should pay for that harm.

States balance these competing interests – the desire to insulate government agencies from liability while still holding them accountable for their actions – by recognizing some form of governmental immunity, but limiting the level of protection it affords and the range of situations in which it applies. As states strike this balance in different ways, the scope of governmental immunity varies widely from state to state.⁸⁶ In states such as Arizona⁸⁷ and Louisiana,⁸⁸ for example, governmental immunity is very narrow and offers little protection to school districts. Meanwhile, in states like Georgia,⁸⁹ Texas,⁹⁰ and California,⁹¹ governmental immunity is broad and protects schools and cities in most situations.

A Note on Immunity

When a school (or other defendant) in a lawsuit is immune, it cannot be made to pay monetary damages to the plaintiff in the lawsuit. A school can still be sued, however, and the school has to defend the lawsuit. The expense of having to defend against a lawsuit is one reason why, even with strong immunity, schools may still be reluctant to allow community use of facilities. If governmental immunity does not apply, a lawsuit against a school district proceeds according to the first four elements of negligence tort law, outlined in this chapter. Even if a school has no immunity, it may prevail in a lawsuit.

Most states fall somewhere in between these two ends of the spectrum in terms of the level of immunity afforded to public schools and government agencies⁹² Figuring out exactly when governmental immunity applies can be complicated, and it depends on the facts of a given situation, state law, and the court's interpretation. Schools and other governmental joint use partners should contact their attorney to figure out if they are protected in a given situation.

In Sherida Jones' case, if the school district were protected by immunity, the family could not get any compensation from the school. A slight change in the facts might alter our expectations about immunity. For example, what if it turned out that the branch that caused Sherida's bike accident came from a dead tree on the school grounds, and the school had repeatedly failed to respond to parents' complaints that the tree presented a hazard? If the school were protected by immunity even in that situation, a child injured by a branch from the dead tree would not be able to get compensation from the school. It's clear why state legislatures struggle to delineate the situations in which immunity should and should not apply.

Recreational User Statutes

Recreational user statutes are intended to encourage landowners to open their property for public use. If a state has a strong recreational user statute that applies to schools and to the activity at hand, it may shield a school from liability in the event that someone is injured during recreational use. This protection is sometimes structured as a form of immunity and sometimes as a limitation on the duty that the landowner owes to recreational users (the first element of the tort of negligence outlined earlier in this section).

Not all states have recreational user statutes. And in some states, like Hawaii, the courts have found that the statute is not applicable to school districts.⁹³ Several states (Arkansas,⁹⁴ Texas,⁹⁵ and Wisconsin,⁹⁶ to name a few) have recreational user statutes that are likely to provide schools with protections. Specifics vary by state, including the language in the statute regarding the type of land (e.g., rural, undeveloped), the definition of what kind of recreational activities are covered, and exceptions to the rule. Whether recreational user statutes are applicable to schools and can potentially limit schools' liability depends on several factors, including how the court interprets the statute and applies case law. Schools should contact their lawyer to figure out if they are protected by recreational use immunity.

If Sherida Jones' accident had taken place on a weekend, when she was riding her bike on school grounds for fun, the school might be protected under the state's recreational user statute. The school's attorney would figure out whether the state had such a statute and whether it applied in the situation at hand.

Employee Liability

Governmental immunity may not extend to all employees working for a school or other joint use partner. Employee liability is an issue distinct from governmental immunity, and an analysis of employee liability in this context is beyond the scope of this toolkit. Schools should consult with their attorney for more information.

Limits on Damages

Some states protect school districts and government agencies from large claims by limiting the amount of tort damages a defendant can be made to pay. These limits are usually imposed by statute. So, for example, if a child broke both his legs in an accident on school property and his family won a lawsuit against the school, the family’s attorney might show that he had \$400,000 in medical bills. If the state’s statute capped the school’s liability at \$75,000, the school could only be made to pay \$75,000.

Many states place caps on damages. North Dakota, in capping liability at \$250,000 per plaintiff,⁹⁷ presents a fairly typical example. In states like Nebraska, where the statute caps liability at \$1 million per person,⁹⁸ the high limits may not be very helpful as far as schools are concerned. But in other states, these caps may significantly ease schools’ liability exposure. Oklahoma, for example, has an extremely low damage limit of \$25,000 per claimant.⁹⁹

In addition to *compensatory damages* – money awarded to offset the costs of the actual damage – plaintiffs are sometimes entitled to *punitive damages*, which are intended to punish a defendant for egregious and blameworthy conduct. These are very rarely assessed;¹⁰⁰ and many states cap or prohibit punitive damage awards against school districts and other public agencies.

Other Protections

Joint use agreements represent a negotiation over how to share the costs and risks associated with increased use of facilities. Insurance, indemnity agreements, and risk management practices are all tools that joint use partners can use to allocate and manage these risks and costs. In this section and the next, we will use a hypothetical scenario (in “Paradise City”) to help illustrate how these protections work and how advocates and partners can use them in establishing a joint use agreement.

Paradise City is a densely populated, lower-income city in great need of recreational facilities. Paradise City High School, part of Paradise City School District, has a track, football field, and baseball field, although they are in poor condition due to wear and tear and badly need work. The swimming pool is inoperable due to lack of maintenance. Because the school district cannot afford to maintain its facilities and because it has concerns about liability, the school district has a policy of locking its gates to control unauthorized entry. But people often hop the fence to play pickup games on weekends. The weekend users do not have access to restrooms.

State Law to Limit Liability?

Recently, some states have sought to pass new legislation specifically giving school districts greater immunity around recreational use. Too often, however, these legislative efforts rely on broad, “one-size-fits-all” provisions that may not be in the best interests of a community. Expanding school district immunity through legislation can lead to unintended but significant drawbacks, including creating a disincentive for schools to properly maintain their facilities, increasing liability exposure for those who may be least able to manage it, and discouraging the use of school facilities by community members who lack the proper insurance. Before taking a position on legislation aimed at reducing or eliminating school district liability, it’s important to consider the existing legal landscape.

Meanwhile, the Paradise City Department of Parks and Recreation (Parks and Rec) is concerned about managing the demand for increased recreational facilities and programming. Parks and Rec just renovated the Plunge, a swim facility for the community. Aside from this, the City’s parks have poor infrastructure and are a magnet for drug activity; families avoid them. Parks and Rec doesn’t have the money for new construction or renovation, but it does have some funding set aside for facilities management.

Parks and Rec is interested in partnering with Fit to Play, a nonprofit that offers recreational programming for youth. Fit to Play has approached Parks and Rec for ideas, because while the nonprofit has the staff to run programs in Paradise City, it lacks both indoor and outdoor space.

The three groups – the school district, Parks and Rec, and Fit to Play – want to collaborate to find solutions for each of their respective deficits and bring new recreational opportunities to Paradise City, where 37 percent of youth are overweight or obese.

Insurance, indemnity, and risk management practices are tools that can help the partners in Paradise City reach an agreement that works for everyone.

Insurance

Insurance is a contract by which one party (the *insurer*) agrees to protect another party (the *insured*) against the risk of loss, damage, or liability arising from some specified contingency, such as a lawsuit. The insured pays a premium to the insurer, who in return agrees to cover the cost in the event that the contingency occurs.

While state laws vary on the type of insurance school districts may or must carry, most school districts insure themselves against liability. Insurance policies can protect schools during the school day or after school and also can protect employees of the school from liability.

Most school districts have a risk manager (or someone filling that function) who will know about the school’s insurance. Advocates should figure out who that person is in the district and ask him or her whether the school’s insurance covers after-hours use or can be extended to do so. If the school wishes to engage in joint use with another organization – a city, a nonprofit, or a public agency – the partner may have insurance as well. In that case, the parties can decide whose insurance coverage is best positioned to cover the costs, such as property damage or an injury, associated with the proposed joint use activities. If a party makes a claim under its insurance policy, its premiums may go up.

Covering Partners

Nonprofits or other joint use partners can sometimes be added as an *additional insured* on a school’s (or other primary party’s) insurance. This is sometimes called being endorsed onto the insurance agreement or buying a *rider* to the insurance agreement. The school district’s risk manager should know whether this is an option and can find out what it would cost.

In Paradise City, the three groups – the school district, Parks and Rec, and Fit to Play – should begin by assessing their insurance coverage, asking these questions:

- ▶ Do the parties have insurance? (Follow-up questions about the school district’s insurance might include whether it has its own policy, is self-insured, or is part of a risk pool. A school administrator should know or be able to find out this information; the school’s risk manager would also have this information.)
- ▶ Does the insurance cover the types of activities the parties want to sponsor?
- ▶ Would there be an increase in cost to extend coverage, and if so, by how much?

With this information in hand, the parties want to determine who is best equipped to assume responsibility for the risks associated with after-school use of Paradise High and/or the Plunge facilities.

Depending on the additional cost, the school district might agree to take on the risk of joint use at Paradise High under its insurance. Or Fit to Play might carry its own insurance that would cover the programs it wants to run on school property. A large nonprofit such as the YMCA would likely have its own insurance, while a small nonprofit might not. If it’s uninsured, Fit to Play could try to purchase a rider on the school’s or the city’s insurance.

Another possibility is that Parks and Rec could decide to operate Paradise High’s facilities as a public park and cover the proposed activities under its insurance.¹⁰¹ If Parks and Rec wants to allow the school district the reciprocal use of the Plunge, the same questions would be asked: Which party’s insurance will cover this, and which party wants to assume the responsibility of filing a claim if someone is injured?

Indemnity

An *indemnity* clause is a provision in an agreement between two parties stating that one party agrees to be responsible for any liability the other party might incur.¹⁰² While insurance should cover a claim that arises within the scope of the insurance policy, having insurance does not mean that the school (and/or partner) cannot be named in a lawsuit. Indemnification is an additional protection that can cover costs outside the insurance policy.

Because expanding access to existing school facilities is substantially less expensive than building and maintaining new facilities, a city may find that indemnifying the school district for any potential liability is a cost-effective strategy for increasing local opportunities for exercise and play. In Paradise City, for example, Parks and Rec might agree to take on the risk of liability associated with the use of Paradise High after school hours. The parties would then include an indemnification clause in the joint use agreement, in which Parks and Rec agrees to indemnify the school district.



Risk Management

Engaging in sound risk management practices is another way for school districts to mitigate liability concerns. All districts can engage in risk management by complying with health and safety laws designed to protect students, employees, and visitors; by ensuring that school buildings and grounds are maintained in a safe condition; and by carefully supervising and protecting school grounds, facilities, and equipment. Properly training and supervising employees is also a risk management strategy.

Many school districts have formal risk management programs in place to analyze and mitigate their exposure to risk. These precautions are helpful in minimizing the risk involved with use both after school hours and during the school day.

It's important for everyone involved to agree about who will be responsible for what functions (costs, staffing, maintenance, and so on), and who will pay for each of these functions. In Paradise City, for example, parties could start by inspecting the proposed facilities together to document and establish a common understanding of the baseline condition of the facilities. If community members are going to be using Paradise High's fields, the fields need to be kept safe, and maintenance must be regularly scheduled. If the school district is better situated to maintain the fields itself with its personnel, Parks and Rec can agree to fund the maintenance.

Establishing a communication protocol is also critical for addressing issues as they come up. For instance, in Paradise City, if Fit to Play staff notice a dangerous condition on the property while they are operating an after-school program, they need to know whom to notify at the school. Each party can designate a contact person, and the parties can agree to meet quarterly to discuss issues that have surfaced. The school district's risk manager can be a resource for information and suggestions.

Overcoming the Liability Hurdle

In working to make joint use a reality, advocates should approach the situation from a cost-benefit perspective. There are costs and risks associated with everything schools do. When a school puts kids on a bus and sends them to an away basketball game, there are direct costs associated with that (transportation, staffing) and risks (damage to school property or injury to students). But schools take on these activities because they have determined that the benefits to the children – building team spirit and camaraderie among students, teaching sports etiquette – outweigh the risks. Similarly, creating opportunities for exercise can increase students' ability to focus, participate, and perform in school, and can generally improve the community's health.

If schools have an opportunity to engage in joint use with cities or other organizational partners, they can negotiate for whatever contributions they want in exchange for access to their facilities. A school may want reciprocal access to city facilities; it may want help financing the renovation or maintenance of its own facilities. Joint use can make these benefits possible.

Whatever particular arrangement they're pursuing, advocates can build their case by presenting data on the benefits of joint use,¹⁰³ understanding the school's (or others') opposition (if there is any), and recommending solutions to mitigate the school's concerns. Here are some suggested steps and talking points:

1 Gather information on the benefits joint use can bring to the community.

- ▶ Assess community and school/district needs. (See checklist on page 15.)

2 Understand the school's position.

- ▶ If there is a pushback from the school, try to identify the reason.
- ▶ If the school is comfortable allowing third parties, such as nonprofits, to run recreational programs on school grounds but is uncomfortable unlocking the gates to the general public, what is the concern with direct public access? If it's property damage or vandalism, see proposed solutions below.
- ▶ If the concern is liability, find out the underlying reasons. Has the school been sued in the past? If so, what changes did the school make? If not, what is the basis for concern? If the school is not forthcoming with this information, try to find a champion in the school community – a school principal, a school board member, even a member of the PTA – and have that person get this information on your behalf.
- ▶ Be willing to use NPLAN's (or other available) resources to navigate liability concerns: www.nplan.org/childhood-obesity/products/nplan-joint-use-agreements.

3 Recommend solutions to mitigate concerns.

- ▶ Does the school's insurance cover recreational activity outside of school hours? If not, how much would it cost to expand coverage to do so? What if another party is willing to pay that cost? What if another party is willing to take on responsibility for liability? What if another party is willing to indemnify the school in the event of a lawsuit?
- ▶ Has anyone spoken with the school's attorney to see whether the state has legal protections that limit the school's liability exposure?



- ▶ If the concern is vandalism or destruction of school property, is the school open to a pilot program? A pilot program designed to allay concerns about vandalism might work like this:
 - Consult a property checklist when the gates are opened and when they're locked.
 - Inventory the property to make sure no damage has occurred.
 - Document the inspection and sign the documentation.

In this way, record and track any incidents for a period of time to see if vandalism in fact increases when the community has greater access to the grounds. Many advocates have noted the reverse – that when a facility becomes a community resource, the incidence of vandalism actually goes down. This is because more people are present on the property, and community members start to take responsibility for what becomes a communal resource.¹⁰⁴

A Final Note

It's important to remember that concerns about the legal risks of opening up school property after hours are often exaggerated. Joint use agreements can help schools and other partners manage actual costs and risks – and state laws, risk management practices, and contractual protections incorporated into joint use agreements all lower the likelihood of a lawsuit and cushion its impact in the event one is filed.

For more information about opening school grounds for community use, see NPLAN's joint use agreement resources at www.nplan.org/childhood-obesity/products/nplan-joint-use-agreements. Lawyers and others interested in a more in-depth technical analysis of liability laws across the United States can consult the 50-state survey available at www.nplan.org/nplan/products/liabilitysurvey. The information provided here is intended to give readers a sense of relevant concepts; it is not offered as legal advice or guidance. For more information on local laws or for legal advice, consult a lawyer in your home state.¹⁰⁵



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Strategies for Relationship-Building, Scheduling, and Maintenance

Even after financial and liability questions have been resolved, a joint use agreement can be stalled by other issues.

Though challenges vary from place to place, research points to a few common areas where the agreements tend to run aground:^{106, 107}

- ▶ Establishing effective relationships with stakeholders, including unionized school-site personnel
- ▶ Scheduling access to facilities
- ▶ Understanding and allocating responsibility for maintenance and upkeep

In this chapter, we provide guidance on how to make sure joint use agreements are carried out smoothly. We explore strategies for engaging a variety of stakeholders early in the planning process, and ways to build lasting partnerships. We also consider some of the typical issues that may emerge, including scheduling access to facilities and maintaining good relationships with unionized employees and other personnel. Finally, we look at ways to avoid conflicts by clarifying each party's roles and responsibilities in maintaining facilities, and offer some suggestions for how to resolve conflicts when they do arise.

Building Relationships: Establishing a Work Group

Effective joint use agreements are grounded in strong working relationships. Staff overseeing the development of joint use agreements should take the responsibility of building relationships seriously. Overlooking or avoiding this aspect of the process could derail the agreement.

A joint use task force or staff work group can foster these important relationships. The City of Charlotte and Mecklenburg County in North Carolina established a joint use task force that offers a national model for engaging and coordinating key stakeholders effectively.¹⁰⁸ The task force, created by a joint resolution (described below), develops policy statements and processes for the joint planning and use of facilities in the Charlotte-Mecklenburg area.¹⁰⁹ Established in 1996, it includes representatives from two dozen agencies.

This community's vision for joint use extends beyond sports fields, gyms, and school property. The task force's expansive approach is reflected in the diverse composition of the group, which includes agencies charged with development of virtually every type of public facility.

Community Voices

Community participation is key in negotiating a successful joint use agreement. Suppose a school and the local parks and recreation department have agreed to keep the lights on at a basketball court throughout the evening, to give teens and others the opportunity to use it. Sounds like a great idea, right? But if a community has had problems in the past with teens gathering near the courts, there may be resistance. This concern should be discussed during the process of negotiating a joint use agreement: a security detail could be added, or programming could be incorporated to engage young people in a way that works for the community.

Charlotte-Mecklenburg Joint Use Task Force Participants¹⁰⁰

City Membership	County Membership	Other
Engineering	Real Estate	Six Mecklenburg Towns:
Real Estate	Finance	Huntersville
Budget and Evaluation	Park and Recreation	Cornelius
Fire	Libraries	Davidson
Police	Charlotte-Mecklenburg Schools	Mint Hill
Transit System	Community College	Matthews
Housing Authority	Budget	Pineville
Neighborhood and Business Services	Health	Not-for-Profits:
Utilities	County Manager's Office	Charlotte-Mecklenburg Housing Partnership
Stormwater Management		Arts & Science Council
Transportation Planning		Historic Landmarks Commission
City Manager's Office		

Diverse representation ensures broad agency and community buy-in. When groups are given the opportunity to learn about plans for local facilities and participate in the decision-making process, they're more likely to be amenable to joint use agreements. In fact, they may become effective spokespeople at the ground level, championing the merits of an agreement among their peers. And if the task force engages in long-term planning for the joint use of community facilities, including multiple perspectives increases the likelihood that the group will produce a nuanced and responsive plan for joint use that meets the community's needs.

The Composition of the Work Group

The first step in developing an inclusive and effective work group is determining who should participate. Here are some questions to ask as you begin shaping your joint use work group:

- ▶ What stakeholders represent the facilities being considered for the joint use agreements?
- ▶ What sort of validation would be desirable or necessary (e.g., approval by

elected or appointed bodies) in order to form and legitimize the work group?

- ▶ How do we go about obtaining that validation?
- ▶ Who will staff the work group?
- ▶ Who will be responsible for the negotiation and monitoring of the contract?
- ▶ Who will maintain the relationship and communication between/among parties?
- ▶ Who is responsible for maintaining the premises and/or making repairs?
- ▶ Who will implement programming at the site?
- ▶ Which community members, businesses, and institutions might have a stake in a joint use agreement?

Institutionalizing the Work Group

In addition to deciding who will be part of the work group, the parties also must decide how to legally formalize it. This serves to institutionalize the work group, stabilizing its structure and making it more likely to endure regardless of local political changes. Again, Charlotte-Mecklenburg provides a useful model. There, the relevant governmental bodies used a local policy tool – a resolution – to institutionalize the joint use task force so that even if there were staff turnover, the group would continue to exist and function.

Local governments often use resolutions to set official policy, direct internal operations, or establish a task force to study an issue. Resolutions can be a good first step in encouraging collaborative relationships among public agencies, nonprofits, and other organizations to expand access to recreation facilities and related programs.

Charlotte-Mecklenburg’s resolution was adopted in 1995, and it was amended by a second resolution in 2000.¹⁴¹ The amended resolution endorsed the concepts of joint facility planning and joint use, recognized that cost savings can be achieved through joint use, and noted that decisions related to these types of community resources must be coordinated.



Effective joint use agreements are grounded in strong working relationships. Overlooking or avoiding this aspect of the process could derail the agreement.

**JOINT RESOLUTION
PROMOTING AND ENHANCING JOINT PLANNING AND
JOINT USE POLICY AND PROCESS**

WHEREAS, in 1995 the Board of County Commissioners, City Council, Board of Education, Central Piedmont Community College, and the Public Library adopted resolutions strongly encouraging joint planning and joint use; and

WHEREAS, in 1996 a Joint Use Task Force of public agencies was organized and began meeting monthly; and

WHEREAS, the Joint Use Task Force has initiated several successful joint use projects: LaSalle Street Library as a satellite center for Police, Community Improvement, and Housing Code Enforcement; Ballentyne School/Park/Fire Station project; the North Tryon Library/Police Service Center; and the Greenville School, Park, and Neighborhood Center development; and the Government District Joint Facilities Master Plan; and

WHEREAS, Mecklenburg County has capital needs projected to total \$3.3 billion through the year 2009 and the City of Charlotte has \$3.9 billion in needs through the year 2010; and

WHEREAS, public agencies are presently developing long-range facility master plans for transit, schools, parks, libraries, and the government district of the Center City Plan; now, therefore, be it

RESOLVED that the Mecklenburg Board of County Commissioners, the Charlotte City Council, the Charlotte-Mecklenburg Board of Education, the Central Piedmont Community College Board, and the Board of the Library of Charlotte and Mecklenburg County would continue to promote and support the Joint Use Task Force in developing a strong joint planning and joint use program; and be it further

RESOLVED that the above entities direct their individual departments/agencies to biennially update the department's ten-year facility master plan which will: serve as the foundation for development of their long range capital needs and CIP; identify potential joint use opportunities; support adopted land use plans; and integrate the departmental planning process into a comprehensive and strategic City/County planning process.

ADOPTED the 25th day of September, 2000.

Setting the Work Group's Vision

Like any group that involves a diverse membership, the work group should have a clear vision and shared goals. In Charlotte-Mecklenburg, the resolution lays out the broad vision the task force shares for local resources. In most communities, setting up joint use agreements will require coordination and cooperation among multiple existing agencies. More than likely, there will be politics involved in moving agreements forward; one agency will need to give something up while another gains something. Advocates for joint use need to educate themselves about local and interagency politics by talking to key stakeholders and learning about any past attempts to put joint use agreements or other similar collaborative agreements in place in the community.

To that end, Charlotte-Mecklenburg's joint use task force has developed a series of "screening questions" to help the task force evaluate whether specific projects or properties are suitable for joint use agreements.

Charlotte-Mecklenburg Screening Questions:¹¹²

- ▶ Is the land publicly owned?
- ▶ Is the land available, and what's its status? (Is it for sale? Is it in probate?)
- ▶ What uses are a good fit for the land or facility?
- ▶ Are funds required to support a joint use agreement? Do the partners have access to necessary funds?
- ▶ Is coordination possible?
- ▶ What type of joint use is possible?
- ▶ What obstacles exist?
- ▶ Can those obstacles be overcome and at what cost?
- ▶ Do the advantages outweigh the challenges?

With this screening process and its ongoing work to coordinate the use of a wide range of facilities, Charlotte-Mecklenburg's joint use task force has helped reduce operational costs borne by certain agencies for underutilized facilities, ensured better cooperation among agencies, and built awareness around joint use issues and opportunities.



“What needs to come first is a reasonable win-win agreement between reasonable adults. Each party must see this as an opportunity. If one or the other feels used, putting it in writing won't help. Nor will it be successful.”

– Mike Raible, Executive Director of Planning and Project Management, Charlotte-Mecklenburg Schools

Scheduling Access to the Facility

Joint use advocates face special concerns when developing and implementing agreements with school districts, which see school buildings and property as being first and foremost for student use. State laws frequently support this view. School principals or coaches may want to limit public access to property like gyms or fields to protect the district's investment in these spaces. They may also want to be able to schedule activities at times that suit their needs. School coaches, for instance, may block out more time than necessary to ensure the facilities will be available, and school officials may cancel public use of their facilities to accommodate last-minute school activities. So how can partners work together to ensure that the scheduling of both school and community activities runs smoothly?

Every successful joint use partnership must be sensitive to the needs of those most directly affected by the agreement. Even though joint use agreements are usually written at the district level, school personnel typically control access to facilities on school grounds. The superintendent may sign the agreement, but the principal, coach, or custodian has the keys. School personnel put a lot of hard (and sometimes unpaid) work into their schools, including buying equipment for their facilities. It is critical to respect their position and give them the confidence that their facilities will be carefully maintained by users. Being sensitive to school personnel will likely make them more amenable to compromise in developing policies for scheduling.

Joint use partners also can use regular meetings to plan for their scheduling needs. In Charlotte-Mecklenburg, every joint use agreement requires an annual scheduling meeting between signatories, during which the schedule is determined for the upcoming year (with provisions for amendments, should an emergency occur). In most cases, school principals know a year in advance when the school needs to schedule the joint use venue. A 12-month calendar clearly designating school dates and availability is copied and shared among the relevant parties.

Many communities include detailed information about scheduling in exhibits attached to the joint use agreement. The table on the next page, for example, is Exhibit B of a joint use agreement between the City of Fresno, California, and the Fresno Unified School District (FUSD). It clearly delineates a minimum period during which the city has priority rights to schedule the facilities at the seven schools covered by the agreement; it states when the general public will have access to outdoor facilities for non-programmed activities; and it lists the acceptable exceptions to these rules.



Exhibit B
Minimum Periods During Which City Has Priority Right to Schedule Use of District High School Athletic Facilities
April 1, 2008, through March 31, 2013

School	Non-Stadium Tracks and Adjacent Fields (Bullard, Edison, Fresno, Hoover and Roosevelt)	Stadium Tracks (McLane and Sunnyside)	All Tracks and Adjacent Fields and Both Stadiums	General Public: Non-Programmatic Recreational Uses of Athletic Facilities
	School Year		Summer	All Year
Bullard	M–F: 6–10 pm S/S/H: 8 am–10 pm		M–F: 3–10 pm S/S/H: 8 am–10 pm	Dawn to dusk. Until 10 pm, if City and District agree to split cost of track lights 50/50.
Edison	M–F: 6–10 pm S/S/H: 8 am–10 pm		M–F: 3–10 pm S/S/H: 8 am–10 pm	Dawn to dusk. Until 10 pm, if City and District agree to split cost of track lights 50/50.
Fresno	M–F: 6–10 pm S/S/H: 8 am–10 pm		M–F: 3–10 pm S/S/H: 8 am–10 pm	Dawn to dusk. Until 10 pm, if City and District agree to split cost of track lights 50/50.
Hoover	M–F: 6–10 pm S/S/H: 8 am–10 pm		M–F: 3–10 pm S/S/H: 8 am–10 pm	Dawn to dusk. Until 10 pm, if City and District agree to split cost of track lights 50/50.
McLane		M–W: 3–10 pm (football season) M–F: 6–10 pm (track season) S/S/H: Available most days	M–F: 3–10 pm S/S/H: 8 am–10 pm	
Roosevelt	M–F: 6–10 pm S/S/H: 8 am–10 pm		M–F: 3–10 pm S/S/H: 8 am–10 pm	Dawn to dusk. Until 10 pm, if City and District agree to split cost of track lights 50/50.
Sunnyside		M–W: 3–10 pm (football season) M–F: 6–10 pm (track season) S/S/H: Available most days	M–F: 3–10 pm S/S/H: 8 am–10 pm	

M–F: Monday through Friday
M–W: Monday through Wednesday
S/S/H: Saturday, Sunday & Holidays

Exceptions:

Football starts 8/11/08. FUSD scheduled events; i.e., middle school games on Saturday, through first weekend in November. Summer football workout schedule determined in April. Times may vary.

McLane and Sunnyside stadiums: FUSD scheduled events. Thursday and Friday evenings blocked due to football games; Saturday middle school football games through early November; band competitions. FUSD football camp days TBD. May have physical education classes in stadium after 3 pm.

District, City, or Community use of facilities for youth activities/programs shall have priority over City's use of facilities for its adult activities/programs.

Even when a master joint use agreement covering multiple facilities is in place, there are no guarantees that partner agencies will have access to specific facilities at specific times unless the agreement provides a clear statement of which partner will access which facility at which time and with what exceptions. When school property is involved, the partners need to

set up rules of prioritization. A task force or similar body should establish clear prioritization rules; schools and youth-focused uses would likely get first priority, as those groups' missions are most closely aligned with the school's mission.

Schedules are critical, but these alone do not guarantee the gates will be unlocked when they are supposed to be. School staff members, including custodians, coaches, and principals, need to support the joint use of "their" facility by showing up and letting you in. Getting to that level of support will require strong relationship-building efforts – time-consuming and "soft" tasks typically considered outside the job descriptions for most public or nonprofit agency personnel.

While joint use agreements usually do not start with an exchange of keys and alarm codes, trust increases as both parties fulfill their obligations. A written agreement that sets clear expectations lays the groundwork for a long-term relationship based on mutual gains and trust.

Staffing Issues

School district staff members are often unionized, and unions should be involved throughout the process of negotiating joint use agreements. Issues such as salary, overtime pay, and funds for maintenance and operations can and should be addressed in the negotiation process, especially when volunteers during joint use hours might handle some tasks that unionized labor performs during school hours.

It's important to have some knowledge of how unions are structured. Unionized workers are organized into *bargaining units*, groups of employees represented by a single labor union. All bargaining units operate under contracts negotiated with their employer. These contracts outline salary and benefits for the unit and, in most cases, clearly lay out work rules. Bargaining unit leaders and members tend to be concerned about changes that could adversely affect their salary, benefits, and work hours. If the contract precludes any volunteer work, reopening the contract to change that language cannot happen until the next negotiation cycle. Ignoring or violating the contract could leave the agency open to a union action, which may result in negative publicity and bad relations with the workforce and union leadership – and could ultimately rule out future joint use activities.

However, if there is nothing in the contract that specifically precludes the use of volunteer labor, sit down with the bargaining unit leadership (and the local union leadership, if appropriate) and present the plan.

Although this section places a special focus on working with unions, many of the concepts apply to working with staff members from a variety of agencies.

Some tips on establishing clear communication with unions:

1. Review and become familiar with the contracts that govern the rules under which union labor works.
2. Engage the union representatives early in the negotiating process.
3. Ensure that all relevant bargaining units are represented in negotiations.
4. Keep the unions updated and involved throughout the duration of the joint use agreement (especially when concerns arise and when the agreement is renewed or comes to an end).

Presenting the joint use idea to the union at the beginning of the negotiation process increases the likelihood that union members will be on board and provides the union with the opportunity to contribute to the success of the agreement from the outset.

Meetings with bargaining unit leadership should be scheduled as early in the negotiation process as possible. This gives all parties an opportunity to review plans for the joint use agreement in the context of the bargaining unit's contract, and allows both sides to raise any concerns they may have about the agreement and its implementation.

Different types of employees may be represented by different bargaining units (possibly even different unions), so be sure all relevant units and unions are invited to the initial meeting. In addition, each agency's relationship with its bargaining unit is unique, so it is important to take into account whether meeting with unit leadership is adequate. If the relationship is such that it is usual or proper to bring in representation from the unit's local union, the initial meeting is the time to do that.

Make a plan for keeping unions informed, and stick to it. It may make sense to ensure that the unions are represented on the joint use task force or working group. Keep union representatives involved at every step of the process to eliminate any surprises (for instance, alerting them to modifications that arise during negotiations) and to ensure that all the stakeholders – within the union or the agency – have consistent information and adequate opportunities to respond to the joint use proposal.

Once the joint use agreement is in place, have regular meetings with union representatives to ensure open communication and to evaluate how things are going.



Maintenance and Upkeep

The final issue that often obstructs the implementation of a joint use plan, especially at school sites, is the question of maintenance and upkeep. While schools are public facilities, school staff – teachers, principals, coaches, and custodians – are uniquely invested in the upkeep of the premises. When the school day begins, they are the ones who have either the pleasure of seeing a facility that is at least as well-kept as when they left it the previous afternoon or the dismay of finding unkempt restrooms, littered ball fields, or overturned benches. School staff are naturally protective of “their” facilities, and they commonly express concerns about having to deal with vandalism, damage, or poorly maintained facilities due to other users not taking appropriate care.

Joint use agreements can be as simple or complex as the negotiating parties desire, or as circumstances dictate. One strategy to guide the maintenance and protection of facilities might be to spell out in the agreement exactly what constitutes “maintenance.” Is it sweeping floors, locking doors and gates, and making sure soccer balls are inflated? Or in the case of classroom use, does it include returning desks and chairs to a particular formation?

The details may seem a bit daunting, but it is not uncommon to run into challenges as a result of not fully understanding how each party defines maintaining the facility and the materials in it.

As with scheduling, there are ways to make sure facilities are well supervised after school hours, and ways to establish *up-front* which party – the school or its joint use partner – will assume responsibility for maintenance and upkeep. Joint use agreements often include protocols for ensuring that school staff will find classrooms, gyms, and fields in the same condition they were left the previous day. Agreements also may include clauses that stipulate reasonable time frames for repairs and maintenance.

The following excerpt from a joint use agreement between the Board of Trustees of the Grand Rapids Community College and the City of Grand Rapids, Michigan, stipulates each partner’s responsibility for on-site supervision, maintenance, and repairs:

Excerpt

Supervision of Programs: Each party shall provide appropriate on-site supervision, provided by their own employees, for all programs conducted at the other parties’ facilities. Either party may request information regarding the supervision plan prior to an event. In certain situations, the parties may determine that conditions warrant the host party providing supervisory or other staff. Based on mutually agreeable arrangements, these expenses may be supported by the requesting party. In any case, such arrangements must be mutually developed and agreed to in advance by the parties.

Restrooms and Locker Rooms: Each party agrees to make locker rooms available for those who need them on each other's premises immediately before, during, and immediately following any scheduled activity or events. Additionally, the parties agree to make rest rooms available for members of the public who attend each activity or event. Each party agrees to maintain said locker rooms and rest rooms and to keep them in good sanitary condition. At the request of the requesting party, the host facility agrees to provide for security to these areas during activities and events, or to provide the requesting party with the means to handle this function themselves, such as keys or access cards as may be necessary.

Maintenance and Repair of Facilities and Equipment: Mowing, fertilizing, water, and other routine maintenance and repair, and/or replacement or upgrade of facilities and equipment shall be the responsibility of the owner; however, either party may agree to maintain or provide for the updating of facilities or equipment at facilities owned by the other party. It is agreed and understood that any facility upgrades, or additional equipment that either party wishes to provide for the facilities of the other must be mutually agreed upon by the parties in advance of the work, and must go through each parties [sic] respective approval processes. Repairs or replacement that is the result of misuse or improper handling shall be the responsibility of the party that caused the damage. The City and College shall agree to meet annually to discuss maintenance responsibilities for facilities.

When the needs of the requesting party outstretch the ability of the owner to provide for routine maintenance or upkeep, or if weekend operations are beyond the scope of the owner's normal operation, the site owner does agree to allow the requesting party the option of performing these tasks. Detailed activity or event needs shall be mutually worked out by the parties in advance, and responsibility for the performance of related tasks identified. The owner may elect to perform some or all tasks with the requesting party agreeing to reimburse for associated expense.

Each party agrees to properly and efficiently maintain all utility support for its respective facilities. This includes heating and air handling, cooling when and where possible, lighting for both interior and exterior areas, as well as all competition areas, and water for all needs such as rest room use, team use, grounds, and public consumption.

Vandalism or Theft: Each party shall be responsible for any loss or damage to property or equipment due to vandalism or theft which occurs when the party is using the other party's facility.¹¹³

Working Through Conflicts

In many cases, conflict between partners can be minimized or avoided altogether by carefully planning for and working through these critical issues of stakeholder involvement, facility access, and site maintenance and upkeep. But if conflicts arise, they're best addressed early on. It's often easy enough to reach out to the local contact at the school or parks department (or other joint user) to have a conversation about the issue at hand. The other party may not even be aware that a problem exists.

In addition, there should be regular meetings of the joint use work group to discuss how satisfied everyone is with how the agreement is being carried out. The meetings provide opportunities to review successes and address areas of concern before they become larger problems, and to incorporate lessons learned into future joint use agreements. Finally, joint use partners should consider leaving room in the agreement to renegotiate the terms of the contract. Establishing a process to renegotiate based on emerging needs provides another useful way to resolve conflicts that may not have been addressed or spelled out clearly in the first drafting.

A Living Tool for Communication

As a rule, a successful joint use agreement thoroughly documents the outcome of a negotiation process that included everyone who controls access to the facilities, raised all of the critical issues, and produced solutions that were mutually affirmed.

Agreements can contain a host of exhibits documenting solutions to issues that were raised during negotiation. These might include fee schedules, detailed lists of those who are (or aren't) allowed to have keys to the facility, methods of dispute resolution, and provisions for renegotiating the agreement – the latter being key for keeping the lines of communication open throughout the life of the agreement. In Vallejo, California, for instance, a joint use agreement between the city's recreation department and schools contains a "periodic reviews and revisions" clause, which states that the partners agree to review the agreement every

three years, making revisions only with the mutual written consent of both parties.¹¹⁴

Clear lines of communication are essential for a healthy joint use agreement, and regularly revisiting the agreements can guard against the lapses in communication that lie at the heart of failed partnerships. In the town of Anderson in Shasta County, California, a joint use agreement states clearly that the terms "may be modified at any time by the mutual consent and written agreement of the respective parties."¹¹⁵





Joint use agreements that serve as a tool for ongoing communication among schools, city or county agencies, and nonprofits – documenting mutually agreed-upon solutions to concerns raised by each – can go a long way toward providing communities with safe, clean, and reliable opportunities for physical activity.



APPENDIX 1

Model Joint Use Agreements

ChangeLab Solutions has developed model agreements for four general categories of joint use. The models are designed to serve as templates for communities to tailor in developing their own agreement.

-  **1. Unlocking the Gates:** Allowing public access to outdoor school facilities during non-school hours
-  **2. Indoor and Outdoor Access:** Allowing public access to indoor and outdoor school facilities during non-school hours
-  **3. Nonprofit Partnerships:** Allowing “third-party” organizations (such as YMCAs or Boys & Girls Clubs) to use indoor and outdoor facilities after school hours to operate programs
-  **4. Reciprocal Access:** Allowing schools and other public and/or nonprofit organizations to have reciprocal access to each other’s facilities

Each template is also available (as a Word document) at www.changelabsolutions.org/childhood-obesity/products/nplan-joint-use-agreements.

Joint Use Agreement 1: Unlocking the Gates

Allowing Public Access to Outdoor School Facilities During Non-School Hours

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.



We have developed model language for joint use agreements allowing public access to outdoor school facilities during non-school hours. You can download an editable version from www.changelabsolutions.org/childhood-obesity/products/nplan-joint-use-agreements.

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

Recitals: → 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.

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

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

Term: → 1. 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.

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.

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.

Facilities Covered: → 3. 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.

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.

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.

Permitted Uses of Active Use Areas: → 4.

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.

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.”

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.

Obligations of City: → 6.
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.

6. Obligations of City

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.

Supervision: → **D. 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.

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.

E. Equipment and Storage

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

Custodial:

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

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.

Toilet Facilities:

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

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.

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.

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.

D. Equipment and Storage

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

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.

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.

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.

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].*

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.

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.

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.

- a. 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.
- b. 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.
- c. In the event an agreement cannot be reached, the matter shall be referred to _____ [City official] and _____ [District official], or their designees, for resolution.
- d. The District shall have the right to make immediate emergency repairs or replacements of property without voiding the City’s right to disagree.

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.

→ **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.

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.

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.

Insurance: → 12. **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.

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.

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.

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.

Termination: → 14. **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.

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

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.

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.

Amendments: → 16. **Amendments**

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

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.

17. **Any Additional Provisions Required by State or Local Law** ←

Any Additional Provisions Required by State or Local Law:
State or local law or practice may require additional clauses in the Agreement.

Signatures

Joint Use Agreement 2: Indoor and Outdoor Access



Allowing Public Access to Indoor and Outdoor School Facilities During Non-School Hours

Joint Use Agreement 2 is a model 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 indoor and outdoor recreation facilities, such as gymnasiums, playgrounds, blacktop areas, and playing fields during times, 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, supervision, 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 written in *italics* provides different options or explains the type of information that needs to be inserted in the blank spaces in the agreement.

We have developed model language for joint use agreements allowing public access to outdoor school facilities during non-school hours. You can download an editable version from www.changelabsolutions.org/childhood-obesity/products/nplan-joint-use-agreement.

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

Recitals: → 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.

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 enhancing the recreational opportunities afforded to the children in the community; and

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

Term: → 1. 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.

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.

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.

3. Facilities Covered

A. Outdoor Facilities

Outdoor Facilities: 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.

The term “Outdoor 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 Outdoor 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

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.

exclude Active Use Areas during the term of this Agreement, provide that any such change shall be in writing and approved by both the District and the City.

Indoor Facilities:

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

B. Indoor Facilities

The term “Indoor Active Use Areas” will be used for purposes of this Agreement to mean the designated gymnasiums, swimming pools, _____, or other indoor recreation facilities. Terms of this Agreement will apply to all Indoor Active Use Areas owned by the District as identified in Attachment B 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, provide that any such change shall be in writing and approved by both the District and the City.

C. Active Use Areas

The term “Active Use Areas” will be used for both Indoor and Outdoor Active Use Areas.

Permitted Uses of

Active Use Areas:

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

4. Permitted Uses of Active Use Areas

The District shall be entitled to the exclusive use of all Indoor and Outdoor 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.

A. City Access to Outdoor Active Use Areas

The City shall be entitled to access Outdoor 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 Outdoor Active Use Areas. Such use shall be referred to as “Outdoor Public Access Hours.”

B. City Access to Indoor Active Use Areas

The City shall have access to Indoor Active Use Areas to open them for use by the community on _____ [Specify hours here or alternatively provide for the hours on a separate attachment.] Such use shall be referred to as “Indoor Public Access Hours.”

Parking Facilities:

The parties should determine whether the community will have access to any parking facilities, and if so, the conditions for access to them.

C. Parking Facilities

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

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.

Obligations of City: → 6. **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 state and local law and community needs. The model language set forth here should be changed to reflect the needs of the parties and community.

Supervision: → **D. Supervision**

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

Indoor Active Use Areas: → **b. Indoor Active Use Areas**

The parties will need to determine the type of supervision required for Indoor Active Use Areas depending on the type of facility (i.e. gymnasium, swimming pool), state and local health and safety regulations, and other applicable requirements. The parties may need to provide more specific requirements for supervision in the Agreement, an attachment, or by reference to other state or local laws, regulations or other requirements.

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 personnel necessary to open and close the Indoor and Outdoor Active Use Areas during Public Access Hours.

C. Inspection and Notification

The City personnel shall inspect the Indoor and Active Use Areas to ensure these sites are returned in the condition they were received. The personnel 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

a. Outdoor Active Use Areas

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

b. Indoor Active Use Areas

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

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 Active Use Areas in a neat, orderly, and sanitary condition at all times during the Public Access Hours.

Toilet Facilities:

The parties should determine whether to permit community access to District restroom facilities. This Agreement is drafted to permit community access to District bathrooms during community use of Indoor Active Use Areas. The parties should determine what access will be permitted during Public Access Hours at Outdoor Active Use Areas.

G. Toilet Facilities

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

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 shall 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 Indoor and Outdoor Active Use Areas for Public Access Hours.

c. Inspection and Notification

The District shall inspect each Active Use Area site after Public Access Hours and report any damage to the City 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.

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 and the conditions for maintaining the storage.

d. Equipment and Storage

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

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 Active Use Areas in a neat, orderly, and sanitary condition at all times during the Public Access Hours.

Toilet Facilities:

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

f. Toilet Facilities

i. Indoor Active Use Areas

The District shall make restroom facilities available during Indoor Public Access Hours. The District shall maintain these restroom facilities.

Maintenance: → 8. **Maintenance**

The parties need to allocate responsibility for maintenance of the facilities.

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

The District shall perform normal maintenance of Outdoor and Indoor 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 Indoor Active Use Areas and playground and blacktop Active Use Areas and delegates to City the responsibility of maintenance of playing fields.]

The District shall perform normal maintenance of Indoor Active Use Areas and all playground and blacktop [_____ or other facility] facilities of Outdoor 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]*.

Restitution and Repair: → 9. **Restitution and Repair**

After discussion, the parties will tailor this provision to best suit their needs. 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.

[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 employee, 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(c) 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 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 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.

- a. The City shall notify the District of any disagreements 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.
- b. 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.
- c. In the event an agreement cannot be reached, the matter shall be referred to _____ [City official] and _____ [District official], or their designees, for resolution.
- d. The District shall have the right to make immediate emergency repairs or replacements of property without voiding the City’s right to disagree.

Operational Costs: —→ 10. 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.

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.

Liability and Indemnification — 11. Liability and Indemnification

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.

[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 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.

Insurance: → 12. **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, including the types and amount of insurance and type of documentation, to reflect their state and local law and practice.

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 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 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.

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.

Termination: → 14. **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.

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

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.

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. The parties will have developed some type of work group/communication method in developing the plan that they may wish to continue to address problems that may occur during the operation of the agreement.

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.

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

Any Additional Provisions Required by State or Local Law:
State or local law or practice may require additional clauses in the Agreement.

17. Any Additional Provisions Required by State or Local Law

Signatures

Joint Use Agreement 3: Nonprofit Partnerships

Allowing “Third-Party” Organizations (such as YMCAs or Boys & Girls Clubs) to Use Indoor and Outdoor Facilities After School Hours to Operate Programs

Joint Use Agreement 3 is a model 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 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.

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



We have developed model language for joint use agreements allowing public access to outdoor school facilities during non-school hours. You can download an editable version from www.changelabsolutions.org/childhood-obesity/products/nplan-joint-use-agreement.

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.

Joint Use Agreement 3

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

Recitals: _____ • 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.

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 collaborate to enhance the recreational opportunities afforded to the children in the community; and

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

Term: → 1. 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.

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.

Effective Date: → 2. **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.

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.

3. **Facilities Covered**

The term “Active Use Areas” will be used for purposes of this Agreement to mean the designated fields, playgrounds, parking lots, gymnasiums, _____ *[list other types of facilities]* 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.

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**

A. **District Use**

The District shall be entitled to the exclusive use of all 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.

B. **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 access to and use of Active Use Areas, 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 also apply to third parties using the Active Use Areas. The City shall be responsible for ensuring third parties comply with all obligations under this Agreement when using Active Use Areas. The City shall enforce all District rules, regulations, and policies provided by the District while supervising community recreational activities at Active Use Areas. 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. The periods of use of Active Use Areas by the City or third parties shall be referred to as “Public Access Hours.”

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.

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.

→ C. **Third-Party Use**

All third-party use of Active Use Areas shall be subject to all District rules, regulations, and policies. The City and the District agree that in providing access to Active Use Areas 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

5. Compliance With Law

All use of District 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.

Communication: — 6. 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.

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

- a. 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 Active Use Areas, to recommend rules and regulations for the District and the 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.
- b. 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 _____ *[District official]* and _____ *[City official]*, or their designees, for resolution.
- c. The Joint Use Interagency Team shall review the Agreement by _____ each year to evaluate the project, determine changes to the schedule, and to propose amendments to this Agreement.

7. Scheduling Use of Property

A. Master Schedule

The District and the City shall develop a master schedule for joint use of District Active Use Areas to allocate property use to the District, the 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 the City will review and evaluate the status and condition of jointly used properties and modify or confirm the upcoming _____ *[year/season/etc.]* schedule.

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 for each Owner to schedule third-party use of its own facilities or to have the City to schedule third-party use of all facilities. This document provides two alternative model clauses that communities may select from and tailor to their own use.

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.

B. 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(c). 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 B, 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(c). 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 B and incorporated herein by reference, as it may be amended from time to time, or as otherwise provided by this Agreement.

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.

8. Documentation and Allocation of Operational Costs

A. Tracking Use of Facilities

The District shall track use of the Active Use Areas 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 duties carried on by their respective employees.

Payment of Overtime:

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

Fees and Charges: → 9. 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 fees to third-party users of District Active Use Areas 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 the City shall maintain records of fees collected under this Agreement.

Annual Review of Benefits: → C. 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.

The District and the 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].

10. Improvements

- A.** The City shall obtain prior written consent of the District to make any alterations, additions, or improvements to District Active Use Areas.
- B.** Any such alterations, additions, or improvements will be at the expense of the City, unless otherwise agreed upon.
- C.** The District 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 for the District property for educational purposes.

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.

Interagency Training: → 11. Interagency Training

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

The District and the City will 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.

Supervision, Security and Enforcement: → 12. Supervision, Security and Enforcement

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

A. Supervision and Enforcement

The City shall train and provide an adequate number of competent personnel to supervise all activities on the District’s Active Use Areas. The City shall enforce all of the District’s rules, regulations, and policies while supervising activities or programs on the District’s Active Use Areas.

B. Security

[If the properties are secured, the parties will need to make arrangements for opening them to use.]

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

C. Inspection and Notification

The City staff shall inspect the District’s Active Use Areas to ensure these sites are returned in the condition they were received. The City shall ensure the District’s designated employee is notified within _____ hours/days *[insert timing here]* in the event that any Active Use Area suffers damage during City or third-party use.

13. Supplies

The City shall furnish and supply all expendable materials necessary to carry out its programs while using the Active Use Areas.

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.

14. Maintenance, Custodial Services, and Toilet Facilities

A. Maintenance

The City agrees to exercise due care in the use of the Active Use Areas. The City shall during the time of its use keep the Active Use Areas in neat order.

[Option One:]

The District shall be responsible for the regular maintenance, repair, and upkeep of its properties and facilities.

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

The District shall perform normal maintenance of all Indoor Active Use Areas, 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.

B. Custodial

[The parties will need to make arrangements for trash disposal during City and third party use of Active Use Areas.]

The District shall make its trash receptacles available during the City and

third party use of District Active Use Areas. The City shall encourage community users to dispose of trash in the trash receptacles during use of Active Use Areas.

C. Toilet Facilities

[This model clause allows the City to provide restroom facilities at the District’s outdoor Active Use Areas. If the indoor Active Use Areas are open at the same time as the outdoor properties, this clause may be unnecessary.]

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

15. Parking

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

Restitution and Repair:

After discussion, the parties will tailor this provision to best suit their needs. 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.

16. 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 employee, inspect and notify the City, of any damage, as described above in subsection 12(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 subsection 16(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 employee within _____ days of completion of the repairs to 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 or equipment as identified by the District, provided this disagreement is made within _____ days after a first notification.

- a. The City shall make any disagreements in writing to the District 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.
- b. 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.
- c. In the event an agreement cannot be reached, the matter shall be referred to _____ [City official] and _____ [District official], or their designees, for resolution.
- d. The District shall have the right to make immediate emergency repairs or replacements of property without voiding the City’s right to disagree.

Liability and Indemnification:

— 17. 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.

17. 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.

Insurance: → 18. 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.

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 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 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.

Termination: → 19. **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.

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

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.

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.

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.

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**

Any Additional Provisions Required by State or Local Law:
State or local law or practice may require additional clauses in the Agreement.

Signatures

Joint Use Agreement 4: Reciprocal Access



Allowing Schools and Other Public and/or Nonprofit Organizations to Have Reciprocal Access to Each Other's Facilities

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

We have developed model language for joint use agreements allowing public access to outdoor school facilities during non-school hours. You can download an editable version from www.changelabsolutions.org/childhood-obesity/products/nplan-joint-use-agreement.

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.

Joint Use Agreement 4

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

Recitals: ————— → 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.

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

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

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.

- 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.

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.

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.

Permitted Uses: → 4. **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**

a. **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.

b. **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.

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.

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.

c. 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

B. City Property

- a. 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.
- b. 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.

Communication: → **6. 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.

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.

- a. 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.

- b. 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.

Scheduling Use of Property → 7. Scheduling Use of Property

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.

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.

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.

8. Documentation and Allocation of Operational Costs

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.

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

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.

9. Fees and Charges

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].

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.

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.

- 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.

Interagency Training: — 11. To assure the success of the Agreement and program, key personnel must understand the purposes and procedures required under the Agreement.

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.

Supervision, Security and Inspections: — 12. The parties may wish to include more specific requirements in the text, by reference to existing requirements, or in an attachment.

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.

13. Supplies

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

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.

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.

15. Parking

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

Restitution and Repair: → 16. **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.

[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.

- a. 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.

- b. 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.
- c. In the event an agreement cannot be reached, the matter shall be referred to _____ [City official] and _____ [District official], or their designees, for resolution.
- d. The Owner shall have the right to make immediate emergency repairs or replacements of Property without voiding the User’s right to disagree.

Liability and Indemnification — 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.

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].

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.

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.

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.

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.

19. **Termination**

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

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.

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.

Amendments:

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

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.

22. **Any Additional Provisions Required by State or Local Law**

Any Additional Provisions Required by State or Local Law:

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

Signatures



Model Joint Use Resolution

This model resolution can help lay the groundwork for joint use agreements in a community. Adopting the model resolution is a first step in encouraging collaborative relationships among public agencies and community organizations to expand access to recreation facilities.

Ordinances and Resolutions

Local legislative bodies generally act by adopting ordinances or resolutions.¹¹⁶ Ordinances are binding legislative acts that have the same force of law as a statute passed by a state legislature.

Local governments enact ordinances when required to do so by state law or charter or when they want to impose laws that are binding on their citizens.

Resolutions, by contrast, are typically less formal statements of law or policy. While practices may vary by municipality, local legislative bodies often use resolutions to set official government policy, approve contracts, issue commendations, direct internal government operations, or establish a task force to study an issue. Resolutions are procedurally easier to adopt than ordinances and can be an effective step for public agencies to study and implement policies such as joint use.¹¹⁷

the foundation for establishing more formal joint use policies and agreements.

The model resolution 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.

This model resolution, designed to serve as a template, is also available (as a Word document) at www.changelabsolutions.org/childhood-obesity/products/JU-resolution.



Model Joint Use Resolution

The purpose of this model joint use resolution is to help local governments lay

RESOLUTION NO. _____ PROMOTING JOINT USE

**RESOLUTION OF THE [CITY/COUNTY/DISTRICT]
OF _____ PROMOTING JOINT USE AS A MEANS
OF ENHANCING AND INCREASING ACCESS
TO [CITY/COUNTY/DISTRICT] FACILITIES AND
RELATED PROGRAMS**

WHEREAS, in 2010, one in every three Americans was obese and 60 percent were either overweight or obese;¹¹⁸

WHEREAS, it is estimated that 50 percent of the U.S. population will be obese by 2030;¹¹⁹

WHEREAS, since 1980, obesity prevalence among children and adolescents has almost tripled;¹²⁰

WHEREAS, only 33 percent of school-age children attended daily physical education classes in 2009;¹²¹

WHEREAS, a significant number of Americans fail to meet the Centers for Disease Control and Prevention’s recommendations for daily physical activity,¹²² including 65 percent of all adolescents;^{123, 124}

WHEREAS, access to nearby recreational facilities leads to increased rates of physical activity;¹²⁵

→ **WHEREAS**, inadequate access to recreation facilities has played a significant role in rising obesity rates;¹²⁶

WHEREAS, children and adults who are overweight and obese are at a greater risk of adverse health effects, including type 2 diabetes, heart disease, high blood pressure, high cholesterol, certain cancers, asthma, low self-esteem, depression, and other debilitating diseases;¹²⁷

WHEREAS, nationally, the annual cost of treating obesity-related diseases is approximately \$147 billion;¹²⁸

WHEREAS, the annual cost of treating obesity-related diseases in [City/County/District/State] is approximately [_____];

WHEREAS, there is growing consensus among public agencies and community organizations that joint use of facilities and related programs can improve public health and preserve public funds, particularly during economic downturns;¹²⁹

Many segments of the population experience disparities in overweight and obesity prevalence, based on race and ethnicity, gender, age, and socioeconomic status.³⁰ In addition, children from lower-income families and children of color in urban America face limited access to parks, open spaces, and other opportunities for physical activity.³¹ A national study of 20,000 young people in the United States found that resources for physical activity – including public parks and recreation facilities, as well as private facilities – were distributed inequitably, with non-white and lower-income neighborhoods twice as likely as higher-income white neighborhoods to lack even a single facility for physical activity.³² Likewise, research shows that communities with higher poverty rates and higher percentages of African-American residents have significantly fewer parks and green spaces.³³

WHEREAS, identifying joint use opportunities among public agencies and community organizations can help in the long-term planning for and development of capital facilities and related programs;

Individual agencies should tailor the above recitals to reflect local needs. For example, if obesity prevention is less of a priority than efficient use of limited public resources, an agency may choose to include additional clauses concerning budget constraints and limit the number of clauses that focus on obesity prevention.

WHEREAS, the [City/County/District] of _____ is the owner of real property and capital facilities located at _____ (“Sites”);

WHEREAS, [City/County/District]’s governing body finds that the Sites can be used more efficiently to maximize use and promote [recreational/educational] activities for youth and other community residents; and

WHEREAS, [City/County/District] desires to promote joint use as a means of enhancing and increasing access to facilities and related programs with the ultimate goal of improving the public health of community residents and preserving public funds.

It is important to designate a body with accountability, whether it is a formal subcommittee or task force or informal citizens’ group; otherwise the intent and purpose of this resolution may never come to fruition.

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

NOW, THEREFORE, BE IT RESOLVED by the governing body of [City/County/District] that the above recitations are true and correct.

By affirming the above statements, the public agency is providing the justification for expending resources (both monetary and non-monetary) to promote joint use of its facilities and related programs.

BE IT FURTHER RESOLVED that the governing body of [City/County/District] hereby promotes joint use as a means of enhancing and increasing access to [City/County/District] facilities and related programs;

BE IT FURTHER RESOLVED that a Joint Use Task Force (“Task Force”) is hereby created for the purpose of working with [City/County/District/Organization] to develop a long-term plan for the joint use of [facility/programs].

It is equally important to assign a leader of the committee/task force/group to ensure that an individual is accountable to the governing body and responsible for promoting joint use.

BE IT FURTHER RESOLVED that the [City/County/District] Manager, or his/her designee, is hereby assigned Chair of the Task Force;

BE IT FURTHER RESOLVED that as Chair of the Task Force, the [City/County/District] Manager, or his/her designee, is hereby authorized to take any and all actions necessary to achieve the purposes of this Resolution, including without limitation, appointing members to the Task Force, surveying existing [City/County/District] facilities and related programs to determine opportunities for joint use, meeting with key stakeholders to promote joint use, drafting a formal joint use policy, negotiating joint use agreements with partner [agencies/organizations], and educating [City/County/District] staff and community members about the importance of joint use.

This list is not meant to be exhaustive; it is intended to outline some of the tasks/actions the leader can undertake to ensure a robust and successful joint use program.

By including a monetary figure in the resolution, a public agency can demonstrate its commitment to executing a successful joint use program.

BE IT FURTHER RESOLVED that the [City/County/District] Manager is hereby authorized to expend up to and including _____ Dollars (\$ _____) to accomplish the intent and purpose of this Resolution.

Requiring the leader to report back to the governing body ensures accountability and increases the likelihood of a successful joint use program.

→ **BE IT FURTHER RESOLVED** that as Chair of the Task Force, the *[City/County/District]* Manager, or his/her designee, shall report back to this governing body on a *[monthly/quarterly/semi-annual/annual]* basis to update the body and the community on joint use accomplishments and progress

DULY ADOPTED this ___ day of _____, 2012.

KaBoom!

It starts with a
playground.

kaboom.org



APPENDIX 3

Sample Agreements

This appendix provides four distinct examples of joint use agreements. Representing different parts of the country, these four agreements range in scope from simple to complex.

Santa Barbara, California

Agreement for Joint Use, Programming, Maintenance, and Development between the City of Santa Barbara and Santa Barbara School Districts

Oldsmar, Florida

Joint use of facilities agreement between the City of Oldsmar and the School Board of Pinellas County

Sammamish, Washington

Joint Use Agreement for Development, Maintenance, Scheduling and Operations of Recreation Facilities between Lake Washington School District and City of Sammamish

Charlotte, North Carolina

Land Swap and Lease/Operating Agreement (Recreation Center – Hickory Grove)



Santa Barbara, California

This fairly detailed agreement lays out a commitment to joint planning and development as well as the joint use of facilities for both recreational and education purposes. The scope of this agreement indicates a community-wide vision for joint use efforts.



**AGREEMENT FOR
JOINT USE, PROGRAMMING, MAINTENANCE,
AND DEVELOPMENT**

AGREEMENT, entered into this ____ day of _____, 2006, by and between City of Santa Barbara and Santa Barbara School Districts, hereinafter referred to as “City” and “District.”

WITNESSETH:

WHEREAS, Education Code Sections 17051(a) and 35275 and Government Code Section 6500 et seq. authorize and empower public school districts and municipalities to cooperate with each other and to that end enter into agreements with each other for the purpose of organizing, promoting and conducting community recreation and education programs for children and adults; and

WHEREAS, the City and District have previously agreed to the joint use and maintenance of recreational and educational facilities and the joint programming and development of recreational and educational activities; and

WHEREAS, the City and District desire to continue the cooperative use of their respective recreational and educational facilities; and

WHEREAS, the City and District, being mutually interested in and concerned with the provision of adequate facilities for the recreation and education of the residents of the community and students of the District, deem it necessary and desirable to cooperate with one another in the development and joint use of their recreational and educational facilities and appurtenances as hereinafter described in order to insure the most efficient and economical utilization of such facilities and to promote the general recreational and educational programs and objectives of the City and the District.

NOW, THEREFORE, the City and District mutually covenant and agree with each other as follows:

1. Principles

- A.** The City and District shall cooperatively plan the development and maintenance of certain school and recreational areas, facilities and buildings to insure their maximum joint use for the benefit of the residents of the City of Santa Barbara.
- B.** The administrators and delegated representatives of the City and the District shall confer regularly in regard to acquisition, development, use and maintenance of joint-use facilities to ensure maximum community use and to avoid duplication.

2. Joint Planning

- A.** The City and District shall advise each other of development or redevelopment plans regarding buildings, fields, pools, etc. that may be used jointly for recreation and education purposes.
- B.** The District's planning staff and the City's planning staff may perform minor and short-term planning and design work for each other on an actual cost basis as staff work loads permit.
- C.** Public buildings and facilities constructed by the District or the City shall be designed to effectively serve the specific purpose for which they are constructed. Where practical, public buildings and facilities shall also be designed to address community needs for leisure-time activities and school programs. Buildings and grounds shall be designed to be compatible with the surrounding environment, with a strong awareness for efficiency of operation, maintenance and aesthetics.
- D.** The City's planning staff and the District's planning staff or architect may consult on the preparation of an efficient, integrated master site plan.

3. Joint Development

- A.** The City and the District may agree to jointly develop or redevelop facilities they deem beneficial to both agencies. Projects recommended for joint development by the Joint Use Committee shall be presented to the City Administrator and Superintendent of Schools for consideration.
- B.** The cost of developing or redeveloping such facilities may be shared as deemed appropriate and approved by both agencies in accordance with applicable law.
- C.** The responsibility for preparing designs, specifications, bidding, supervision of work and maintenance of the facility to be jointly developed or redeveloped shall be defined and approved by the City and the District before starting the development.
- D.** The owner of the real property upon which the facility has been developed shall determine the availability of jointly developed facilities for joint use.

4. Appropriations

The Joint Use Committee may consider and make recommendations to the City Administrator and the School District Superintendent regarding budgeting priorities.

The fall meeting of the Joint Use Committee shall be dedicated to the discussion of new projects and changes to programming or facility use.

New projects or additions or deletions of programming or facilities may be presented to the Joint Use Committee for consideration.

5. Joint Use

- A. The District agrees to grant to the City, upon City's application, the use of designated facilities or equipment owned by the District; provided the use of such facilities or equipment for City recreation purposes shall not interfere with the use of such facilities and equipment by the District or constitute a violation of any applicable laws.
- B. The City agrees to grant to the District, upon District's application, the use of designated facilities or equipment owned by the City which the District may require in connection with its programming; provided the use of the facilities or equipment by the District shall not interfere with the use of the facilities or equipment by the City.
- C. The use of facilities and equipment pursuant to this agreement shall be granted subject to the owner's current rules and regulations.
- D. The City Parks and Recreation Director and the District Business Manager are hereby delegated the responsibility of establishing schedules for the use of joint-use facilities and equipment.
- E. The party using facilities or equipment of the other pursuant to this agreement shall furnish qualified personnel as deemed necessary by the owner for the proper conduct and supervision of the use.
- F. A party using facilities or equipment of the other party pursuant to this agreement shall repair, or cause to be repaired, or will reimburse the owner for the actual cost of repairing damage done to said facilities or equipment during the period of such use, excluding damage attributed to ordinary wear and tear. The City and the District reserve the right to remove facilities or equipment from the terms of this agreement due to continued misuse of a facility or equipment following written notice documenting said misuse.
- G. Except as otherwise provided in this Agreement, the party using a facility of the other party shall be responsible for direct costs associated with the use of the facility including, but not limited to, monitor fees, cleaning fees, equipment set-up or take-down fees, and District health assistants that administer/dispense medication to participants of afterschool programs taking place at District sites. If services are not provided or required, fees will not be charged.
- H. **District Facilities Available for Joint Use**
District facilities made available for joint use shall provide access to available indoor or covered facilities in the event of inclement weather,

restrooms and a telephone for emergencies. City staff may reach an agreement with individual school principals regarding type and location of storage (or storage container) at a school site.

Elementary Schools	Available Use
Adams	Fields, blacktop, play equipment, classroom, and auditorium
Cesar Chavez	Fields and classroom
Cleveland	Fields, blacktop, play equipment, classroom, and auditorium
Franklin	Fields, blacktop, play equipment, classroom, and auditorium
Harding	Fields, blacktop, play equipment, classroom, and auditorium
McKinley	Fields, blacktop, play equipment, classroom, and auditorium
Monroe	Fields, blacktop, play equipment, classroom, and auditorium
Open Alternative	Blacktop, play equipment, and classroom
Peabody	Fields and basketball courts
Roosevelt	Fields, blacktop, play equipment, classroom, and auditorium
Washington	Fields, blacktop, play equipment, classroom, and auditorium
Secondary Schools	Available Use
La Colina Junior High	Fields, blacktop courts, theatre, locker room, gym, classroom
La Cumbre Junior High	Fields, blacktop courts, theatre, locker room, gym, classroom
Goleta Valley Junior High	Fields, blacktop courts, locker room, classroom
Santa Barbara Junior High	Fields, blacktop courts, gym, classroom, locker room and multi-purpose room, parking lot (located at Quarantina & Ortega)
San Marcos High School	Fields, gym, pool, basketball courts, classroom
Santa Barbara High School	Fields, gym, pool, tennis courts, basketball courts, classroom

I. City Facilities Available for Joint Use

Recreation Facilities

Cabrillo Park Softball Field
 Carrillo Ballroom
 Carrillo Street Gymnasium
 Carrillo Recreation Center
 Dwight Murphy Soccer Field
 Dwight Murphy Softball Field
 Cabrillo Bath House
 East Beach Volleyball Courts & Picnic Area
 Harding Recreation Center
 Las Positas Tennis Courts
 Los Baños del Mar Pool
 Municipal Tennis Stadium and Courts
 Oak Park Tennis Courts
 Ortega Park Softball Field
 Ortega Park Pool
 Ortega Soccer Field
 Pershing Park Softball Fields
 Pershing Park Tennis Courts
 Santa Barbara Golf Club
 West Beach Volleyball Courts

Recreation Facilities Limited to Monday to Thursday Use

Cabrillo Arts Center (no school dances)
Casa las Palmas
Chase Palm Park Recreation Center
Louise Lowry Davis Center
MacKenzie Adult Building
Ortega Welcome House

Parks

Ortega Park
Skofield Park

Parks Limited to Monday to Thursday Use

Alameda Park
Chase Palm Park
La Mesa Park
Leadbetter Beach
Mission Historic Park
Oak Park
Stevens Park

J. City Facilities Not Available for Joint Use

MacKenzie Park Youth Baseball Fields
Leadbetter Beach Volleyball Courts
Pershing Park Baseball Field

6. Scheduling

- A.** In scheduling the use of school facilities, District events and programs shall have first priority; City recreation programs and Parks and Recreation Department co-sponsored programs shall have second priority scheduling; community youth groups (except Parks and Recreation Department co-sponsored programs) shall have third priority and other community organizations or agencies shall have fourth priority. In cases of emergencies or errors in scheduling, District events and programs shall have first priority for use at District facilities and City events and programs shall have first priority for use at City facilities. Every reasonable attempt will be made to avoid scheduling conflicts. Parks and Recreation Department activities shall not be scheduled at school facilities before the end of the school day when school is in session without the express permission of the appropriate school principal.
- B.** Users of District facilities or equipment whose use is scheduled by the City shall be responsible for field lining, furnishing temporary bleachers or seating as allowed, nets, clocks, or any other field preparation cost, expense or effort, including materials, tools and labor.

- C. The City Parks and Recreation Department shall have a responsible adult representative present at all Parks and Recreation Department events held on District property. The representative may be a volunteer or a paid Parks and Recreation Department employee responsible for ensuring that District rules and regulations are observed and that the facilities and grounds are returned to their prior existing condition upon completion of the activity. The City shall have a Parks and Recreation Department employee on call at all times when a Parks and Recreation Department sponsored or scheduled activity is occurring on District property in order to respond to questions or investigate improper actions.
- D. The District shall have a responsible adult representative present at all District events held on City property. The representative may be a volunteer or a paid District employee responsible for ensuring that City rules and regulations are observed and that the facilities and grounds are returned to their prior existing condition upon completion of the activity. The District shall have a District employee on call at all times when a District sponsored or scheduled activity is occurring on City property in order to respond to questions or investigate improper actions.
- E. The City and the District shall submit to each other written use requests in advance on a District Civic Center permit or City Facility Use Permit following procedures established by each party. Additionally, when submitting City Facility Use Permit requests, the District will follow the “Joint Use of City Facilities: Procedures”. Permit requests must be submitted in advance and reservations will be made on a “first come, first serve” basis.

7. After-School Recreation Programming

- A. The City and the District, as annually budgeted and within available resources, shall provide after-school recreation services at certain school sites for specific age groups. Programs and services may be jointly funded, funded by only one party or funded by third parties.
- B. Each party shall annually review the scope and content of the after-school recreation programs and determine the level of funding to be approved and appropriated for the upcoming fiscal year. The Joint Use Committee shall review these programs annually to determine the effectiveness, value and the need for such programs and shall make recommendations for changes and modifications to the City Administrator and the Superintendent of Schools.
- C. Distribution of City program promotion documents (flyers) at district sites must be bilingual, and only provide information on City parks and recreation programs offered at district sites. Flyers must be approved in advance by the District Superintendent or designee. Flyers should be submitted for approval with adequate lead time and once approved,

duplicated and bundled in accordance with the distribution requirements for each individual school site.

- D. A representative list of afterschool recreation programs includes the following:
 - a. Junior High School After-school Sports and Recreation Program
 - b. Elementary After-School Opportunities for Kids Program
 - c. Elementary Recreation After-School Program
 - d. Youth Sports Leagues for Elementary School Age Youth

8. Maintenance of Facilities Jointly Developed or Used

- A. Facilities jointly developed shall be adequately maintained to ensure appropriate and safe use, appearance and longevity.
- B. In general, the responsibility for maintenance, repair and renovation of jointly developed facilities shall be the responsibility of the owner of the real property on which the facility is situated.
- C. Joint maintenance of the same facility should not occur except in the case of emergencies or as recommended by the Joint Use Committee and approved by the City and the District.
- D. The maintenance of District sports fields and playgrounds may be provided by the City as specifically agreed to by the parties. The City shall annually determine the funds available for such maintenance and shall appropriate funds according to this determination. The City Parks and Recreation Director shall determine the facilities and areas to which the City will provide maintenance and the level of maintenance that will be provided. The Joint Use Committee may make recommendations to the Parks and Recreation Director regarding the City provided maintenance.
- E. The City may install sprinkler systems, turf, playground equipment, fencing, restroom facilities and additional recreation equipment on District facilities; provided such installation does not conflict with District use and subject to approval of the District. All such improvements and facilities constructed or placed on District property shall be available for District use. Improvements made under this provision shall be conducted under separate agreements specifying the long-term use, maintenance responsibilities and other appropriate issues regarding the improvements consistent with the provisions of this agreement. After a reasonable period of time, as mutually agreed to by the parties, title to any improvements on District property shall vest to

the District. Should this agreement be terminated, the District and the City shall agree upon a fair purchase value, accounting for depreciation, for improvements on District property for which title has not yet vested to the District or the District and the City shall agree to remove the improvements from District property.

F. The City, as directed by District, shall collect on behalf of the District any user, custodial or maintenance fees established by the District for scheduled use of District property. Collected fees shall be remitted to the District quarterly. The District shall determine the amount of such fees.

G. The District shall provide all custodial services for auditoriums, gymnasiums, restrooms and other indoor facilities on District property. The District, at the discretion of the Superintendent of Schools, may charge scheduled users (including the City) a custodial fee for custodial staff time even if custodial staff is working regularly scheduled hours. If District facilities are used at a time when custodial staff is not regularly on duty, or when a custodian is required to open a facility, the scheduled user shall pay the cost of the custodial staff time.

H. City Maintenance of District Facilities

As recommended and approved by the Joint Use Committee, City shall coordinate with District to provide the following maintenance at the facilities:

- a. Aerate and fertilize sport fields.*
- b. De-thatch sport fields.*
- c. Re-grade, fill holes and seed/re-sod the sport fields.*
- d. Repairs or maintenance to field lights.
- e. Litter pick-up by all Parks and Recreation Department programs.*

* These maintenance activities shall be provided only at those sites where Parks and Recreation Department league games occur on a seasonal basis, subject to City funding.

I. Maintenance of Athletic Fields

J. Notwithstanding the general provisions above regarding the maintenance and scheduling of joint use facilities, the parties hereby agree to the following specific provisions regarding the maintenance, scheduling, monitoring and lighting of the athletic fields at La Colina Junior High School, Santa Barbara Junior High School, La Cumbre Junior High School and Franklin Elementary School (hereafter referred to as “Field” or “Fields” for purposes of this subsection 8H). To the extent the provisions of this subsection 8H conflict with other provisions of this Agreement, the provisions of this subsection shall control.

a. Field Maintenance

- i. Maintenance Standards.** The District shall maintain the Fields and their associated irrigation systems in accordance with the Minimum Maintenance Standards attached hereto as Exhibit A. Any additions, alterations, changes or amendments to the Minimum Maintenance Standards shall be subject to prior written approval of the City Parks and Recreation Director (Director) or the Director's designee and the District Superintendent or the Superintendent's designee. The District shall schedule and monitor the use of the Fields so as to prevent overuse and destruction of the turf.
- ii. Integrated Pest Management.** The District shall utilize Integrated Pest Management (IPM) principles and practices in the maintenance of the athletic fields in accordance with Santa Barbara School Districts Board Policy 3514.2, and Administrative Regulation 3514.2. The District shall utilize all applicable least toxic measures including mechanical, cultural, and pesticide alternatives prior to resorting to the use of pesticide with treating weeds, insects, fungus, gophers and any other pest that would harm the safety and quality of play on the athletic fields.
- iii. Contracting/Work Performance.** The District may contract with a third party to perform the maintenance work on the Fields, in which case the District will be responsible for the bidding and administration of the contract. The District is responsible for assuring that all maintenance is performed in accordance with the approved Minimum Maintenance Standards and that the contractor complies with all applicable federal, state and local regulations, laws and ordinances.
- iv. Funding.** The District shall be responsible for all costs of maintaining the Fields including, but not limited to, irrigation system management, water costs, fertilization, aeration and mowing. Should the maintenance costs exceed \$55,000 during the term of this agreement, the City agrees to reimburse the District for one half of the maintenance costs in excess of \$55,000. However, in no case shall the City's total reimbursement exceed \$35,500. Performance of the City's reimbursement obligation shall be conditioned upon: (1) Oversight Committee approval of the fields' condition at its most recent meeting; (2) the District continuing its maintenance of the field consistent with the Minimum Maintenance Standards; and (3) the District providing the City with a detailed cost accounting of all field maintenance costs.

- v. **Oversight Committee.** An oversight committee shall be formed as a sub-committee to the Joint Use Committee to evaluate the maintenance of the Fields for consistency with the Minimum Maintenance Standards. The oversight committee shall consist of two City members of the Joint Use Committee or their designates, two District members of the Joint Use Committee or their designates, one representative from a local organization selected by the Joint Use Committee, and the Principal at each school site. The oversight committee shall conduct quarterly meetings. The Committee shall conduct itself in conformity with the Ralph M. Brown Act. A majority of the members oversight committee shall constitute a quorum to conduct business. Oversight Committee decisions shall be made by majority vote of the committee members present at any meeting of the committee attended by at least a quorum. Tie votes shall be lost motions. The oversight committee shall evaluate the condition of the fields and may recommend amendments to the Minimum Maintenance Standards to protect and preserve the condition of the field. However, the City Parks and Recreation Director and the District Superintendent must approve any amendment to the Minimum Maintenance Standards before taking effect.

b. Field Scheduling and Monitoring

- i. **City Services.** City shall provide scheduling and monitoring services for the Fields as described in Exhibit B. The District shall provide the City with a maintenance and closure schedule for each Field on a quarterly basis.
- ii. **User Fees.** In order to reimburse the City for the staff time and other expenses required to perform the scheduling and monitoring services, the City shall be authorized to charge and collect fees for the use of the Fields (“Field Rental Fees”) according to the schedule attached as Exhibit C.
- iii. **Funding.** Each Party shall annually review the scope and content of the field maintenance, scheduling and monitoring of athletic fields and determine the level of funding to be approved and appropriated for the upcoming fiscal year.

To the extent the Field Rental Fees collected do not fully reimburse the City for the expense of providing the scheduling and monitoring services, the District shall reimburse the City for expenditures made in performance of the scheduling and monitoring services up to Twenty Thousand Dollars (\$20,000) per fiscal year. The City shall bill the District for reimbursement at the end of each quarter. The District shall reimburse the

City within thirty (30) days of receipt of the City's invoice. If the Field Rental Fees collected during the term of this Agreement exceed the cost of the staff time and other expenses required to perform the scheduling and monitoring services during the term of this Agreement, City shall place the excess funds in a segregated account for future use consistent with the terms of this Agreement at the discretion and direction of the City/School District Joint Use Committee.

c. Field Lighting

The City shall pay the utility cost of lighting the fields at Santa Barbara Junior High School. The District shall pay the utility cost of lighting the fields at La Colina Junior High School.

9. Joint Use Vehicle Program

- A.** District agrees to grant to City, upon its application and in accordance with the terms of this Agreement, use of passenger vans and buses owned by District ("District Vehicle(s)").
- B.** City agrees to grant to District, upon its application and in accordance with the terms of this Agreement, use of passenger vans and buses owned by City ("City Vehicle(s)").
- C.** District Vehicles and City Vehicles may sometimes be referred to collectively as "Joint Use Vehicles").
- D.** Neither party shall pay any rental or use fee for the use of the other's vehicles. This reciprocal offer of use constitutes good and valuable consideration for this agreement.
- E.** No Joint Use Vehicle may be used outside of Santa Barbara County without prior written permission of the owner of the vehicle. No employee of either party may use any Joint Use Vehicle for personal use.
- F. Vehicle Scheduling and Priority of Use**
 - a. General Timing.** In general, City Vehicles will be made available to District when public schools are in session, and District Vehicles will be made available to City when public schools are not in session.
 - b. Written Requests.** The party wanting use of the other party's vehicle will submit a written vehicle use request to the other party's transportation supervisor in advance.
 - c. Request Contents.** Vehicle use requests will include, to the extent known by the party making the request, the class of vehicle

requested, date, time, destination, number of passengers and name of the driver for the trip.

- d. **Verification of Driver Licensing Compliance.** Each Party must verify and will only allow drivers to drive that are in compliance with licensing requirements of the Department of Motor Vehicle code.

10. Restrooms on Junior High School Sites

- A. The restroom facilities located on the athletic fields at Santa Barbara Junior High School and La Cumbre Junior High School shall be available for public use on a drop-in basis, and during scheduled activities.
- B. The District shall be responsible for opening the restrooms on all non-holiday weekdays. The District shall stock the restrooms with toilet paper and paper towels. Costs of these services will be paid by the District.
- C. The District may use contract services for the cleaning of floors, walls, and fixtures. Field Monitor or contract services will be used for closing of restrooms on non-holiday weekdays and the opening and closing of restrooms on weekends and holiday weekdays. Cost of these services will be paid through the field scheduling and monitoring budget.
- D. The District shall be responsible for removal of graffiti and necessary repairs, including those caused by vandalism.
- E. Scheduled Parks and Recreation Department activities shall have use of the restrooms included as part of the facility use charge.
- F. The District has accepted the restrooms as capital improvements of the District and shall maintain property and liability insurance coverage for the facilities in amounts determined by the District.

11. Park Ranger Patrol Program

- A. City Park Rangers are available to patrol District properties to document and report acts of graffiti and vandalism, enforce rules and prohibitions according to valid authority; check doors and windows to ensure that buildings are secure; monitor scheduled events; issue parking citations (as necessary); assist City Police Department in identifying abandoned vehicles and similar related duties.
- B. The District shall pay the cost of park ranger patrols on District properties. The City and the District shall enter into an on-going agreement specifying the District's funding commitment and the extent and hours of coverage.

12. Establishment of City and District Joint Use Committee

A Joint Use Committee shall be established consisting of three (3) staff members from both the City and the District knowledgeable in the subject matter within the Joint Use Committee’s jurisdiction. In addition to the three (3) members of the Committee, the City shall provide an administrative assistant to prepare agendas, minutes and correspondence and to perform other administrative tasks for the Committee.

The Superintendent of Schools and City Administrator shall appoint representatives to the Joint Use Committee for two-year terms. Vacancies on the Committee shall be filled by appointment of the Superintendent of Schools or City Administrator for the balance of the member’s term.

The Committee shall meet at least three times a year, but may meet additional times each year as necessary to administer this agreement. The Committee shall annually elect a Chair and Vice-Chair by majority vote of the Committee members.

The Committee shall be responsible for:

- A. Administering this joint use agreement in compliance with the Ralph M. Brown Act and all other applicable laws and regulations;
- B. Establishing sub-committees to administer facility scheduling, junior high after-school sports and recreation programs, and other matters in compliance with the Ralph M. Brown Act and all other applicable laws and regulations;
- C. Preparing an annual report of the Joint Use Committee to the City Council and Board of Education. The annual report shall be submitted to the City Council and Board of Education by July 1 each year. The report shall summarize the administration of the joint use agreement for the previous fiscal year and make any recommendations the Joint Use Committee deems appropriate concerning the future administration of the joint use agreement.

13. Term of Agreement

This agreement shall commence upon the date first entered above and shall end on June 30, 2010 unless otherwise terminated pursuant to the terms of this agreement. Either party may terminate this agreement and the rights and obligations hereunder, with or without cause, by providing the other party one year prior written notice of the party’s intent to terminate the agreement.

14. Indemnification

The City shall investigate, defend and indemnify the District from any and all claims, demands, actions or damages arising out of the City’s use of District Facilities to which the District may be subjected as a direct consequence of this agreement except for those claims, demands, actions or damages resulting

solely from the negligence of the District, its officers, agents and employees. The District shall investigate, defend and indemnify the City from any and all claims, demands, actions or damages arising out of the District's use of City Facilities to which the City may be subjected as a direct consequence of this agreement except for those claims, demands, actions or damages resulting solely from the negligence of the City, its officers, agents and employees.

15. Complete Understanding and Amendments

This agreement and the attached exhibits set forth the complete agreement and understanding of the parties; any modification must be in writing executed by both parties.

16. Notices

If at any time after the execution of this agreement, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the United States mail, return receipt requested, first class postage prepaid and (1) if intended for City shall be addressed to:

City Clerk
City of Santa Barbara
P.O. Box 1990
Santa Barbara, CA 93102-1990

with a copy to:
Parks and Recreation Director
City of Santa Barbara
P.O. Box 1990
Santa Barbara, CA 93102-1990

and (2) if intended for Santa Barbara Unified School District shall be addressed to:

Santa Barbara School Districts
720 Santa Barbara Street
Santa Barbara, CA 93501

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail.

IN WITNESS WHEREOF, the parties have executed this agreement on the date and year first above written.

Signatures

Oldsmar, Florida

This short and simple agreement focuses on the joint use of school district and city recreational facilities. It covers all the main topics addressed in the toolkit including liability, maintenance, scheduling and communication between parties.



JOINT-USE-OF-FACILITIES AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of April, 2010, by and between the **CITY OF OLDSMAR, FLORIDA**, a municipal corporation, hereinafter referred to as "City" and **THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA**, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board may request the use of various City-owned facilities for its recreation programs, or other Board-related programs; and

WHEREAS, the City may request the use of various Board-owned facilities for its recreational programs, public meetings, and other City-related programs; and

WHEREAS, the Board and the City are each willing to cooperate in this matter on certain terms and conditions;

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the Board and the City mutually agree to the joint use of their respective facilities, under the following terms and conditions:

1. **Term.** The term of this Agreement will be for a period of five (5) years beginning April 8, 2010, and ending April 7, 2015. This Agreement may be extended for additional 5-year periods under the same terms and conditions set forth herein, with written agreement and approval by the Board and the City.

2. **Scheduling Uses.** Short-term uses of facilities may be scheduled with the joint approval of the Superintendent of Schools and the City Manager, or their respective designees, as indicated on a Facility Use Authorization Form, a sample of which is attached as Exhibit "A," which will be prepared by the Board's Real Estate and Concurrency Services. Said form will be

JOINT-USE-OF-FACILITIES AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of April, 2010, by and between the CITY OF OLDSMAR, FLORIDA, a municipal corporation, hereinafter referred to as "City" and THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board may request the use of various City-owned facilities for its recreation programs, or other Board-related programs; and

WHEREAS, the City may request the use of various Board-owned facilities for its recreational programs, public meetings, and other City-related programs; and

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considered an amendment to this Agreement when executed by the Superintendent of Schools and the City Manager, or their respective designees.

3. **Use of Facilities Owned by Board.** The Board agrees to make its facilities available when the use thereof does not interfere or conflict with any Board programs. Use of said facilities will not be earlier than 8:00 a.m. nor later than 11:00 p.m. for outdoor use and not later than 12:00 midnight for indoor use.

4. **Use of Facilities Owned by City When Normally Open.** The City agrees to make its facilities available when the use thereof does not interfere or conflict with any City programs. Use of said facilities will conform with the hours the facilities are normally open to the public.

5. **Use of Facilities When Normally not Open.** If one party desires to use the other party's facilities at a time other than when normally open (e.g., outside normal hours, vacations, holidays, staff-development or in-service days, and times when the facility owner normally has no staff on duty), the using party will be required to pay the direct costs incurred for said use; (e.g., utility, facility and personnel costs) at the prescribed rates of the facility owner. Direct costs may also be charged the using party for repetitive interior uses of facilities, regardless of the presence of facility owner staff. The Board and the City will not charge each other when said direct costs are less than fifty- (\$50) dollars.

6. **Return Condition of Facility.** The party using the facility agrees to return the facility and surrounding area to a clean and sanitary condition after use by that party or any of its agents or invitees.

7. **Supervision of Program.** Each party will provide its own personnel for the supervision of the programs it conducts.

8. **Restriction of Use.** Use of the facility by private parties or organizations or by business enterprises for profit is prohibited unless specifically approved by the Superintendent of

Schools and the City Manager, or their respective designees. The Board and the City further agree to make no unlawful, improper or offensive use of the facility and all rights of the using party hereunder will be terminated by the Board or the City in the event that such use is made thereof. All persons using facilities owned by the Board will abide by all Board policies, including Board policies, which state that the consumption of tobacco products or alcoholic beverages on Board property, including any outside areas, is prohibited. All persons using facilities owned by the City will abide by all City policies and the City's Code of Ordinances.

9. **Liability.** The City and Board shall be liable for their own acts of negligence, or their respective agents' acts of negligence when acting within the scope of their employment, in the performance of this Agreement; provided, however, that the City's and Board's liability is subject to the monetary limitations and defenses imposed by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the parties, nor shall anything herein be construed as consent by the parties to be sued by any third party for any cause or matter arising out of or related to this Agreement.

10. **Assignment, Inspection and Termination.** The Board and the City will not assign this Agreement or sublet any facilities of the other party or any part thereof without the written consent of the other party. The Board and the City agree that each party and its officers, agents, and servants will have the right to enter and inspect their facilities and the operation being conducted thereon at reasonable times. This Agreement will remain in effect unless terminated by either party as follows:

- a) Upon breach of this Agreement by a party, the other party will give written notice of termination of this Agreement specifying the claimed breach and the action required to cure the breach. If the breaching party fails to cure the breach within five (5) days

from receipt of said notice, then this Agreement will terminate ten (10) days from receipt of the written notice;

- b) Either party may terminate this Agreement for any reason by giving written notice to the other party that the Agreement will terminate thirty (30) days from the receipt of said notice by the other party.

11. **Unforeseen Questions**. The Board and the City agree that in the event of unforeseen questions arising out of the use of the said facilities or questions of use, the questions will be settled in writing between the Superintendent of Schools and the City Manager or their respective designees for resolution of such questions concerning this Agreement.

12. **Headings**. The headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope of intent of this Agreement or any part hereof, or in any way affect the same, or construe any provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

CITY OF OLDSMAR, FLORIDA

Kathy Horvath
City Clerk, *Interim*

By: J. Paul
Mayor

Approved as to form and content:

Chowen Frank
City Attorney

ATTEST:

THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA

J. Hoff Jim Madden for
Superintendent

By: Janet R. Clark
Chairperson

Approved as to form and content:

Jeanne A. Johnson
General Counsel

Exhibit "A"

FACILITY USE AUTHORIZATION FORM

Date: March 23, 2010
To: Agency
Subject: Additional Use Request under the Agreement Between the School Board of Pinellas County and City of Oldsmar effective April 8, 2010 (5 yrs)

Requestor:
Description of Use:
Facility(ies): **SAMPLE – Note: This form will be completed by Real Estate & Concurrency Services and submitted for signatures.**

Dates & Times:
Supervision By:

Coordinator (& Phone #) for School Board:
Coordinator (& Phone #) for Agency:

The following estimated costs will be incurred as a result of the said use:

Wages:	\$
Direct Costs	\$ 000.00
Other (List)	\$ _____
Total	\$ 000.00

The facility owner/representative _____ will invoice _____ for the above-described costs, which may vary if the actual use of facilities differs from that shown above. This form, when executed by the authorized representative for the School Board and the authorized agency representative, will be authorization to use the above described facility on the dates and times set forth herein. This additional use is granted under the terms and conditions of the above said agreement.

Additional conditions, if any:

City of Oldsmar

School Board of Pinellas County, Florida

Authorized Representative Date
for Agency

Authorized Representative Date
for School Board
11111 S. Belcher Rd., Largo, FL 33773

With copies to: Superintendent of Schools
Director, Accounting
Director, Auditing
Associate Superintendent (Region II-V)
School Representative
School Bookkeeper
Agency Representative

RPC #

Sammamish, Washington

In the preamble to this agreement, the parties clearly articulate a compelling motivation for engaging in joint use planning: “WHEREAS, the City and District are stewards of public lands in the City; and because it is in the best interest of the community and of both the City and District to provide the best service possible to meet their respective obligations with the least possible expenditure of public funds, cooperation between the City and the District is necessary...” This agreement provides detailed guidance to the parties about scheduling, liability, security, maintenance, and insurance.



**Lake Washington School District and City of Sammamish
Joint Use Agreement for
Development, Maintenance, Scheduling and Operations
Of Recreation Facilities**

This Agreement is made and entered into this 15th day of June, 2004, by and between the Lake Washington School District No. 414 (hereinafter referred to as the "District"), a municipal corporation and subdivision of the State of Washington, and the City of Sammamish (hereinafter referred to as the "City"), a municipal corporation. This umbrella Agreement supports the City's management and/or scheduling of District athletic fields and/or facilities.

WITNESSETH:

WHEREAS, the governing bodies of the City and District are mutually interested in supporting adequate programs for the community in the areas of athletics, recreation and education; and

WHEREAS, the governing bodies are authorized pursuant to RCW 39.34 to enter into agreements with each other and to do any and all things necessary to meet the respective obligations of their agencies; and

WHEREAS, the City has established the Department of Parks and Recreation (hereinafter referred to as the "Department") to be responsible for carrying out the purpose of community parks development and recreation programs; and

WHEREAS, the District is responsible for the public education of the students in the community, including physical education and athletic activities related to the educational program; and

WHEREAS, the City and District are stewards of public lands in the City; and because it is in the interest of the community and of both the City and the District to provide the best service possible to meet their respective obligations with the least possible expenditure of public funds, cooperation between the City and the District is necessary and will benefit both entities; and

WHEREAS, the City and the District have recognized for many years that through cooperation, these publicly-held lands can be used to meet broader community needs for education, recreation and open space than either party can provide separately; and

WHEREAS, the City has concluded that the recreation needs of the community could be better met if the development and maintenance of District facilities were enhanced to levels beyond that needed for the educational requirements of the District; and

WHEREAS, the City and the District are mutually interested by means of this Agreement in improving the existing conditions of certain District athletic facilities in order to expand and enhance their use for both the schools and overall community; and

WHEREAS, the City and the District anticipate entering into more specific agreements relating to this Agreement and joint use of athletic facilities by means of Addendum(s) to this Agreement and, upon mutual execution of this Agreement, the District authorizes its Deputy Superintendent and/or Director of Support Services to enter into such Addendums.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the City and District hereby agree to cooperate with each other in carrying out the above-stated purposes, and to that end do agree as follows:

SECTION 1: Purpose and Subject Matter

The subject of this Agreement is the City's development, maintenance, and operations of District recreation facilities, excluding football stadiums, located within the City of Sammamish. In the future, this may also include District-owned gymnasiums.

The parties agree the school properties and facilities of the District are intended primarily for school and educational purposes and are for the benefit of students and the school age population.

The parties agree that during the time period covered by this Agreement, the athletic fields and facilities are intended to be used jointly for school and community recreation purposes for the benefit of District students, the District, and the City at large. 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.

SECTION 2: Joint Use

A. District Facilities

- a. The District will make school facilities available for City recreational activities and programs. The Director of Parks and Recreation, or his designated representative, shall select (in writing) facilities for use, subject to the approval of the District Superintendent of Schools or his designated representative.
- b. The use of selected school 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 entitled "Community Use of District Facilities", a copy of which is attached hereto as *Exhibit A* and incorporated herein by reference, as it may be amended from time to time ("District Policy"), or as otherwise provided by this Agreement.
- c. City use of District school facilities shall be scheduled in advance with the District and the schedule shall be arranged in order to avoid conflict between school and recreation use. In scheduling said facilities, school events and programs (regardless of which District school has requested scheduling of said facilities) shall have first priority (as set forth in the District Policy), and community recreation events established by the Parks and Recreation Department shall have second priority.

B. City Facilities

- a. The City will make City facilities available to the District for school events, activities, and/or programs. The Superintendent of Schools, or his designated representative, shall select (in writing) facilities for use, subject to the approval of the Director of Parks and Recreation or his designated representative.

- b. The use of selected City facilities shall be in accordance with the regular procedures of the City in granting permits for the use of such facilities, or as otherwise provided for by this Agreement.
- c. District use of City facilities shall be scheduled in advance with the City and the schedule shall be arranged in order to avoid conflict between recreation and school use. In scheduling said facilities, Parks and Recreation Department activities and events shall have first priority, and school events and programs shall have second priority.

C. Personnel

- a. The City, through its Department of Parks and Recreation, agrees to train and provide qualified personnel to supervise the City sponsored activities which take place on school facilities, and the District agrees to train and provide qualified personnel to supervise the school activities which take place on City facilities.

SECTION 3: District Outdoor Athletic Facilities Scheduling and Use:

- a. The City shall act as scheduling coordinator for outdoor athletic facilities at the elementary schools located within the City (Blackwell, McAuliffe, Mead and Smith). The District shall act as scheduling coordinator for the remaining District outdoor facilities located within the City. The parties intend that, in the future, the City shall act as scheduling coordinator for all outdoor athletic facilities located within the City except for the High School Stadium.
- b. District programs and activities will have the right to preempt other users upon giving 24 hours advance notice, except in extraordinary circumstances.
- c. The City and District shall allocate available field time to community users based upon District Policy. Team rosters with player addresses will be used as needed to verify equity among applicants. The City shall be responsible for holding scheduling conferences in February and October of each year to coordinate time requirements of the various user groups.
- d. A group applying for use of facilities, in its policies and practices, shall not discriminate against any person on the basis of race, color, religion, national origin, handicaps, age, marital status, or sex. As a part of his/her application to the District, the applicant shall attest and certify with regard to his/her non-discrimination practices, all as further set forth in the District Policy.
- e. Without prior consent of the District, the City shall not use pesticides or herbicides on District-owned property and any approved use shall be consistent with District policy.
- f. Schedule of available times for the school facilities which are not in conflict with school use shall be:

Elementary Fields:

September- June Mon- Fri: 4:00 p.m. to Dusk
(academic year) Sat: 8:00 a.m. - Dusk
Sun: 9:00 a.m. - Dusk
July-August Mon - Sat: 8:00 a.m. - Dusk

Sun: 9:00 a.m. - Dusk

Secondary Schools Fields:

September - June Mon- Fri: 6:00 p.m. to Dusk (unlighted)
6:00 p.m. to 10:00 p.m. (lighted)

Sat: 8:00 a.m. to Dusk (unlighted)
8:00 to 10:00 p.m. (lighted)

Sun: 9:00 a.m. to 6:00 p.m.

July- August Mon-Sat: 8:00 a.m. to Dusk (unlighted)
8:00 a.m. to 10:00 p.m. (lighted)

Sun: 9:00 a.m. to 6:00 p.m.

- g. The parties agree that, in the event neither the District nor the City is requesting use of each other's facilities under this Agreement, but instead a third party is requesting such use, that the priority of use shall be determined in the following order:

(1) City of Sammamish Youth Organizations:

Youth organizations or teams who have at minimum of sixty-five percent (65%) of its members residing in the City of Sammamish. A minimum of fifteen percent (15%) of the time available at District facilities, exclusive of District use, shall be reserved for these youth organizations that are not affiliated with the Parks Department and whose members reside in the City and/or District.

Field allocation will be documented annually by the number of teams and level of participation verified by team rosters with player names and addresses.

(2) City of Sammamish Adult Organizations:

Adult organizations who have a minimum of sixty-five percent (65%) of its members residing or working in the City of Sammamish.

(3) Other Youth Organizations:

Youth organizations where sixty-five percent (65%) or less of the members reside outside the City of Sammamish.

(4) Other Adult Organizations:

Adult organizations where sixty-five percent (65%) or less of the members reside outside the City of Sammamish.

SECTION 4: Joint Improvements & Renovations

- a. The District reserves the right to improve, renovate and install equipment on District owned and operated fields as necessary to support its academic, and/or athletic programs without restriction. The District will keep the City informed of significant improvements prior to their occurrence.
- b. For all District-owned property leased and operated by the City, the District may propose District funded improvements. The design, plans, specifications, type of construction, safety features, placement and maintenance costs shall be submitted to the City for review and approval. The City shall not unreasonably withhold its approval of such District-initiated efforts.
- c. For all City-initiated improvements and City-initiated equipment installation on District property under this Agreement, the design, plans, specifications, type of construction, safety features, placement and maintenance requirements are subject to written approval from the District prior to any development, construction, or installation by the City. The District shall not unreasonably withhold its approval of such City-initiated efforts.
- d. The cost of maintaining and operating such facilities, and the improvements and equipment installations thereon, shall be mutually agreed to by the City and District and further the City and District agree to maintain such areas in good condition during the periods of their respective responsibility.
- e. Any City initiated renovations and improvements to District owned facilities will be coordinated with the applicable school principal and the District's Director of Support Services. Care will be taken to ensure renovation activities do not unreasonably interfere with the educational environment of the school and do not close facilities critical to the school, school activities, school recess, lunch periods, physical education and/or athletic program requirements.

SECTION 5: Fees and Charges

- a. The City may charge rental fees to community users of District-owned athletic facilities to cover any administrative and maintenance costs which the District or City may incur. Any additional fees and costs shall be assessed only after consultation with the District and consistent with District Policy.

SECTION 6: Security

- a. Except as provided below in this section, the District shall provide general site security for the outdoor facilities at the school to the same extent it does for all District facilities. In the event the City enters into a long-term lease with the District for District owned fields and facilities, the City shall assume security requirements similar to that found at other city-operated parks. However, school personnel shall remain responsible for the proper supervision and protection of students under their care.
- b. Security, parking control, and crowd control are the responsibilities of the user of the property. The user shall assure the City that all vehicles are kept off District fields and away from unauthorized places. The user shall ensure that good order is maintained at all

times. For District owned and operated property, the user shall also certify in writing to the City that his/her group will comply with all of the District's policies which prohibit tobacco, smoking, alcoholic beverages and weapons. The users assume full responsibility for the conduct of persons involved in the user's activity or who are on the property with the consent of, at the invitation of, or as result of his/her group's activity. Such responsibility also includes the cost of repair to or replacement of property damaged or destroyed by the act or omissions of the users, their agents, or invitees. Either the City or District may require, as a condition of use, the hiring of security personnel and/or commissioned police officers.

- c. Security of gate and locks are also the responsibility of the party using the District facility. Users shall be notified that they may be assessed an extra fee for any gates and/or locks left unsecured after their use. This provision shall not apply when District or City staff is present to supervise the security of the facility.
- d. The City will ensure adequate supervision of community user groups utilizing school facilities under this Agreement in order that regular school activities are not compromised.

SECTION 7: Clean-up and Maintenance

- a. Trash and garbage cleanup of facilities is the responsibility of the party using the property. The user shall ensure that fields, gymnasiums and other facilities are left clean immediately after use. Extra trash and garbage pickup fees may be assessed by the City for any third party using the property and not leaving it in a clean condition. If a facility is not left in a clean condition suitable for use by the District, the District may accomplish the cleaning and charge the City.
- b. All user-owned equipment, materials, and gear shall be removed from the site after each use, unless prior arrangements have been made with the City and District. Failure to do so may result in the City or District removing and storing the equipment with the cost of the removal and storage being assessed to the user.
- c. For District owned and operated fields and facilities, the District is responsible for the primary maintenance to the standard traditionally provided to serve its educational and athletic programs. The City may augment the District's maintenance program for these sites.

SECTION 8: Advertising

- a. No permanent advertising will be allowed under this Agreement unless agreed to by both parties on a case-by-case basis.

SECTION 9: Annual Meeting

- a. For each school operating under this Agreement, a District representative, a school site representative, and a representative of the City will meet at least once a year prior to May 1 to establish a joint use scheduling calendar for the next year. The calendar will allocate blocks of time throughout the day, week and year for use by each party, in accordance with the priorities established by District Policy.

SECTION 10: Conflict Resolution

- a. If either party believes that the other party is not fulfilling the performance obligations established by this Agreement, that party shall give written notice of its complaint to the other party. The party receiving the complaint shall, within 15 calendar days, correct the situation and confirm the correction in writing or reject the complaint explaining the mitigating circumstances and why a remedy cannot be achieved.
- b. If the City and District representatives are unable to resolve the complaint, the District's Director of Support Services and the City's Director of Parks and Recreation shall meet to resolve the complaint. If they are unable to do so, the issue shall be referred to the District's Superintendent and the City Manager for resolution.

SECTION 11: Term of Agreement

- a. The first term of the joint operation program described in this Agreement is considered a pilot program. It enables the parties to try out the arrangement and evaluate whether it works to each party's satisfaction. The first term of the Agreement shall be three (3) years commencing upon execution of this Agreement by both parties. At any time during this first term, or the option periods referenced below, either party may terminate the Agreement by providing the other party three (3) months written notice.
- b. Contingent upon the satisfactory results of a joint evaluation of the pilot program, the District and City shall have the option of mutually extending the Agreement, and any amendments mutually agreed to by the parties, for an additional four (4) years. The terms and conditions of this Agreement may be modified by mutual consent to reflect changed conditions and/or experiences. The parties may also, by mutual consent, extend the Agreement a second time by an additional five (5) years. The exercise of the option periods shall be accomplished 180 days prior to termination of the existing term. All extensions of the Agreement shall be in writing executed by both parties.
- c. If the parties fail to mutually extend this Agreement as set forth in subsection 11b, and neither party has terminated the Agreement, the terms of this Agreement, or such other terms as the parties have agreed upon in writing, shall be renewed automatically for one-year periods thereafter unless terminated by either party in the manner provided in this Agreement.
- d. Should the Agreement be terminated prior to the expiration of the current or a future Agreement period, the terminating party will be responsible for reimbursing the terminated party for any improvements made by the terminated party to the terminating party's property. The reimbursement shall be based on the straight line depreciated value of the improvement unadjusted for inflation based on the following schedule:
 - i Field improvements: 10 year schedule
 - ii Equipment improvements: 5 year schedule
 - iii Building construction: 40 year schedule

SECTION 12: Operating Rules

- a. The District and the City shall jointly promulgate site operating rules consistent with adopted District policies, regulations, procedures and adopted City ordinances, policies and resolutions to ensure the safety and welfare of all site users.

SECTION 13: Indemnification and Insurance

- a. District Property Leased to City.

The City agrees to protect, defend, indemnify, and save harmless the District, its officers, employees, and agents from any costs, claims, judgments, and/or awards for damages, arising out of or in any way resulting from the use, maintenance or operation of District-owned facilities that are being leased by the City, except for (i) injury or damage attributable to the sole negligence of the District, or (ii) where the District is using such facilities pursuant to a District sponsored or controlled program and such injury or damage is not attributable to some act or omission of the City. In the event the District incurs any judgment, award and/or cost arising there from, including attorneys' fees to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the City.

- b. District Property Not Leased to City.

This subsection shall apply to incidents that occur at District-owned facilities that are not being leased by the City.

(1) The City agrees to protect, defend, hold harmless, indemnify, and defend the District, its officers, employees, and agents from any costs, claims, judgments, awards or liability for damage arising out of or in any way resulting from the use, maintenance or operation of District-owned facilities that are not being leased by the City when such facilities are being, or have been, used pursuant to a City program or assignment as contemplated in this Agreement, except where (i) such injury or damage arises out of, or is a result of, a District sponsored or controlled activity on the premises, (ii) where such injury or damage is not attributable to some act or omission of the City, or (iii) the injury or damage is attributable to some act or omission of the District. In the event the District incurs any fees, expenses and/or costs, including reasonable attorney's fees, to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the City.

(2) The District agrees to protect, defend, hold harmless, indemnify, and defend the City, its officers, employees, and agents from any costs, claims, judgments, awards or liability for damage caused by any act or omission by the District that arises out of the use, maintenance or operation of District-owned facilities that are not being leased by the City when community users are using such facilities pursuant to a City program or assignment as contemplated in this Agreement, where such injury or damage is not attributable to some act or omission of the City. In the event the City incurs any fees, expenses and/or costs, including reasonable attorney's fees, to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the District.

- c. City Property Leased to District.

The District agrees to protect, defend, indemnify, and save harmless the City, its officers, employees, and agents from any costs, claims, judgments, and/or awards for damages, arising out of or in any way resulting from the use, maintenance or operation of City-owned facilities that are being leased by the District, except for (i) injury or damage attributable to the sole negligence of the City, or (ii) where the City is using such facilities pursuant to a City sponsored or controlled program and such injury or damage is not attributable to some act or omission of the District. In the event the City incurs any judgment, award and/or cost arising there from, including attorneys' fees to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the District.

d. City Property Not Leased to District.

This subsection shall apply to incidents that occur at City-owned facilities that are not being leased by the District.

(1) The District agrees to protect, defend, hold harmless, indemnify, and defend the City, its officers, employees, and agents from any costs, claims, judgments, awards or liability for damage arising out of or in any way resulting from the use, maintenance or operation of district-owned facilities that are not being leased by the District when such facilities are being, or have been, used pursuant to a District program or assignment as contemplated in this Agreement, except where (i) such injury or damage arises out of, or is a result of, a City sponsored or controlled activity on the premises, (ii) where such injury or damage is not attributable to some act or omission of the District, or (iii) the injury or damage is attributable to some act or omission of the City. In the event the City incurs any fees, expenses and/or costs, including reasonable attorney's fees, to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the District.

(2) The City agrees to protect, defend, hold harmless, indemnify, and defend the District, its officers, employees, and agents from any costs, claims, judgments, awards or liability for damage caused by any act or omission by the City that arises out of the use, maintenance or operation of City-owned facilities that are not being leased by the District when community users are using such facilities pursuant to a District program or assignment as contemplated in this Agreement, where such injury or damage is not attributable to some act or omission of the District. In the event the District incurs any fees, expenses and/or costs, including reasonable attorney's fees, to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the City.

SECTION 14: Insurance:

a. District Liability Coverage. This Section shall apply: (1) when the District is using District-owned facilities leased by the City under a separate Agreement that references and incorporates this Agreement, and (2) to liabilities or incidents arising out of acts or omissions by the District from the use, maintenance or operation of District-owned facilities that are not being leased by the City when community users are using such facilities pursuant to a City program or assignment as contemplated in this Agreement, where such injury or damage is not attributable to some act or omission of the City.

(1) Nature of Coverage.

- (a) The District shall maintain commercial general liability coverage or shall obtain a coverage agreement through a Risk Pool authorized by Chapter 39.34 RCW which shall provide liability coverage to the District for the liabilities contractually assumed by the District in this Agreement, and arising out of the activities pertaining to this Agreement.
- (b) By requiring such liability coverage, the District shall not be deemed to, or construed to, have assessed the risks that may be applicable to the City in this Agreement. The City shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

(2) Scope and Limits of Liability Coverage. Coverage shall be at least as broad as:

- (a) General Liability: Insurance Services Office form number (CG00 01 Ed. 1188) Covering Commercial General Liability, with a limit of not less than: \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate.

The policy or coverage agreement shall include but not be limited to:

- (i) coverage for premises and operations;
 - (ii) contractual liability (including specifically liability assumed herein);
 - (iii) Employers Liability or "Stop-Gap" coverage.
- (b) Automobile Liability: Insurance Services Office form number (CA 00 01 Ed. 12-90) Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2,8, & 9 for a limit of not less than \$1,000,000 combined single limit per occurrence.
 - (c) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

(3) Deductibles and Self-Insured Retentions. Any deductible and/or self-insured retention shall be the sole responsibility of the District.

(4) Other Provisions. The coverages required by this Agreement are to contain or be endorsed to contain the following provisions where applicable.

- (a) Liability Coverages. To the extent of the District's negligence as herein assumed, the District's liability coverage shall be primary coverage as respects the City, its officers, officials, employees, and agents. Any insurance and/or self insurance maintained by the City, its officers, officials, employees, and agents shall not contribute with the District's coverage or benefit the District in any way.
- (b) All Policies and Coverage Agreements. Coverage shall not be suspended, voided, canceled, materially reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice, sent by registered mail, has been given to the City.

- (c) Acceptability of Insurers. Unless otherwise accepted by the City, insurance coverage is to be placed with a Risk Pool authorized by Chapter 39.34 RCW or insurers with a Best's rating of no less than A: VIII, or, if not rated by Best's, with minimum surplus the equivalent of Best's surplus size VIII.
 - (d) Verification of Coverage. The District shall furnish the City with certificates of coverage. The certificates for each policy or coverage agreement are to be signed by a person authorized to bind coverage. The certificates are to be received and accepted by the City prior to the commencement of activities associated with this Agreement. Acceptance hereunder shall be presumed unless otherwise notified by the City. The City reserves the right to require complete certified copies of the pertinent parts of applicable policies at any time.
- b. City Liability Coverage. This Section shall apply in all circumstances when the City is leasing, using or operating District-owned facilities or assigning the right to use such facilities to members of the community.

(1) Nature of Coverage.

(a) The City shall maintain commercial general liability coverage or shall maintain liability coverage via the City's self-insurance program for the liabilities contractually assumed by the City in this Agreement, and arising out of the activities pertaining to this Agreement.

(b) By requiring such liability coverage, the District shall not be deemed to, or construed to, have assessed the risks that may be applicable to the City in this

Agreement. The City shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

(2) Scope and Limits of Liability Coverage. Coverage shall be at least as broad as:

(a) General Liability: Insurance Services Office form number (CG00 01 Ed. 1188) Covering Commercial General Liability, with a limit of not less than: \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate.

The policy or coverage shall include but not be limited to:

- (i) Coverage for premises and operations;
- (ii) Contractual liability (including specifically liability assumed herein);
- (iii) Employers Liability or "Stop-Gap" coverage.

(b) Automobile Liability: Insurance Services Office form number (CA 00 01 Ed. 12-90) Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, & 9 for a limit of not less than \$1,000,000 combined single limit per occurrence.

(c) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

- (3) Deductibles and Self-Insured Retentions. Any deductible and/or self-insured retention shall be the sole responsibility of the City.
- (4) Other Provisions. The coverages required by this Agreement are to contain or be endorsed to contain the following provisions where applicable.
- (a). Liability Coverages. To the extent of the City's negligence as herein assumed, the City's liability coverage shall be primary coverage as respects the District, its officers, officials, employees, and agents. Any insurance and/or self insurance maintained by the District, its officers, officials, employees, and agents shall not contribute with the City's coverage or benefit the City in any way.
- (b). All Policies and Coverage Agreements. Coverage shall not be suspended, voided, canceled, materially reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice, sent by registered mail, has been given to the District.
- (c). Acceptability of Insurers. Unless otherwise accepted by the District and if the City obtains commercial insurance, insurance coverage is to be placed with insurers with a Best's rating of no less than A: VIII, or, if not rated by Best's, with minimum surplus the equivalent of Best's surplus size VIII.
- (d). Verification of Coverage. The City shall furnish the District with certificates or other proof of coverage required by this Agreement. The certificates for each policy or coverage are to be signed by a person authorized to bind coverage. The certificates are to be received and accepted by the District prior to the commencement of activities associated with this Agreement. Acceptance hereunder shall be presumed unless otherwise notified by District. The District reserves the right to require complete certified copies of the pertinent parts of applicable policies at any time.

SECTION 15: Assignment

- a. Neither party will assign or sublet its rights or responsibilities under this Agreement without the written authorization of the other party. Written authorization shall not be withheld unreasonably.

SECTION 16: Severability

- a. If any term or clause of this Agreement is held invalid or unenforceable, the remainder of the Agreement will not be affected, but shall continue in full force.

SECTION 17: Notice

- a. Each notice or other communication which may be or is required to be given under this Agreement, shall be in writing and shall be deemed to have been properly given when delivered personally during normal working hours to the party to whom such communication is directed, or three (3) working days after being sent by regular mail, to the following addresses:

If to the City:

Jeff Watling
Parks and Recreation Director
486 228th Ave NE
Sammamish, WA 98074
Business Phone: (425) 898-0660
Fax: (425) 898-0669

If to the District:

Forrest W. Miller
Director of Support Services
15212 NE 95th St
Redmond, WA 98052
Business Phone: (425) 882-5108
Fax: (425) 882-5146

SECTION 18: Non-Waiver

- a. Failure of either party to insist upon the strict performance of any term of this Agreement will not constitute a waiver or relinquishment of any party's right to thereafter enforce such term.

SECTION 19: Integration

- a. This writing contains all terms of the parties' agreement on this subject matter. It replaces all prior negotiations and agreements, subject to the provisions of Section 1 herein above. Modifications must be in writing and be signed by each party's representative.

SECTION 20: Filing

- a. This Agreement shall be filed with the County Auditor pursuant to RCW 39.34.040.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on their behalf.

Dr. F. Donald "Don" Saul
Superintendent
Lake Washington School District

Ben Yazici
City Manager
City of Sammamish

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that ____ signed this

Charlotte, North Carolina

Unlike more traditional joint use agreements, the agreement between Mecklenburg County and the Charlotte-Mecklenburg Board of Education encompasses two phases of joint use planning. First, it lays out the basic terms of a land conveyance between the county and the board of education. Second, it addresses the use of school and county premises once the construction of a new school facility is completed. While many of the issues that should be included in a joint use agreement are covered in detail (e.g., repairs and maintenance, indemnity and insurance, termination), other topics such as rules and regulations and scheduling are referenced but more fully described in a separate memorandum of understanding. The benefit of this approach is that it allows for flexibility, as the parties are not forced to enter into an official amendment to the agreement each time there is a scheduling change or new operational regulation.



MECKLENBURG COUNTY

CONTRACT # 040584

NORTH CAROLINA

LAND SWAP & LEASE/OPERATING AGREEMENT
(Recreation Center – Hickory Grove)

THIS LAND SWAP & LEASE/OPERATING AGREEMENT (this “Agreement”) entered into the be effective May 1, 2004, is made and entered into by and between **THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION**, (the “CMBE”), and **MECKLENBURG COUNTY** (the “County”).

BACKGROUND

1. CMBE owns certain property known as Hickory Grove Elementary School, consisting of approximately 12.41 acres, as shown on Exhibit A attached hereto and incorporated herein by reference (the “Current School Property”).
2. The County owns certain adjoining property, consisting of approximately 11.48 acres, as also shown on Exhibit A (the “Current County Property”) (the Current School Property and the Current County Property collectively referred to herein as the “Hickory Grove Site.”).
3. CMBE and the County desire that a new elementary school (the “New School”), including a new recreation center, be constructed on the Hickory Grove Site as generally shown on the master site plan (the “Approved Site Plan”) attached hereto and incorporated herein as Exhibit B. Additionally, it is acknowledged and agreed that the County may develop at a later date additional park facilities (the “Park Facilities”) and/or perhaps a full service branch library (the “Library”) operated by the Public Library of Charlotte-Mecklenburg County (“PLCMC”) at the Hickory Grove Site in accordance with this agreement.
4. The phasing plan is generally as described as follows:
 - a. CMBE intends to construct a new elementary school on a portion of the Hickory Grove Site. As part of the construction of a new elementary school, a recreation center shall be constructed, such recreation center to be used by both CMBE and the County in accordance with this Agreement.
 - b. At a later date to be determined (and funding permitting) PLCMC intends to either (1) renovate a portion of the currently existing school building or (2) to create a new branch library.
 - c. At a later date to be determined (and funding permitting), the County intends to develop park facilities that will be developed in conjunction with CMBE and PLCMC school and library development.
5. The recreation center to be constructed by CMBE is also generally shown on Exhibit B, and is referred to herein as the “Premises.”
6. The County promises to contribute to the cost of constructing the Premises in an amount of \$1,200,000 and shall spend an additional \$300,000 for equipping the Premises.

AGREEMENT

NOW, THEREFORE, the parties hereto, for themselves and their successors and permitted assigns, agree as follows:

1. **OWNERSHIP OF REAL ESTATE; LAND SWAP; FURTHER ASSURANCES.** After completion of construction of the School, CMBE and the County shall swap land so that the final boundary line is generally as shown on Exhibit B. The intent is that the County and CMBE each will own the same amount of land as each currently owns. The exact boundary line shall be determined by survey mutually agreeable to the County and CMBE staff. CMBE and the County agree to in good faith approve, sign and record appropriate deeds, easement agreement(s) and other closing documents, including any appropriate amendments to this Agreement as reasonably required by each and their respective counsel. The Superintendent and County Manager are authorized to approve and sign any such appropriate documents. Any conveyances shall be subject to this Joint Use Agreement. The land to be owned by CMBE is hereinafter referred to as the "School Property" and the land to be owned by the County is hereinafter referred to as the "County Property."

The closing of the conveyance of the School Property to CMBE shall occur as soon as reasonably possible after approval of the survey noted above. The closing of the conveyance of the County Property to the County shall occur within 60 days of the date County notifies CMBE that it wants to close on the County Property, but in no event earlier than 60 days from the date of the opening of the New School on the School Property.

By entering into this Agreement, the County hereby authorizes CMBE and its contractors to enter the Current County Property for purposes of constructing the School.

2. **DESIGN/CONSTRUCTION.** CMBE shall cause a to be selected design build team ("Design-Builder"), to design the School, including the Premises, in accordance with basic programmatic information furnished by CMBE and the County (as to the Premises) generally in accordance with the Approved Site Plan. Communication with and direction of Design-Builder shall be through CMBE, but both parties shall participate in the review of the plans and specifications during the design development phase of the Design-Builder's work. The County shall approve the plans for the Premises. It is expected that the School shall be completed on or before August 2006.

Prior to January 1, 2006, the County shall advise CMBE as to whether the County desires CMBE to demolish all or a portion of the currently existing school facilities located on the Current School Property or if the County desires such facilities to remain. If the County advises CMBE that the County does want the structures demolished, then CMBE shall be responsible for the costs of such demolition and shall cause such demolition work to be completed no later than 180 days after CMBE vacates the existing school facilities.

As noted above, at a later date, the County expects to design and construct the Park Facilities and the Library on the County Property. CMBE staff shall be given the opportunity to review

proposed plans and specifications and provide input for the design of the Park Facilities and the Library.

3. **LEASE OF PREMISES; LICENSE TO USE GROUNDS.** Upon the terms and conditions set forth herein, CMBE leases to County, and County leases from CMBE the Premises; provided, however, CMBE reserves the exclusive right to use the Premises (i) during regular school hours on school days (as such terms are defined by CMBE) and (ii) during certain weekend and evening hours during the school year at dates and times to be determined by CMBE prior to each school year (“CMBE’s Reserved Hours”). County may use the Premises during CMBE’s Reserved Hours, if, and to the extent, approved by Hickory Grove Elementary School administration (“School Staff”) in its sole discretion.

CMBE also grants to County and to County’s employees and invitees, the right to use the outdoor fields, parking lots, driveways and walkways located on the School Property (the “School Grounds”) designated by School Staff, in accordance with CMBE’s rules and regulations applicable to use of the School Grounds and also in accordance with scheduling and other operational policies and procedures established by the parties under the Annual Memorandum of Understanding as provided for in Section 11.

County grants to CMBE and to CMBE’s employees and invitees, the right to use the outdoor fields, parking lots, driveways and walkways located on the County Property (the “Park Grounds”) designated by County Park & Recreation staff, in accordance with County’s rules and regulations applicable to use of the Park Grounds and also in accordance with scheduling and other operational policies and procedures established by the parties under the Annual Memorandum of Understanding as provided for in Section 11. CMBE shall have the exclusive right to use the play field and play area to be constructed by CMBE on the County Property (located behind the new school building as generally shown on Exhibit B) during CMBE’s Reserved Hours.

4. **DELIVERY OF PREMISES.** CMBE shall deliver possession of the Premises to County upon completion of construction of the Premises and the issuance of a certificate of occupancy. County may, prior to delivery, enter the Premises at its own risk for the purpose of installing its equipment and making other leasehold improvements, so long as such entry does not unreasonably interfere with completion of the Premises. County will receive a set of “As Built” drawings of the Premises within thirty (30) days of receipt by CMBE.
5. **TERM.** The term of this Agreement (the “Term”) commences upon its execution and shall run until July 1, 2055 and shall automatically renew on a year to year basis unless terminated by either party by providing one-year advance written notice to the other.
6. **RENT.** No rent shall be paid from County to CMBE.
7. **REPAIRS & MAINTENANCE.** County will be responsible for the operation, security, repair and routine maintenance of the interior of the Premises at all times, including, without limitation, janitorial service and replacement of broken windows, except CMBE will be responsible for the routine maintenance of the Premises floor. CMBE shall also be responsible for the repair and maintenance of the exterior and structural portions of the Premises; provided,

however, County shall be responsible for any needed snow and ice removal if County desires to operate the Premises during non-school hours.

8. **OPERATING EXPENSES.** County shall arrange and pay for all services required by County in connection with its use of the Premises, including, but not limited to, the cost of management and operation, except CMBE will pay for utilities for the entire Premises for the benefit of both CMBE and County. (Additionally, if the County elects to irrigate or light any outdoor field space at a later date, the County shall be responsible for operation costs, including water and electric bills for such irrigated and/or lighted fields).
9. **USE AND OPERATION.** The Premises shall be used by County solely for public purposes, for the operation of a recreation and athletic facility, which shall be open to the general public and shall provide facilities for leisure, recreation, athletics and other similar uses incidental thereto.
10. **SCHEDULING.** Subject to Section 3 above, County shall be responsible for coordinating the scheduling of the Premises in cooperation with CMBE. In order to facilitate scheduling, School Staff will provide the County's Parks and Recreation Department Director, or designee, no later than July 1 annually, a schedule of CMBE's Reserved Hours. This procedure will not preclude School Staff from making requests to use the Premises at other times which additional requests County will endeavor to grant. Within 30 days after receiving such notice from CMBE, County will provide CMBE a schedule of the dates and times it intends to operate programs in the Premises. This procedure will not preclude County from scheduling additional programs; provided, however, in no event shall County schedule any programs during regular school hours on school days on any portion of the Premises not under CMBE's exclusive control without first obtaining approval of the School Staff. Additional details as to scheduling and other operational policies and procedures shall be established by the parties in the Memorandum of Understanding described in Section 11 hereof.
11. **RULES & REGULATIONS; MEMORANDUM OF UNDERSTANDING.** CMBE shall have the right to establish, modify, publish and enforce reasonable and uniform rules and regulations applicable to use of the Premises and School Grounds. County agrees to comply with such rules, regulations, policies, and procedures, and to use its best efforts to cause its employees, agents, guests, and invitees to comply. Such rules and regulations, in addition to scheduling and other operational policies and procedures to be established by the parties, shall be documented in a separate Annual Memorandum of Understanding, as the same may be modified from time to time. The Annual Memorandum of Understanding need only be approved by the Superintendent of The Charlotte-Mecklenburg Schools, or designee, and the County's Parks and Recreation Department Director, or designee.
12. **TAXES.** CMBE and County shall each pay all taxes and assessments, if any, levied upon its own furnishings, fixtures, equipment and other personal property located in the Premises. CMBE shall be responsible for obtaining a certificate of occupancy for the Premises. CMBE and County shall each obtain and pay for all permits or licenses required by any law, ordinance, statute, or regulation in connection with the conduct of its own use of the Premises. CMBE shall pay all taxes and assessments, if any, levied upon the Premises (including the underlying land).

13. **VOLUNTARY IMPROVEMENTS BY COUNTY.** County shall not make alterations, additions or improvements to the Premises or any other portion of the Premises, or Grounds without prior written consent of CMBE, which consent will not be unreasonably withheld. All permanent alterations and improvements shall become part of the Premises and shall remain upon and be surrendered with the Premises upon the expiration or termination of this Agreement.
14. **REMOVAL OF PERSONAL PROPERTY.** County may remove, within sixty (60) days after the expiration or termination of this Agreement, any temporary improvements, trade fixtures, equipment and personal property which County shall have placed in the Premises at its expense, provided that County restores the Premises to the same condition as existed at the commencement of the Term or later installation, normal wear and tear excepted.
15. **NONDISCRIMINATION.** The parties hereto, for themselves and their successors in interest and permitted assigns, covenant and agree, that (i) no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the basis of sex, national origin, race, ethnic background, color, religion, age or disability in the use of the Premises; and, (ii) in the furnishing of services thereon and thereto, no person shall be excluded from participation herein, denied the benefits of, or otherwise be subjected to discrimination on the basis of sex, national origin, race, ethnic background, color, religion, age or disability.
16. **LIENS.** Each of the parties shall keep the Premises free from any and all liens of any nature for any work done, labor performed or materials furnished thereon at the instance or request of, or on the behalf of, each party; and each party shall defend, indemnify and save harmless the other party from and against any and all claims, liens, demands, costs and expenses of any nature for such work done, labor performed, or materials furnished.
17. **INDEMNITY AND INSURANCE.** To the extent permitted by law, CMBE and County shall each defend, indemnify and save harmless the other party and its employees, agents, and officers from and against any and all losses, claims, suits, damages or expenses, including but not limited to reasonable attorneys fees, arising out of or in any manner connected with the indemnitor's occupancy, use or operation of the Premises, excepting, however, losses, damages, suits, claims or expenses caused by the sole negligence of the indemnitee, its officers, agents or employees. Each of the parties hereto shall, at its expense, procure and maintain in full force and effect during the Term hereof a policy of automobile bodily injury and property damage liability insurance covering owned, nonowned and hired vehicles for an amount reasonably acceptable to the other party; a policy of comprehensive general insurance for bodily injury and property damage liability for reasonably acceptable to the other party; and a policy of workers' compensation insurance, with applicable statutory limits. In lieu of the insurance required hereunder, each party may elect to provide the equivalent insurance under a self-insurance program reasonably acceptable to the other party. All policies of insurance (including participation certificates in a self-insurance program) shall provide that the same shall not be canceled or materially altered until a 30-day written notice of cancellation, material change or nonrenewal has been served upon the other party. Each party shall file with the other party certificates evidencing that the required insurance policies or their equivalent are in effect. In

the event any of the policies of insurance required herein are canceled or not renewed, the party required to maintain such insurance shall, prior to the effective date of cancellation or non-renewal, procure other insurance in the amounts and in accordance with the conditions set forth herein. Except as provided in Section 19, below, the procuring of the required policies of insurance shall not be construed to be a limitation of a party's liability or as a full performance on its part of the indemnification provisions of this Agreement, each party's obligation being, notwithstanding such policies of insurance, the full and total amount of any damage, injury, expense or loss caused by or attributable to the indemnitor's activities conducted under this Agreement.

18. **PROPERTY INSURANCE COVERAGE.** CMBE shall carry fire and extended coverage, vandalism, and malicious mischief insurance coverage on the Premises, including machinery, equipment and fixtures, in the full replacement value thereof and shall name County as an additional insured for the County's interest in such improvements. County shall carry at its expense "all risk" insurance coverage upon the contents of the Premises in the full replacement value thereof and shall name CMBE as an additional insured for CMBE's interest, if any, in such contents. In lieu of the insurance required hereunder, each party may elect to provide the equivalent insurance under a self-insurance program reasonably acceptable to the other party. All policies of insurance (including participation certificates in a self-insurance program) shall provide that the same shall not be canceled or materially altered until a 30-day written notice of cancellation, material change or non-renewal has been served upon the other party. County and CMBE shall provide to each other the necessary evidence of the above coverage in the form of certificates.
19. **WAIVER OF SUBROGATION.** CMBE and County agree that in the event any part or parts of the Premises or contents thereof are damaged or destroyed by fire or other casualty, the rights or claims of either party, its agents, successors or assigns against the other with respect to such liability for any loss, destruction or damage resulting therefrom, including loss suffered as a result of the negligence of either party or their agents, are hereby released and discharged to the extent such loss, destruction or damage is covered by the insurance or equivalent self-insurance program required by this Agreement, and any and all subrogation rights or claims under any insurance coverages insuring the premises, fixtures and contents are hereby waived to the extent such loss, destruction or damage is covered by insurance, **even if caused by the negligence of the other party.** All policies of fire or other insurance covering the Premises, fixtures or contents shall contain a clause or endorsement providing, in substance, that the insurance shall not be prejudiced if the insureds have waived any rights of recovery or subrogation against any person or persons prior to the date of loss, destruction or damage.
20. **UNTENANTABLE PREMISES.** If any portion of the Premises leased to County are partially damaged by fire or other casualty to the extent of 50% or less of its replacement value, CMBE shall repair such damage as quickly as is reasonably possible. If the Premises are completely destroyed by fire or other casualty, or damaged to an extent greater than 50% of their replacement value, then at the option of either party, this Agreement shall terminate as of the date of such damage or destruction, and CMBE shall be under no obligation to repair or rebuild the Premises. If CMBE chooses to rebuild after any such casualty (provided that CMBE complies with its insurance obligations hereunder), County agrees to pay 75% of any replacement costs incurred by CMBE in rebuilding that are not paid by its insurer.

Joint Use Hickory Grove Gym - FINAL.3.24.04

21. **DEFAULT.** Should County default in the performance of any term, covenant or condition to be performed by County and such default is not remedied within thirty (30) days from and after written notice to it by CMBE specifying said default, or, if such default cannot be remedied within that period, and diligently and continuously pursued, CMBE may declare this Agreement and all rights and interests created thereby to be terminated.

22. **QUIET ENJOYMENT.** CMBE warrants that it is or will be the sole owner of the Premises and has or will have the right to lease the same to County upon the terms and conditions set forth herein; that the same are free from all encumbrances, restrictions and tenancies; and that County shall quietly hold and enjoy the Premises for the full Term so long as it does not remain in default in the performance of its covenants or observance of its conditions hereunder beyond any applicable curative period.

23. **NOTICES.** Any and all notices to be given under this Agreement or otherwise may be served by enclosing the same in a sealed envelope addressed to the party intended to receive the same, at its address and deposited in the United States Mail as registered or certified mail with postage prepaid, as follows:

If to CMBE: The Charlotte-Mecklenburg Board of Education
701 E. Second Street
Charlotte, NC 28202
Attn.: Superintendent

copy to: The Premises
Attn. Principal

If to County:
Attn.: Director, Parks and Recreation

When so given, the notice shall be effective three (3) days after the date of mailing. Either party may change its notice address by giving written notice thereof to the other party. Either party may also give notice by hand delivery at the above address or by facsimile at such numbers that may be established by the parties from time to time.

24. **RELATIONSHIP.** The relationship between CMBE and County is strictly that of landlord and tenant, and nothing contained in this Agreement shall be deemed to make the parties joint ventures or partners or to grant County any fee interest in the Premises or any improvements constructed therein.

25. **SEVERABILITY.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

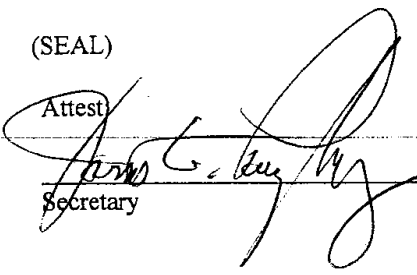
26. **AMENDMENTS.** This Agreement may be amended only by written instrument executed by the parties hereto.

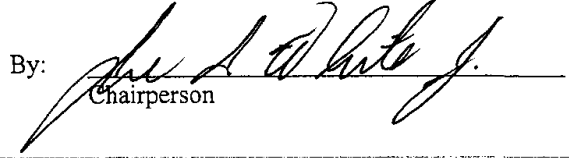
27. **WAIVER, CONSENT AND APPROVAL.** Any consent or approval required hereunder and any waiver of a provision hereof shall be effective only if given in writing signed by the representative of the party to be charged, and then such waiver, consent or approval shall be effective only in the specific instance and for the purpose given. Whenever under this Agreement the approval or consent of a party is required, such approval shall not be unreasonably withheld or delayed.
28. **APPLICABLE LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina, and any action brought in connection herewith shall be brought in Mecklenburg County, North Carolina.
29. **CMBE'S ENTRY.** In addition to CMBE's rights under Section 1 above, with the County's permission, CMBE shall have the right, at reasonable times and in a reasonable manner, to enter the Premises for any necessary or appropriate purpose, including inspection and maintenance.
30. **ENTIRE AGREEMENT.** The entire agreement, intent and understanding between CMBE and County concerning the Premises is contained in the provisions of this Agreement and the Memorandum of Understanding. The terms of this Agreement shall control if any of the provisions in the documents conflict. Any stipulations, representations, promises or agreements, written or oral, made prior to or contemporaneously with this Agreement shall have no legal or equitable effect or consequence unless reduced to writing herein or in such agreements.
31. **SPECIAL PROVISIONS.**
- A. Signage.** As part of the initial construction of the New School, CMBE shall cause to be constructed signage on the School Property reasonably acceptable to both CMBE and County staff identifying the school and recreation facility. Thereafter, County shall place park signs upon the School Site within or adjacent to the Premises at locations deemed necessary by either County or CMBE to inform the public of the location of the Premises and the rules governing its use. The placement of such signs shall not interfere with CMBE's use of the School Property for school purposes and the location thereof shall first be approved by School Staff. All Park & Recreation signage shall be maintained by County.
- B. Equipment.** County shall provide, at its expense, the equipment it deems appropriate to be used in the Premises. CMBE will provide the equipment it uses for instructional purposes, provided, however, School Staff may request use of County's equipment, which requests County will endeavor to grant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed in duplicate, with all the formalities required by law as of the day and year first above written.

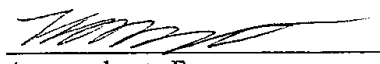
**THE CHARLOTTE-MECKLENBURG
BOARD OF EDUCATION**

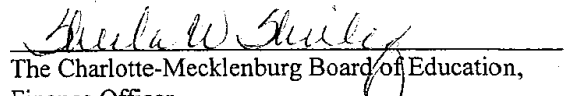
(SEAL)


Attest

Secretary

By: 
Chairperson

THIS INSTRUMENT AS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE SCHOOL BUDGET AND FISCAL CONTROL ACT.


Approved as to Form
Board of Education Attorney


The Charlotte-Mecklenburg Board of Education,
Finance Officer

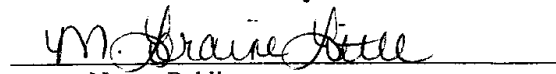

Guy Chamberlain, Assistant Superintendent
for Building Services

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

I, a Notary Public of the County and State aforesaid, certify that James L. Pughsley personally came before me this day and acknowledged that he is the Secretary of The Charlotte-Mecklenburg Board of Education and that by authority duly given and as the act of said Board of Education, the foregoing instrument was signed in its name by the Chairperson of said Board of Education and attested by him as Secretary of said Board of Education.

Witness my hand and official stamp or seal, this the 30th day of June, 2004.

[SEAL]


Notary Public

My Commission Expires: 6.23.07
Joint Use Hickory Grove Gym - FINAL.3.24.04

MECKLENBURG COUNTY

(SEAL)

Attest:

James Spang
Clerk to the Board of Commissioners

By: [Signature]
Gen. County Manager

THIS INSTRUMENT AS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

MA Bethune
Approved as to Form
County Attorney

[Signature]
Mecklenburg County,
Director of Finance

[Signature] 4/2/04
Wayne Weston, Director Park & Recreation

INSURANCE PROVISIONS REVIEWED AND APPROVED BY DIVISION OF INSURANCE AND RISK MANAGEMENT

By: [Signature]

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

I, a Notary Public of the County and State aforesaid, certify that Janice S. Paige personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Mecklenburg, North Carolina and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the County Manager and attested by her as Clerk to said Board of Commissioners.

Gen.

Witness my hand and official stamp or seal, this the 20th day of May, 2004.

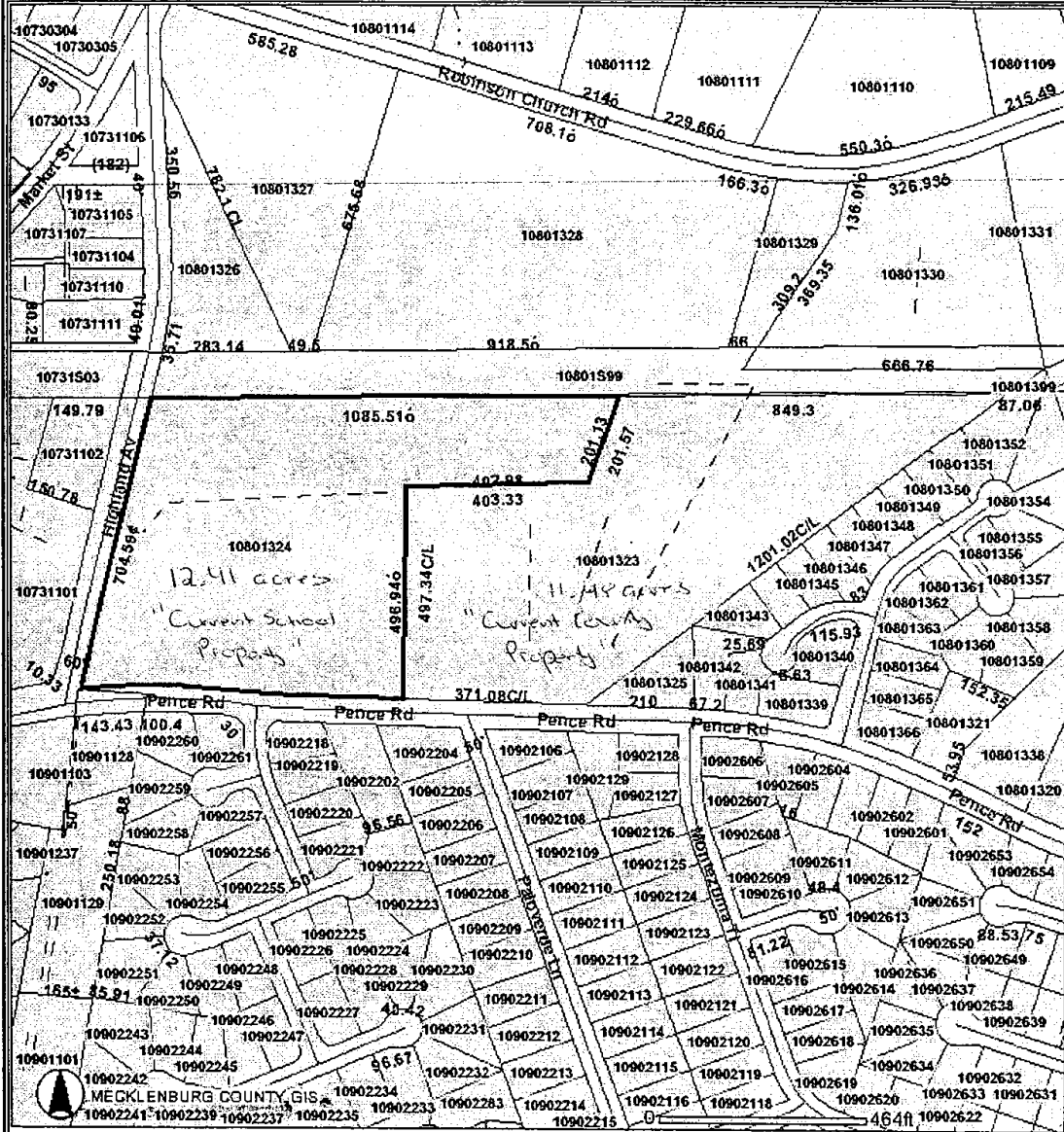
[SEAL]

Angela A. White
Notary Public

My Commission Expires: JANUARY 5, 2005

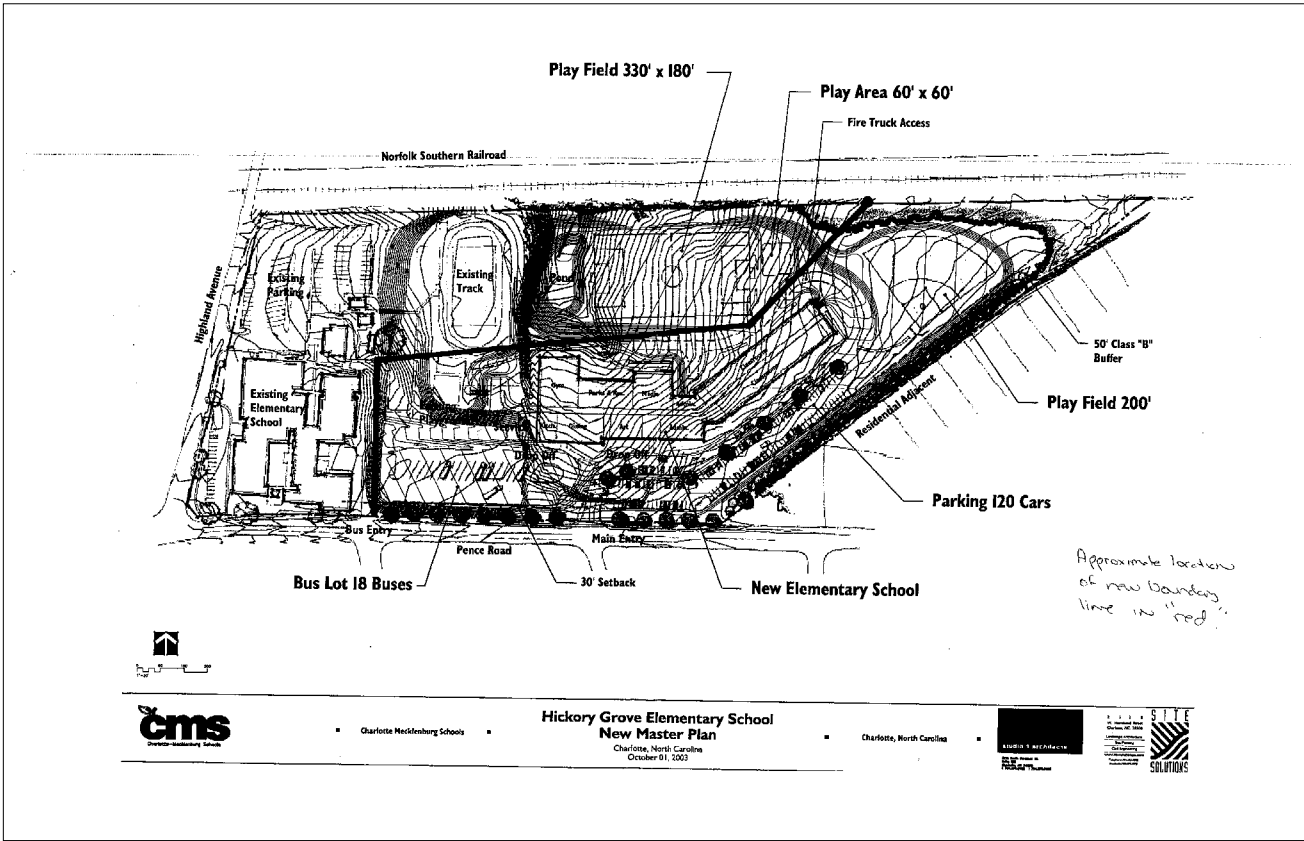
Mecklenburg County, North Carolina
POLARIS
 Property Ownership Land Records Information System
 Date Printed: Wed Mar 24 22:26:56 EST 2004

Exhibit A Hickory Grove Site



This map is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, planimetric maps, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.

<http://maps2.co.mecklenburg.nc.us/servlet/com.esri.esrimap.Esrimap?ServiceName=RealE...> 3/24/2004



Endnotes

Introduction

- 1 See the official website of the City of St. Petersburg for more information: www.stpete.org/mentors/andmore.asp#Anchor-49575.
- 2 See official website of the City of Seattle for more information: www.seattle.gov/parks/Publications/JointUse.htm.

Chapter 1

- 3 Ogden CL, Carroll MD and Flegal KM. "High Body Mass Index for Age among US Children and Adolescents, 2003–2006." *Journal of the American Medical Association*, 299(20): 2401–05, 2008.
- 4 Ogden CL, Carroll MD, McDowell MA and Flegal KM. NCHS Data Brief No.1: *Obesity among Adults in the United States—No Change since 2003–2004*. Hyattsville, MD: National Center for Health Statistics, 2007, p.1. Available at: www.speoobesidade.pt/Files/Noticias/Files/Obesity%20Among%20Adults%20in%20the%20United%20States_No%20Change%20Since%202003-05.pdf. Data from the most recent NHANES survey shows that among adult men the prevalence of obesity was 31.1% in 2003–2004 and 33.3% in 2005–2006, a small but not statistically significant change. Among adult women, the prevalence of obesity in 2003–2004 was 33.2% and 35.3% in 2005–2006, again a small but not significant change.
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Chapter 2

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Chapter 4

- 43 NPLAN greatly appreciates the invaluable expertise of Ana Lasso, Jonathan Wells, Jeff Vincent, Wally Whittier, Marty Martinez, Ben Winig, and Robert Ogilvie in developing this chapter.
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- 46 This section describes bond issuance by school districts, state government, and local government. Special districts and developers may also issue bonds, which is described in their respective sections of this chapter.
- 47 A general obligation bond is a way to raise funds to finance specific projects. General obligation bonds issued by a government entity (state, county, city, school district, etc.) are secured by the full faith, credit, and taxing power of the government entity that issues the bonds. This makes them a very safe investment because there is a very low risk the government would fail to repay the loan. Because repayment of these loans is all but guaranteed, these bonds have a relatively low interest rate, but investors are willing to accept this lower rate of return because the interest paid is generally tax-exempt.
- 48 Flynn and Kershaw, *supra* note 45, at 8.
- 49 Hassel B, Esser K, and Schroeder J. *Facilities Financing: New Models for Districts That Are Creating Schools New*. St. Paul, MN: Education Evolving, 2004, p. 2. Available at: www.lisc.org/content/publications/detail/811.
- 50 Filardo M, Vincent J, Allen M, et al. *Joint Use of Public Schools: A Framework for a New Social Contract*. Washington, DC: 21st Century School Fund, 2010, p. 6. Available at: www.21csf.org/csf-home/publications.asp. For more ideas on building support for local measures to fund joint use, see Ogilvie RS and

- Zimmerman J. *Opening School Grounds to the Community After Hours: A Toolkit on Joint Use*. Oakland, CA: Public Health Law & Policy, 2010. Available at: www.phlpnet.org/healthy-planning/products/joint_use_toolkit.
- 51 Because a revenue bond is only secured by the projected revenues of the project and not the full taxing authority of the government, it is not considered as low risk an investment as a general obligation bond. While it may have a slightly higher interest rate than a general obligation bond to offset this slightly less dependable source of repayment, it is usually seen as the second most secure type of bond.
 - 52 This program requires Congress to reauthorize it, which happened most recently through the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Pub. L. No. 111-312, 124 Stat. 3296 (2010). For more information on the program extension and available funds, see Letter from Arne Duncan, U.S. Secretary of Education, to Chief State School Officers (March 11, 2011). Available at: www2.ed.gov/policy/gen/guid/secletter/110311.html.
 - 53 Bond funds can be used to renovate and repair buildings, purchase equipment and update technology, install energy-efficient or renewable energy systems, develop curricula, and conduct teacher training. New construction is ineligible for QZAB funds.
 - 54 U.S. Department of Education, Qualified Zone Academy Bonds, www.qzab.org/what_is.asp (last visited Nov. 3, 2011).
 - 55 Each state is eligible for funds based on the percentage of the state's population below the federal poverty line.
 - 56 Hundreds of impoverished urban and rural communities have been designated as Empowerment Zones (EZs) or Enterprise Communities (ECs). EZs and ECs are eligible for special wage credits, tax deductions, bond financing and capital gains to encourage public-private partnerships that will stimulate economic development and job growth. To find these communities, go to the U.S. Department of Housing and Urban Development's locator website: <http://egis.hud.gov/ezrlocator> (last visited Nov. 3, 2011).
 - 57 For a full listing of federal programs available to state and local governments; public and private for-profit and nonprofit organizations and institutions; specialized groups; and individuals, go to the Catalog of Federal Domestic Assistance Homepage: www.cfda.gov (last visited Nov. 3, 2011).
 - 58 The Trust for Public Land, Land and Water Conservation Fund, www.tpl.org/what-we-do/policy-legislation/federal-funding-programs/land-and-water-conservation.html (last visited Nov. 3, 2011).
 - 59 U.S. Department of the Interior, National Park Service, Land and Water Conservation Fund, www.nps.gov/nrcr/programs/lwcf/fed_state.html (last visited Nov. 3, 2011).
 - 60 The U.S. Department of Agriculture Rural Development also offers loans to towns and rural areas to build community facilities. To learn more about the Community Facilities Direct and Guaranteed Loans Program, go to U.S. Department of Agriculture—Community Facilities Direct and Guaranteed Loan Program: www.rurdev.usda.gov/HAD-CF_Loans.html (last visited Nov. 3, 2011).
 - 61 A frontier area is a county with a population density of fewer than six people per square mile.
 - 62 To find the contact information for your state Department of Education, go to the U.S. Department of Education's online searchable database: www2.ed.gov/about/contacts/state/index.html (last visited Nov. 3, 2011).
 - 63 Cooper T and Vincent J. *Joint Use School Partnerships in California: Strategies to Enhance Schools and Communities*. Berkeley, CA: Center for Cities & Schools and Public Health Law & Policy, 2008, p. 12. Available at: http://citiesandschools.berkeley.edu/reports/CC&S_PHLIP_2008_joint_use_with_appendices.pdf.
 - 64 There are other terms used to describe development-associated fees, including developer fees, development impact fees, capital recovery or expansion fees, mitigation fees, facility or capacity fees, or system development charges.
 - 65 Some states may have laws or court cases that severely restrict the imposition of impact fees on developers.
 - 66 To see the types of facilities funded by impact fees levied in different states, see the summary chart on page 3 of the latest fee impact survey conducted by Duncan Associates, available at: http://impactfees.com/publications%20pdf/2010_survey.pdf (last visited Nov. 3, 2011).
 - 67 It should be noted that while zoning bonuses are popular with developers, neighborhood residents don't favor them because of the potential impacts of more density.
 - 68 Special purpose districts have many different names depending on the type of service or infrastructure they provide and where in the country they are established. Some of the common names include: special improvement districts, community facilities districts, benefit assessment districts, special benefit districts, special assessment districts, and special services districts.
 - 69 Some state laws allow two or more public agencies (e.g., city or county governments, transportation districts, park districts) to enter into an agreement to form a Joint Powers Authority (JPA) so they can coordinate activities and resources to provide services across local jurisdiction boundaries.
 - 70 Depending on your state, a redevelopment agency may be called something else, for example, an urban renewal agency, a brownfields redevelopment authority, or an office of community renewal.
 - 71 The developer can be a for-profit company or a nonprofit organization.
 - 72 For accounting purposes, lease payments are generally not considered debt and therefore do not trigger any state or local laws that may limit the amount of debt a school or public entity may incur.
 - 73 Hassel et al., *supra* note 49, at 4.
 - 74 The law limits the amount of bonds that can be issued in each state to \$10 multiplied by that state's population. In addition, the lease term for the facility must be the same as the term to repay the tax-exempt bond by the developer. At the end of the lease term, control of the property must automatically revert to the district. At the time of this writing, the ability to issue these bonds has been extended through 2012.
 - 75 For examples of state laws enabling private-public partnerships to build schools, see Virginia's Public-Private Education and Infrastructure Act of 2002, Va. Code Ann. §§ 56-575.1 *et seq.* (2011) (available at: www.dgs.state.va.us/PPEA/tabid/62/Default.aspx) and North Carolina's Public-Private Partnerships (PPP) for Schools, N.C. Gen. Stat. § 115C-531 (2011). Available at: www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2005&BillID=s2009.
 - 76 The type of nonschool use that would be permitted on the site can be specified in the agreement between the school district and developer so that it is compatible with the primary use of the facility by students.
 - 77 *See, e.g.,* Eggers WD and Dovey T. *Closing America's Infrastructure Gap: The Role of Public-Private Partnerships*. Deloitte Research, 2007. Available at: www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_ps_PPPUS_final%281%29.pdf; Johnson KA and Moser EH. *The Six Habits of Fiscally Responsible School Districts*. Midland, MI: Mackinac Center for Public Policy, 2002, pp. 15–16. Available at: www.mackinac.org/archives/2002/s2002-06.pdf; Evergreen Freedom Foundation. *School Director's Handbook: School Construction*. Evergreen Freedom Foundation, 2011. Available at: www.myfreedomfoundation.com/pdfs/Construction.pdf.

- 78 Gamkhar S and Koerner M. “Capital Financing of Schools: A Comparison of Lease Purchase Revenue Bonds and General Obligation Bonds.” *Public Budgeting & Finance*, 22(2), 21–39, 2002.
- 79 Mohundro WR. “Lease Purchase Financing: The Processes and Impact on New School Construction in Texas,” p. 27 (Dec. 2005) (unpublished PhD dissertation, University of North Texas). Available at: http://digital.library.unt.edu/ark:/67531/metadc4950/m1/1/high_res_d/dissertation.pdf.
- 80 It is important to note that some states may have laws limiting or restricting the ability of local governments and/or school districts to sell property.

Chapter 5

- 81 For readers who work for cities or counties, we recommend talking to a lawyer in the city or county counsel’s office. Similarly, readers who work for schools and school districts will want to talk to the school’s counsel. For advocates, the Public Health Law Network, funded by the Robert Wood Johnson Foundation, currently provides legal technical assistance: www.publichealthlawnetwork.org. Please also see NPLAN’s resources on joint use agreements: www.nplan.org/nplan/joint-use. The fact sheet “What Does the City Attorney Have to Do with Obesity Prevention?” provides a sense of the scope of city attorneys’ work: www.phlpnet.org/sites/phlpnet.org/files/City_Attorney_Obesity_Prevention_Fact_Sheet_FINAL_web_20101123.pdf.
- 82 For more information on the laws of a particular state with regard to these legal protections, see Baker T. *Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: A Fifty-State Survey*, 2008. Available at: www.nplan.org/nplan/products/liabilitysurvey (“50-state survey”). For information specific to your own situation, contact an attorney in your area.
- 83 There are actually two types of immunity that protect governments and public agencies: sovereign immunity and governmental immunity. For purposes of this toolkit, we will use the term “governmental” immunity to stand in for both. Generally speaking, sovereign immunity is a very broad immunity afforded to state governments and their agencies, while local governments typically enjoy a more limited governmental immunity. States differ as to whether school districts are classified as part of a state agency or not. Therefore, in some states school districts may be protected by sovereign immunity, while in others by governmental immunity. For more information on this distinction, see NPLAN’s 50-state liability survey, *supra* note 82, available at: www.nplan.org/nplan/products/liabilitysurvey (click on “overview memo”).
- 84 In some states, governmental immunity is established through court decisions (so-called common law); in other states, the legislature has passed a law (statutory law) creating the immunity. At its common law roots, sovereign immunity meant that the king could not be sued without his consent. See, e.g., Jaffe L. “Suits against Governments and Officers: Sovereign Immunity.” *Harvard Law Review*, 77(1): 1-39 at p.1, 1963.
- 85 63 C.J.S. Municipal Corporations § 663 (citing *Wilson v. Stark Cty. Dept. of Human Serv.*, 639 N.E.2d 105 (Ohio 1994)).
- 86 For more information on the law of a particular state, see NPLAN’s 50-state liability survey, *supra* note 82, available at: www.nplan.org/nplan/products/liabilitysurvey. For information specific to your situation, consult a local attorney.
- 87 Ariz. Rev. Stat. Ann. § 12-820.01.
- 88 La. Const. art. XII, § 10(A), (interpreted in *Kimball v. Allstate Ins. Co.*, 712 So. 2d 46, 57 (La. 1998)); La. Rev. Stat. Ann. § 13:5101 et seq.
- 89 Ga. Code Ann. § 50-21-20 et seq., esp. 50-21-22(5); *Bitterman v. Atkins*, 458 S.E.2d 688, 689 (Ga. 1995); see also Ga. Code Ann. § 20-9-992 (immunity of school boards and political subdivisions).
- 90 *Heyer v. N. E. Indep. Sch. Dist.*, 730 S.W.2d 130, 133 (Tex. App. 1987).
- 91 Cal. Gov’t Code § 810 et. seq.
- 92 For more information on the law of a particular state, see NPLAN’s 50-state liability survey, *supra* note 82, available at: www.nplan.org/nplan/products/liabilitysurvey.
- 93 Haw. Rev. Stat. § 520 et seq.; *Covington v. United States*, 902 F. Supp. 1207, 1211 (D. Haw. 1995); see also *Lansdell v. County of Kauai*, 130 P.3d 1054, 1061 (Haw. 2006).
- 94 Ark. Code Ann. § 18-11-305.
- 95 Tex. Civ. Prac. & Rem. Code Ann. § 75.002.
- 96 Wis. Stat. Ann. § 895.52.
- 97 N.D. Cent. Code § 32-12.1-03.
- 98 Neb. Rev. Stat. § 13-926.
- 99 Okla. Stat. Ann. tit. 51, § 154.
- 100 See, e.g., Eisenberg T, Heise M, Waters N et al. «The Decision to Award Punitive Damages: An Empirical Study» *Cornell Law Faculty Publications*, Paper 185, 2010. Available at: <http://scholarship.law.cornell.edu/facpub/185>; Eisenberg T, Goerd J, Ostrom B et al. “The Predictability of Punitive Damages,” *J. Legal Stud.*, 26: 623, 1997. Available at: <http://library2.lawschool.cornell.edu/hein/Eisenberg%20Theodore%202026%20J.%20Legal%20Stud.%20623%20%281997%29.pdf>.
- 101 For more information on how to structure the insurance provisions of a joint use agreement, see NPLAN’s model joint use agreements, available at: www.phlpnet.org/childhood-obesity/products/nplan-joint-use-agreements. See, e.g., *Joint Use Agreement 3: Opening School Facilities for Use During Non-School Hours and Authorizing Third Parties to Operate Programs* at pp. 13-14: www.phlpnet.org/sites/phlpnet.org/files/JU3_3rdPartyProgramsAgrmt_FINAL_090318_o.pdf.
- 102 Indemnity clauses will often not apply in the event of negligence or willful misconduct on the part of the party being indemnified. For more information on how indemnification agreements can be structured, see NPLAN’s model joint use agreements, available at: www.phlpnet.org/childhood-obesity/products/nplan-joint-use-agreements. See, e.g., *Joint Use Agreement 3: Opening School Facilities for Use During Non-School Hours and Authorizing Third Parties to Operate Programs* at pp. 12-13: www.phlpnet.org/sites/phlpnet.org/files/JU3_3rdPartyProgramsAgrmt_FINAL_090318_o.pdf.
- 103 See, e.g., jointuse.org’s research and fact sheets making these links, available at: www.jointuse.org/resources/related-research; www.jointuse.org/resources/make-joint-use-happen/fact-sheet-joint-use-and-health.
- 104 KaBOOM! *Tucson, Arizona: Sharing Play Space and Responsibility – joint use agreements increase open space and improve safety*. Available at: http://kaboom.org/docs/documents/pdf/playmatters/Play_Matters_Tucson.pdf.
- 105 See the official website of the City of St. Petersburg for more information: www.stpete.org/mentors/andmore.asp#Anchor-49575.

Chapter 6

- 106 This chapter draws on *Obstacles Regarding Joint Use of School Facilities*, a paper based on research conducted by the California Park & Recreation Society and the California State Parks to identify the obstacles and best practices of joint use of school facilities. California Parks & Recreation Society (CPRS). *Obstacles Regarding Joint Use of School Facilities*. Sacramento, CA: CPRS, 2008. Available at: www.cprs.org/traininginformation.htm.
- 107 Another useful resource that focuses on joint use partnerships is: Cooper T and Vincent JM. *Joint Use School Partnerships in California: Strategies to Enhance Schools and Communities*.

- Berkeley, CA: Center for Cities & Schools and Public Health Law & Policy, 2008. Available at: http://citiesandschools.berkeley.edu/reports/CC&S_PHLIP_2008_JointUse_execsumm.pdf.
- 108 Charlotte-Mecklenburg Planning – Joint Use Task Force Webpage, <http://charmeck.org/city/charlotte/planning/CapitalFacilities/Pages/JointUseTaskForce.aspx> (last visited Jan. 3, 2011).
- 109 Mecklenburg County, N.C., Resolution Requesting Creation of Joint Planning and Joint Use Policy and Process (April 18, 1995).
- 110 Interview with Jonathan Wells, Capital Facilities Program Manager, Charlotte-Mecklenburg Planning Department (Dec. 9, 2011).
- 111 Mecklenburg County, N.C., Joint Resolution Promoting and Enhancing Joint Planning and Joint Use Policy and Progress (Sept. 25, 2000).
- 112 Interview with Jonathan Wells, *supra* note 110.
- 113 City of Grand Rapids, Mich. – Grand Rapids Community College, Joint Use of Facilities, Maintenance, and Programming Agreement (Dec. 1, 2009).
- 114 Greater Vallejo Recreation District – Vallejo City Unified School District, Joint Facility Use Agreement Between Greater Vallejo Recreation District and the Vallejo City Unified School District (June 6, 2004).
- 115 City of Anderson, Cal. – Happy Valley Elementary School District – Cascade Union Elementary School District – Anderson Union High School District, Joint Use of Facilities and Equipment (March 16, 1982).
- 116 5 McQuillin Mun. Corp. § 15.3 (3rd ed.).
- 117 *Id.* at §§ 15.17, 16.27, 16.39 & 16.46.
- 118 National Public Radio. *Obesity In America, By The Numbers*. 2011. Available at: www.npr.org/2011/05/19/135601363/living-large-obesity-in-america.
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