

Opening School Grounds to the Community After Hours

A toolkit for increasing physical activity through joint use agreements



public health
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Introduction

Almost a third of American children and adolescents¹ – and two thirds of American adults² – are overweight. Over the past four decades, obesity rates have soared for all age groups, doubling among preschoolers and increasing nearly fivefold among children ages 6 to 11.³

To counter rising rates of obesity and related diseases, Americans are being 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 can be 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. For too many communities, all of these factors combine to make the healthy choice – more quality physical activity – the hard choice.



These barriers can be especially damaging in low-income neighborhoods, where life expectancy is significantly lower than it is in neighboring high-income areas. A recent report from the Bay Area Regional Health Inequities Initiative (BARHII) makes it clear: where you live is probably a bigger determinant of your health than whether you have health insurance.⁴

Such environmentally rooted disparities in health – between the rich and the rest, between whites and minorities – are the norm rather than the exception across the country. Altering physical environments to become more conducive to physical activity, especially in low-income and minority neighborhoods, has become the focus of a nascent convergence of the fields of public health and city planning. This effort is taking many forms, from creating “safe routes to schools” to enhancing the safety of local parks.

In recent years, increasing access to recreational facilities that already exist at schools has emerged as one of the most promising strategies for building more opportunities for activity into neighborhoods. This promise is rooted in the realization that even the most poorly designed and underserved neighborhoods include schools. In an era of never-ending budget shortfalls,

maximizing access to existing facilities – rather than trying to construct new ones – is the most efficient and economical use of public resources.

California has a strong tradition of opening public school facilities for community use after hours, and under state laws such as the California Civic Center Act and the California Community College Act, many school districts throughout the state routinely permit community members access to schools. (For more detail about these and other laws in California encouraging such use of school facilities, see Appendix 1.)

Still, despite strong policies that favor community use, school facilities are often locked and inaccessible to community residents who might otherwise use them on weekday evenings and weekends. 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 using school property beyond regular school hours. At the same time, communities throughout California 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.

Joint Use Agreements

Joint use agreements offer a way for school districts to open their facilities to community use. A *joint use agreement* refers to a written agreement between a school district and one or more public or private (nonprofit) entities setting forth the terms and conditions for sharing the use of the district’s facilities. A joint use agreement can allow community access to school property by allowing the district to share with another agency the costs and risks associated with opening the property for after-hours use.



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

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 can also require ongoing coordination, communication, and cooperation among partners who have little or no history of working together.

A recent survey of California public school districts found that nearly 60 percent already have some form of joint use occurring in their schools,⁵ and half reported they were in the process of building new schools that will incorporate some type of joint use facility.

Joint use agreements should always clearly articulate each partner's financial, legal, and operational responsibilities. Because the agreements attempt to address specific community needs, however, they can vary from place to place.

About This Toolkit

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

Chapter 1 provides a snapshot of how communities throughout California are currently sharing facilities, formally or not, and highlights the essential components of a joint use agreement.

Chapter 2 provides a step-by-step checklist for negotiating and developing a joint use agreement, highlighting important issues to consider at each stage of the process.

Chapter 3 presents short profiles illustrating how different communities throughout California have negotiated and implemented four types of joint use:

- ▶ **Unlocking the Gates:** Allowing public access to outdoor school facilities during non-school hours
- ▶ **Indoor and Outdoor Access:** Allowing public access to indoor and outdoor school facilities during non-school hours
- ▶ **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
- ▶ **Reciprocal Access:** Allowing schools and other public and/or nonprofit organizations to have reciprocal access to each other's facilities

Chapters 4, 5, and 6 offer guidance on how to overcome obstacles that may arise in negotiating and enforcing a joint use agreement.

Appendix 1 outlines the robust legal framework in California encouraging the joint use of school facilities, summarizing the relevant legal codes.



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Appendix 2 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.

Appendix 3 features model agreement language developed by PHLP for the four types of joint use outlined above, designed to serve as templates for other communities.

Communities can put joint use agreements to work for more than recreational facilities, expanding access to libraries, parks, and other city and county properties. Developing the know-how to establish and nurture joint use agreements creates a win-win for the entire community.

1 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 – 2405, 2008.

2 Ogden CL, Carroll MD, McDowell MA and Flegal KM. “Obesity among adults in the United States – no change since 2003-2004.” NCHS data brief no 1. Hyattsville, MD: National Center for Health Statistics, 2007. 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.

3 Ogden CL, Flegal KM, Carroll MD, et al. “Prevalence and trends in overweight among US children and adolescents, 1999–2000.” *Journal of the American Medical Association*, 288(14): 1728-1732,

2002; Hedley AA, Ogden CL, Johnson CL, et al. “Prevalence of overweight and obesity among US children, adolescents, and adults, 1999-2002.” *Journal of the American Medical Association*, 291(23): 2847-2850, 2004; Ogden CL, Carroll MD, Curtin LR, et al. “Prevalence of overweight and obesity in the United States, 1999–2004.” *Journal of the American Medical Association*, 295(13): 1549-1555, 2006.

4 Bay Area Regional Health Inequities Initiative. *Health Inequities in the Bay Area (Report)*. 2008, p.3. Available at: www.barhii.org.

5 Vincent J. *Building California's new schools: A survey of the state's public school districts*. Center for Cities & Schools, University of California, Berkeley. 2008. (PhD dissertation)

1 A Snapshot of Joint Use Partnerships in California

Joint use partnerships between schools and other agencies are already in place in an overwhelming majority of counties throughout California. To identify the types of joint use agreements California communities currently have under way, the obstacles they encounter, and the solutions they've developed, Public Health Law & Policy (PHLP) circulated an online survey to public health advocates statewide.¹

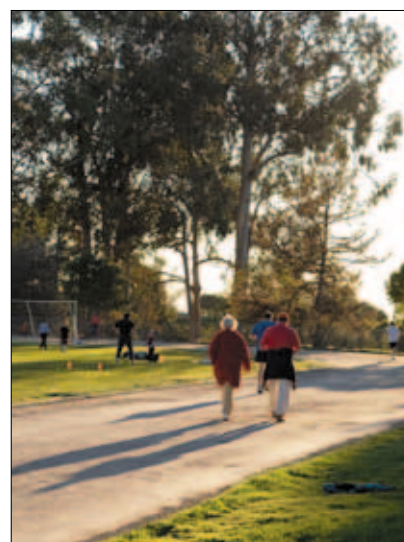
We found that community use of schools is taking place without any written agreements in many parts of the state, especially in rural and suburban areas, and especially when the use is limited to outdoor facilities. It may be that these communities have a history or norm of opening schools or sharing resources, or that the decision-makers in these areas are more likely to know each other socially as well as professionally. The limited number of public spaces for recreation in these communities also may accelerate the need to take advantage of what is available.

When it comes to opening access to indoor *and* outdoor facilities, however, communities should implement formal agreements that assign specific, legally binding responsibilities to each partner, clarifying roles and providing the basis for reconciling potential conflicts. Informal agreements can lapse if the relationship between the people who initiated the agreement becomes strained, or if those individuals move on to different positions.² There also tends to be a greater likelihood of property damage or wear and tear with access to indoor facilities and equipment.

Nearly 70 percent of the counties that responded to PHLP's survey had formal contracts in place, and nearly 20 percent were sharing facilities through informal agreements. Formal agreements were more common in urban and suburban locales, while in rural areas, informal agreements were more common. In almost every instance, parks and recreation departments were a partner in the agreement.

Survey respondents identified the following components as essential to a successful joint use agreement:

- ▶ Developing operational plans that outline partners' responsibilities
- ▶ Establishing positive, effective communication among partners



- ▶ Identifying new sources of funding, and determining how costs will be shared
- ▶ Negotiating liability
- ▶ Building support from the community and local organizations
- ▶ Building support from local political leaders

Even in cities and counties where some community use is taking place, access to school facilities can be limited. Real and perceived barriers – in urban, suburban, and rural areas alike – include concerns about increased costs, vandalism of school property, liability, and programs being ineffective because limited resources are spread too thin.

In some cases, our survey indicated, joint use agreements are in place but not in force – either because local priorities had shifted and there was no longer enough support or motivation, or because partners had failed to fulfill their duties in accordance with the agreement.

The survey and our additional research made clear that effective joint use agreements are based on a shared perception among partners that they (or their constituents) will benefit by pooling resources, that the agreement will provide access to resources that would otherwise be unavailable, and that the benefits of partnering to establish this type of agreement will outweigh the challenges.



¹ We received 160 survey responses from around the state: 43 from urban areas, 97 from suburban areas, and 20 from rural areas.

² Wright F. “School Districts as Partners: Maximizing Public Value of Public Land and Facilities.” May 2006. Available at: www.cprs.org/membersonly/Joint_Use_White_Paper.pdf. (Unpublished paper on joint planning, use, and management of public facilities.)

2 Checklist for Developing a Joint Use Agreement

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. By defining the resources being governed – and by clearly articulating each partner’s roles and responsibilities – an effective agreement will minimize any potential conflict, ensuring that the benefits of the partnership outweigh the challenges.

There is no single path to developing a joint use agreement, but this checklist can serve to help guide the way. The steps outlined in this section identify a number of issues to consider. 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.

Identify community and school needs.

To assess the community’s needs for additional recreational opportunities, identify:

- ▶ Underserved communities (such as lower-income communities lacking access to neighborhood parks and community centers)
- ▶ Unmet recreation needs
- ▶ Locations in the community where recreation needs can be met by school facilities
- ▶ The types of recreation facilities required to meet these needs

To assess school needs, identify:

- ▶ Students’ unmet physical education and recreation needs (ones the city might meet)
- ▶ Facility needs (for improvements, maintenance support, scheduling assistance)

Identify potential properties and partner organizations.

Inventory facilities – all properties, or those in targeted areas – to determine what is available. Assess how suitable these properties are 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.

Build relationships with the appropriate decision-makers.

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 friends are, and mobilize them to get others on board.

Make sure the concept is approved.

The school board and the governing entity of the city, county, or town should first approve the concept of developing a joint use agreement¹. Appealing to these entities' interests – and ensuring those interests will be represented in the joint use agreement – is critical to securing this approval.

Select negotiators.

Identify the employees from each partner entity who will be responsible for developing the agreement. The designated employees should be knowledgeable about the facilities and proposed programs, and they should have enough experience to develop informed recommendations on behalf of their organization.

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.

Inspect proposed facilities.

Both parties should examine the facilities together to establish – and document – the baseline conditions.

Identify and reach agreement on issues involving use.

All parties need to agree on operational and management issues, including:

- ▶ Which users have priority access for different facilities (i.e., the earliest opportunity to reserve the facility)
- ▶ Which entity will be responsible for scheduling the use of the property, 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 location of/access to/ security of storage areas if needed
- ▶ The type of supervision necessary for the manner in which 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 if access is granted, 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 who 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

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 determine the types of documentation to exchange or require. Ensure the agreement is consistent with existing state and local law and regulations, existing permitting procedures (amending permitting procedures if necessary), and existing fee procedures or structure (amending if necessary).



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 may be covered by volunteers.

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.

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 agree on the protocol for scheduling properties. 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.

Agree upon improvements and improvement protocol.

Consider whether – and the conditions governing how – the parties will allow each other to make improvements (that is, changes made by or for the benefit of the party using the property). Determine how to allocate the costs associated with making improvements, and who “owns” the improvements.

Agree upon how to determine and allocate costs.

Calculate the costs of sharing the facilities, and determine how to allocate those costs 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.

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 cancelling 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.

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.

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.

Receive formal approval.

Once the governing entities formally approve the agreement, the work of overseeing its implementation begins.

¹ 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.

3 Profiles of Joint Use in Action

Across California, joint use agreements vary greatly in scope. At one end of the spectrum, the agreements can provide access to a single facility – for instance, the City of Burlingame has an agreement with the local chapter of the American Youth Soccer Organization governing the use of a field behind the local high school. Other communities, such as Claremont, have established agreements covering access to dozens of facilities throughout the city.

For documents with more detail about many of the joint use partnerships featured in this chapter (including Burlingame and Claremont), see Appendix 2.

Between these two extremes lies a host of variations, shaped according to the character of the community they are designed to serve.

This chapter presents brief profiles illustrating four different types of joint use:

- 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

As these profiles show, all communities – rich or poor, rural or urban – have to figure out ways for large public (and sometimes nonprofit) agencies to work together as partners. In all cases, communication and relationship-building have been critical in getting partners engaged and ensuring that everyone honors and benefits from the agreement.

Joint Use Agreement Type #1: Unlocking the Gates

Allowing public access to outdoor school facilities during non-school hours

PHLP has developed model language for California joint use agreements allowing public access to outdoor school facilities during non-school hours (see Appendix 3). You can download an editable version from www.healthyplanning.org.

Unlocking the gates to outdoor school recreation facilities (athletic fields, basketball courts, tennis courts, playgrounds) is the most common type of joint use. In fact, it is so common – and often done informally, without a written agreement – that many don’t even think of as joint use. While informal agreements may be a fine short-term solution, formalizing them will help guarantee the gates stay unlocked even after the people who initiated the informal arrangement have moved on to other positions.

There are many, many examples of joint use agreements for “unlocking the gates” across the state. This section offers a glimpse of the background behind three: La Mesa, Agoura Hills, and San Francisco.



Robert S. Ogilvie

La Mesa (San Diego County)

Population	54,749 (US Census, 2000)
Development pattern	Medium-density suburban
Population density	5,887/sq mi
Median household income	\$41,693
Partners involved	City of La Mesa La Mesa-Spring Valley School District

La Mesa is a small but relatively densely populated city northeast of San Diego. “It’s basically a built-out community,” says Yvonne Garrett, director of community services for the City of La Mesa. “There’s no free land.” In fact, the only land suitable for developing into recreational facilities is owned by the school districts, making school facilities in La Mesa a crucial recreational asset.

The City of La Mesa currently has two joint use agreements: one with a high school district and another with the local elementary/middle school district. The agreement with the high school district is not applied much – partly because of a local lawsuit that called for more of its facilities to be set aside for girls’ sports, and partly because the high school district uses its property largely for its own activities overall, leaving the facilities less available for community use.

La Mesa’s second agreement, however – with La Mesa-Spring Valley, the elementary/middle school district – has been essential to making sports facilities accessible to the community. It was developed in 1970, but just a couple of years ago, after an injury took place on one of the school fields, the city and the school district realized the agreement was not as clear as it should have been where liability was concerned. “It was vague about divvying up responsibility,” says Garrett. “It didn’t articulate who would be responsible at what time.”



After the legal case was settled, local leaders – including the city manager, the school board, the city council, and the city’s community services director – started to talk about updating the joint use agreement. “The agreement had been modified over the years with amendments,” says Garrett, “but never really looked at in its entirety.”

The update ended up involving more than just the liability framework, and it took a year and a half to complete. “It became a larger discussion about how you successfully share facilities that are heavily used,” Garrett says. “It took a while to reach consensus.” Drafts of the agreement went back and forth to each partner’s legal team, and the city council and the board of education approved the update in 2008.

For a copy of the joint use agreement between the City of La Mesa and the La Mesa-Spring Valley School District, see Appendix 2.

The updated agreement works mostly as it had before, but it now outlines how new joint use projects will be developed and specifies what happens if there is damage or an injury. In the new agreement, each organization agrees to “defend, indemnify, protect, and hold [the other] and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property,” regardless of negligence (the only exception being willful misconduct). It also states that in the event a claim is made against either of the parties, they will immediately “meet and confer” about handling the claim. It includes an arbitration clause for unresolved disputes as well.

The biggest challenge La Mesa has faced so far with the new agreement, Garrett says, has been making sure everyone knows to take responsibility for making sure a recreational space is safe before using it. “That was a new clause, and there are so many people to inform,” she says. “Whoever finds a problem is responsible for roping it off, putting up caution tape, keeping people away, and alerting the proper authorities.” Just getting the document to all of the people who needed it was itself a challenge, she says, let alone making sure they understood exactly what it required.

“Joint use relationships are difficult and time consuming,” she acknowledges. “But at the end of the day, the benefit outweighs all of the challenges.”

Agoura Hills (Los Angeles County)

Population	20,537 (US Census, 2000)
Development pattern	Low-density suburban
Population density	2,511.8/sq mi
Median household income	\$108,862
Partners involved	Agoura Hills Parks and Recreation Las Virgenes Unified School District

Agoura Hills is a well-to-do suburb in Los Angeles County, just northwest of Santa Monica. The area is rich with recreational opportunities, and the city itself features about 75 acres of parkland and many hiking and equestrian trails.

The city’s master plan, developed in the late 1980s, called for a new amenity to be built in one of the city’s parks – and in 2004, the city proposed constructing new tennis courts. But the community opposed the idea, preferring instead to preserve the park’s undeveloped space and existing play equipment.

Residents met with the city council, parks and recreation staff, and the city manager’s office to work out an alternate solution. They came up with a compromise: putting in a basketball court at the park to satisfy the master plan’s requirements, and devoting the rest of the money the city had planned to use for the new tennis courts to upgrade existing tennis courts at the local high school instead, opening community access to them through a joint use agreement with the school district.

“The school district didn’t have the funding at the time to renovate the tennis courts,” says Amy Brink, director of community services for the City of Agoura Hills, noting that this was not the local school district’s first joint use agreement; it had partnered with neighboring cities before. “It was a perfect way for us to partner. We met with the school to discuss what types of renovations they wanted to have, and worked with them on how best to use the money.”

As the memo on the next page illustrates, there were very specific stipulations regarding what the city would cover and what sort of access it would get in return:

Memorandum

To: Larry Misel, Principal
Agoura High School

From: Amy Brink, Director of Community Services
City of Agoura Hills

Subject: Agoura High Tennis Court Renovations/Tennis Court Facility
Use Agreement

Date: January 10, 2007

The following is a rough draft of an agreement between the city of Agoura Hills and the Las Virgenes Unified School District for the use of the tennis courts at Agoura High School.

City agrees to:

1. Resurface all nine tennis courts	\$ 48,600
2. New tennis nets on all courts	\$ 2,700
3. New chain link fence	\$ 84,600
4. Lower the fence that sits between the courts	\$ 1,400
5. New windscreens on all courts	\$ 26,900
6. Upgrade/fix and add lights	\$ 42,000
7. Create premiere stadium tennis court that includes bleacher seating and city/high school logos painted on surface	\$149,000
8. Create entrance/exit gate	\$2,000
9. Create entrance/exit system (approximately)	\$15,000
TOTAL:	\$372,200

In return, the School District agrees to:

1. Allow public access to two courts, 24 hours/day, 7 days/week
2. [Allow City] access/use of remaining seven tennis courts Monday–Friday (4p.m. on) and all day Saturday/Sunday
3. Create room and allow parking for people who will be playing tennis

The city maintains the tennis courts, covers the cost of utilities, and pays the high school an annual facilities use fee. Both entities maintain their own insurance policies while they use the courts and also cross-insure one another, as the city's insurer (the California Joint Powers Insurance Authority) requires.

So far the partnership has been “a complete win-win situation,” says Brink. Seven of the nine courts are reserved for student use during the school day. After school hours and on weekends, the city uses those courts for programs such as private and group lessons, tennis camps, leagues, and tournaments. The other two courts are open to the public around the clock, though the school can reserve them if necessary for a tournament or other activity by scheduling it in advance with the city. The two public courts can also be reserved by community members for a fee – which in turn goes into the city's general fund to help offset the costs of maintaining the courts.

San Francisco

Population	808,976 (US Census, 2008 estimate)
Development pattern	High-density urban
Population density	17,323/sq mi
Median household income	\$65,519
Partners involved	City and County of San Francisco San Francisco Unified School District

San Francisco is the most densely populated city in California. The citywide school district includes 112 schools and more than 56,000 students, more than half of whom qualify for free or reduced-cost lunches. While there are many parks throughout the city, a number of areas in San Francisco do not have local access to open space, and a recent report from the University of California at Berkeley¹ recommended using school district facilities to meet the community's recreational needs.

For a copy of the memorandum of understanding governing San Francisco's joint use partnership, see Appendix 2.

All of this prompted the City and County of San Francisco to initiate a joint use partnership in 2007 with the San Francisco Unified School District (SFUSD), allowing the city to unlock outdoor school playgrounds and blacktops at 11 public schools throughout the city on weekends and holidays.²

The city's recreation and park department had worked in the past with schools to allow students access to nearby city parks during recess. But it was a "piecemeal" approach, not a coordinated project, says Chris Armentrout, SFUSD's director of development and government relations.

To begin planning a districtwide partnership, the Mayor's office met with staff from the district, the recreation and park department, and the department of public works. "I was naïve," Armentrout says. "I was thinking we'd just send a custodian over to unlock the gates, and we'd be done. But I was quickly relieved of that naïvete."

Through numerous meetings, in large groups and small, designated staff from each agency discussed the many issues associated with implementing this idea – everything from access to school grounds, staffing, and security to liability, oversight, and evaluation. They met with the district's legal, facilities, and risk management departments to run through potential scenarios. They met with administrators at each of the school sites to address concerns around additional wear and tear and the potential for graffiti and damage. They worked with the public works department to hash out exactly what the playground signage should convey about the new agreement. ("A lot of people put a lot of time and energy into the signage," Armentrout recalls.)

All of the discussions eventually culminated in an memorandum of understanding (MOU) establishing the "Schools as Community Hubs" pilot project, which the city and school district signed in late 2007. The pilot

project launched soon afterward at James Lick Middle School, and within a couple of months it was in full force at all 11 participating school sites, one for each legislative district.

The MOU outlined a protocol for the sites, requiring regular inspection and immediate remediation of any damage that might result from the joint use project. Both the district and the city inspect the site before the beginning of every school week, and the district can contact any of multiple city government staff to report damage related to the joint use project.

Participating schools have a double-lock system ensuring that either one of two different keys can be used to lock or unlock a gate, so the city can access project sites without needing the district’s master key.

The pilot project was scheduled to end in June 2008 with the close of the school year, at which point the organizers conducted a formal assessment before deciding whether to renew the agreement for another year. “We surveyed the principals, and the responses generally ranged from neutral to ‘This is terrific – we want to keep it going,’” Armentrout says. “The worst sort of comment was ‘We didn’t see any tangible benefit, but we didn’t see any harm, either.’”

The original team reconvened to revamp the agreement for another year, and Armentrout expects the project to continue. “We’re now about to go into our third year,” he says. The project is yet another testament to a strong relationship between the city and the school district, he says, pointing to an initiative several years ago significantly boosting city funding for school programs, including sports, libraries, and arts and music. “The district has a very good relationship with the Mayor’s office, and there have been huge efforts on behalf of our district,” he says. “The city has really demonstrated a commitment to the children of San Francisco.”



Peter R. Russo

1 Bell L, Huang J, Lambie-Hanso L, et al. *San Francisco parks and recreation space analysis*. Goldman School of Public Policy. University of California, Berkeley. 2007.

2 This case study draws on Vincent J. and Cooper T. *Joint Use School Partnerships in California: Strategies to Enhance Schools and Communities*. Center for Cities & Schools (CC&S) and Public Health Law & Policy (PHLP). 2008.

Joint Use Agreement Type #2: Indoor and Outdoor Access

Allowing public access to indoor and outdoor school facilities during non-school hours

PHLP has developed model language for California joint use agreements allowing public access to indoor and outdoor school facilities during non-school hours (see Appendix 3). You can download an editable version from www.healthyplanning.org.

There are many agreements in California between school districts and other city or county agencies that open access to not only outdoor but also *indoor* school facilities, such as gymnasiums and swimming pools.

This type of agreement gives city and county agencies more opportunities to program athletic activities, and it provides more possibilities for schools to collaborate with local government agencies to schedule recreational programs for their students. The agencies most commonly partnering with schools in these agreements are parks and recreation departments.

Such agreements are in place all over the state, including Anderson (Shasta County), Paso Robles, Reedley (Fresno County), Los Gatos, Inglewood, Danville, and Los Angeles. This chapter features an agreement in Corning (Tehama County).



Corning (Tehama County)

Population	6,741 (US Census, 2000)
Development pattern	Low-density small town
Population density	2,324.5/sq mi
Median household income	\$25,357
Partners involved	Corning Recreation Department Corning Union Elementary School District Corning Union High School District

Corning, a rural community in the northern Central Valley, is primarily an agricultural town. Most of the area’s open space is privately owned, dedicated to farms and factories. The city owns some small parks with picnic areas and some playgrounds, but it has few recreational facilities of its own.

To meet the community’s recreation needs, Corning relies – through two new joint use agreements – on the resources at its eight elementary and three high schools. The two agreements, launched in 2008, provide access to indoor and outdoor facilities at all of the schools, including gymnasiums, swimming pools, tennis courts, and athletic fields.

For a copy of the joint use agreement covering access to facilities at the elementary school district in Corning, see Appendix 2.

Corning’s recreation department was established only a few years ago, after a city-appointed recreation commission (composed largely of parents in the community) advocated for a city department to address parks and recreation issues. As soon as the department was created, the city manager tasked Kimberly Beck, the new recreation supervisor, with developing joint use agreements with the two districts.

Some informal shared use had already taken place at the local elementary schools during the summer months, with parent volunteers organizing Little League, youth soccer, and other programs. Partly because the informal programs had been successful, Beck says, elementary school administrators (specifically the district supervisor, akin to a superintendent) jumped on board.

High school staff, she says, initially expressed more concerns about wear and tear and other costs, including an increase in their electricity bill. “We had to sell it more to the high school,” she recalls.

Beck collected joint use agreements and MOUs from neighboring communities and worked closely with the city attorney and city manager to develop a draft that went to the school districts and their legal advisors for review.

They eventually finalized and implemented the agreements, and the recreation department worked to spread out the programs as much as possible among the available school facilities to avoid disproportionately heavy use for any particular property.

The partnerships have been operating smoothly so far. “At one of the school board meetings, one of the head custodians stood up and said ‘We’ve had zero problems,’” Beck says.

The elementary schools leave their facilities unlocked for public access around the clock (as they did even before the formal agreements were developed), while the high school district locks its facilities after hours when programs are not in session. Community members are currently advocating for access to high school grounds beyond the scope of the existing agreement, says Beck.

“The community feels that if they pay for these facilities, they should be able to use them,” she says. “There’s nowhere to walk around here, so right now people go to the cemetery to walk. They’d rather go to the high school track.” The joint use agreements can be amended at any time, a condition stipulated in the contracts – so both parties have the option to renegotiate any issues that arise once the agreements have been implemented.

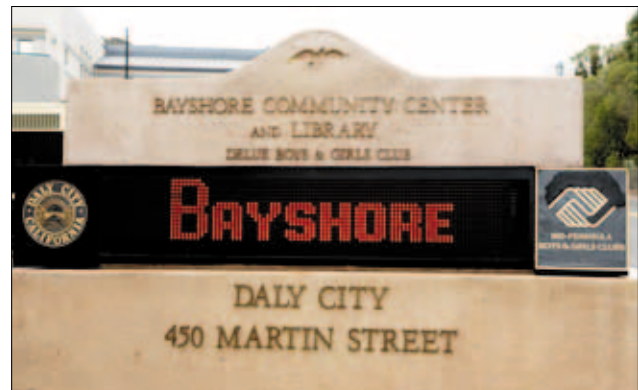
Joint Use Agreement Type #3: Nonprofit Partnerships

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 agreements are not always limited to local government agencies and school districts. Nonprofit organizations involved in developing recreational opportunities for youth and adults – for instance, the YMCA, Boys & Girls Clubs, and other sports-oriented organizations – are very important partners in joint use.

Public-private partnerships are growing in popularity as city and county agencies increasingly find themselves strapped for cash. A multitude of communities across the state – including Santa Ana, Burlingame, Garden Grove, La Quinta, Santa Monica, San Diego, Novato, Los Angeles, and Morgan Hill – have implemented joint use agreements with third-party nonprofits. Santa Clarita and Oakland are featured in this chapter.

PHLP has developed model language for California joint use agreements allowing “third party” organizations to use indoor and outdoor facilities after school hours to operate programs (see Appendix 3). You can download an editable version from www.healthyplanning.org.



Santa Clarita (Los Angeles County)

Population	151,088 (2000 US Census)
Development pattern	Edge city
Population density	3,159/sq mi
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 junior high 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 Southern California 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.

For a more specific breakdown of how the new facility was funded, see Appendix 2.

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.”

Oakland (Alameda County)

Population	420,183 (US Census, 2008 estimate)
Development pattern	Urban
Population density	7,126.1/sq mi
Median household income	\$40,055
Partners involved	YMCA of the East Bay Numerous school districts

With more than 45 joint use agreements in place with area school districts, the Oakland-based YMCA of the East Bay has developed partnerships to program everything from soccer camps to swimming and tennis lessons to after-school programs occupying kids until their parents' workday is over.

In many cases, the joint use agreement effectively means that a school becomes a YMCA site after school hours – an arrangement that reflects the nonprofit's effort to make its programs a “logical extension of the school day,” says Robert Wilkins, executive director of the YMCA of the East Bay.

Because the YMCA is such a large organization, it has its own insurance and staff – but liability and staffing issues have been the two most challenging to resolve, Wilkins says. Where liability is concerned, the YMCA is self-insured, and the first several million dollars of any claim that arises will come out of the nonprofit's pocket. So it prefers agreements that limit its liability.

The organization uses a formula to determine its liability for a site based on the type of program taking place. “We have risk profiles that we run, and we contour our programs to stay within a pretty tight risk window,” says Wilkins. “Some of the critical factors have to do with the level of physical activity, the equipment involved, the adult-to-child ratio, the program's duration, and its frequency.” The formula has varying success with different schools: in some instances, the extent of liability is linked to degrees of access, so the YMCA can end up with a segment of the facility that is too small to fully engage participants in meaningful physical activity.

As far as staffing goes, Wilkins says the YMCA's main issues involve who will staff the facility after school hours and to what extent this is going to result in extra work. Where possible the YMCA prefers to use the existing, unionized school staff because they know the buildings and facilities. For the most part, the YMCA pays the unionized wage, but in a few cases, the nonprofit has been able to negotiate lower wages with school employees. “It doesn't happen very often,” says Wilkins. “At schools where you might have a lot of violence in the neighborhood, where the streets are unsafe, some individual employees see this as their contribution to the community.”

The willingness to pay union wages where necessary has been one key to the East Bay YMCA's ability to build what Wilkins considers the basis of successful joint use partnerships: equal enthusiasm on both sides. The

school district has to be committed to this effort as an extended agenda of its work, Wilkins says. “It takes work, it takes flexibility, and it takes iron-clad commitment to make these partnerships work.”

He has found that one way to build the relationship and the commitment is to pay close attention to the school’s concerns. “We always think about how the agreement can benefit the school and its students,” he says, noting that creating school-identified programs can further school pride and other goals. The YMCA’s swimming program at McClymonds High School in Oakland, for instance, brings third-graders into the high school for swimming lessons, and the YMCA has been able to work with high school staff to create an added benefit for the students by setting up a big kids/small kids mentorship program. “We teach the high school kids some of the skills we teach our own instructors,” Wilkins says, including how to lifeguard and teach the younger kids how to swim.

With programs like these, the YMCA of the East Bay has been able to move past the landlord/tenant relationship – often fraught with real and perceived boundaries to joint use – and on to a partnership that transforms the idea of what a school itself can be.

Such transformative relationships take strong and innovative leadership on all sides, sometimes requiring more than one joint use partner. While the YMCA of the East Bay runs a swimming program at the McClymonds High School pool during the school year, the Oakland Parks and Recreation Department takes over with its own community swim program when the school year ends, staffing and maintaining the pool to make it available to local residents throughout the summer. Each partner has a piece in this agreement, and the pieces fit together in a way that benefits the entire community.

Joint Use Agreement Type #4: Reciprocal Access

Allowing reciprocal access to district and city facilities

PHLP has developed model language for California joint use agreements allowing reciprocal access to district and city facilities (see Appendix 3). You can download an editable version from www.healthyplanning.org.

Our survey of joint use agreements in California showed that many were designed to allow cities and school districts *reciprocal* access to facilities – in other words, providing each partner low-cost or free access to a facility (or facilities) it can use. This section describes reciprocal agreements in Daly City, Vallejo, Rancho Cordova, Santa Barbara, Merced, and the Kings County town of Lemoore.



Daly City (San Mateo County)

Population	103,621
Development pattern	High-density suburban
Population density	13,703.8/sq mi
Median household income	\$62,310
Partners involved	City of Daly City Parks and Recreation Town of Colma County of San Mateo Brisbane School District Jefferson Elementary School District Bayshore School District South San Francisco Unified School District Jefferson Union High School District St. Ignatius College Prep

Daly City, just south of San Francisco, is one of the most densely populated urban areas in California. Maximizing resources is a priority, and the city has had a lot of experience negotiating joint use agreements – and the associated local politics – over the past two decades.

The city has partnered with each of its five local school districts as well as with St. Ignatius, a Catholic high school in San Francisco, and the neighboring Town of Colma, for reciprocal access to swimming pools, gyms, sports fields, and other recreational facilities. One joint use project, partly funded by San Mateo County, transformed what Mike Stallings, director of Daly City Parks and Recreation, recalls as “a gopher-infested, unusable dirt lot” into an all-purpose artificial turf field and indoor gymnasium at a middle school.

The joint use partners have a strong history of collaboration, helped by the fact that many of the individuals directly involved in establishing the agreements – especially school superintendents and parks and recreation staff – have occupied their positions for a long time. And even as city council and school board members have changed over the years, the newcomers have largely appreciated the advantages of the joint use partnerships.

Still, challenges are inevitable, Stallings says. “No matter how carefully you think it through, no matter how well you plan,” he says, “it always seems that after the second committee meeting you slap yourself on the forehead and say, ‘How did I get this process so wrong?’” Strong working relationships among the project’s collaborators are key to navigating the unexpected turns, he says.

Stallings advises working with supporters to strategically identify individuals to join a committee before beginning to draft a joint use agreement. “You may need to involve city or county council members, the water district board of directors, PTA members, volunteers with local nonprofits,” he says. “And you must be able to empathize with your collaborators, to solve the problems and create an agreement.”



With a city council and five elected school boards to work with in Daly City, Stallings notes that the potential for political tension is a reality. “If money is involved, there’s going to be political tension,” he says. “Be aware of the potential for this tension at all times. Don’t be blindsided by it.” By building an extensive circle of supporters, he says, you’re more likely to hear rumblings about a community member’s dissent before anything is aired at a public meeting, and you’ll be better prepared to address the concerns (and you’ll have the opportunity to do so on a one-to-one basis, if appropriate). He also sees some value in “inviting the lion into the den” – that is, including naysayers on the committee developing the joint use agreement – “so you’re not attacked by them at the very end,” he says.

If the joint use committee encounters a lot of resistance on a project, especially if it is the first agreement of its kind for the community, Stallings advises starting with a pilot or short-term project. “Then revisit, tinker, and get a longer-term agreement,” he suggests.

Generally, the history and value of collaboration has overridden potential conflicts in Daly City, and the city and schools alike realize that neither entity has the resources to serve the community’s recreation needs by itself. This understanding has extended to other city departments as well, Stallings says: the city’s police chief even declined funding for a new officer when the funding came at the expense of after-school programs, maintaining that these programs protected youth and the community far more than an additional officer could.

Vallejo (Solano County)

Population	116,760 (US Census, 2000)
Development pattern	Low-density suburban
Population density	3,868.9/sq mi
Median household income	\$47,030
Partners involved	Greater Vallejo Recreation District Vallejo City Unified School District

Vallejo, a city in the San Francisco Bay Area, used a joint use agreement to formalize a long-standing informal arrangement between the recreation and school districts when financial difficulties threatened to impact local recreational programs.

The formal agreement was initiated in 2004 when the school district, facing a budget shortfall, decided to begin charging fees for the use of its facilities on weekends. Before that, the school and recreation districts had generally used each other's facilities at no cost.

The new agreement didn't expand access, because all of the school district's facilities were already available for community programs and vice versa. But the agreement formalized the new terms and costs. "We wanted to spell out who pays for what and how much," says Shane McAfee, director of the Greater Vallejo Recreation District.

The recreation district provides the schools with access to city-owned facilities such as a swimming pool and community centers, in turn gaining access to the school district's sports fields, gymnasiums, and other indoor and outdoor facilities. During the week, the city does not face any additional costs for staffing at the school facilities – it only pays its usual program staff, McAfee says. The only school staff member who has to be present for the after-school programs is a custodian, and the school already has a custodian on site on weekday evenings until 9pm. On weekends, the city pays a custodian to open and lock any facilities being used for city programs.

Scheduling for the facilities happens once a year, with the recreation department's sports coordinator and designated school district staff coordinating their programs for the following year. Once the school district has planned for its own needs, the recreation department gets first choice for use outside of school hours before the remaining slots are made available to the public. Other groups – private or independent sports leagues, service clubs, and so on – work directly with the school district to schedule any activities they want to hold on school facilities.



For a copy of the joint use agreement between the Greater Vallejo Recreation District and the Vallejo City Unified School District, see Appendix 2.

The two agencies had a long history of working together, making the transition from informal joint use to a formal agreement easier. Both were interested in an agreement that would last regardless of changing personalities and philosophies, and both wanted a policy framework for future joint use projects.

In fact, they are currently working on an agreement to jointly manage a combined school and park planned for a newly developed area of town.

“We’ve been working on this project for about three years,” McAfee says, with both the school and the city contributing funds for construction. “Part of the school’s funding for the project comes from the state,” he says, “and for that funding, the school needed an MOU to show how we’re going to operate the school and park together.”

Their experience with particular terms and conditions in the existing joint use agreement informed the process of drafting the MOU for the new project, and both parties’ track record of honoring their agreement over the past several years has built confidence in expanding the partnership. McAfee recalls an incident where someone participating in a city program on school property vandalized a student’s homecoming float that was in the works. “We took responsibility for it – we paid for it, and we arranged to help the kid fix up his float,” McAfee says. “You’ve got to live up to your existing agreement before you negotiate another one. You’ve got to be a good partner.”

Rancho Cordova (Sacramento County)

Population	55,060 (US Census, 2000)
Development pattern	Low-density suburban
Population density	2,624.7/sq mi
Median household income	\$40,095
Partners involved	Cordova Recreation and Park District Sacramento Unified School District Folsom Cordova School District San Juan Unified School District Elk Grove Unified School (informally)

Rancho Cordova, a suburban city located east of Sacramento, has been something of a trailblazer when it comes to joint use agreements: the first in California – and one of the first in the nation – was formalized in the area in the early 1960s, as the community itself was being established.

Situated along the American River, Rancho Cordova has a great deal of park space, but the Cordova Recreation and Park District (CRPD) owns few recreational facilities. “I can count on one hand the number of buildings we own,” says Trish Lindvall, general recreation supervisor for the CRPD. “As a programmer, you have to get creative. We rely very heavily on the schools.”

Access to recreational space is part of Rancho Cordova’s development vision, incorporated into local land use planning documents. And partnerships are “part of our culture,” Lindvall says. “Everyone jokes that when there’s a problem, no one points a finger at anyone – we just form a collaborative around it.”

Still, while the school and park districts in what Lindvall calls a “very recreational-minded community” have essentially grown up together over the years, issues around their joint use arrangements have emerged from time to time – reinforcing the need for vocal support from the community and constant communication between the partners in the agreement.

The CRPD is currently engaged in joint use agreements with three of the four area school districts; each agreement allows reciprocal access to both partners’ facilities. The first agreement was with the Sacramento Unified School District, followed by the neighboring Folsom Cordova School District in the 1970s. The third agreement, with the San Juan Unified School District, was created in 1995 when a new school was built in the area to accommodate a growing population. The city has a fourth shared-use agreement with the newly formed Elk Grove Unified School District, an informal arrangement with a formal document currently in development.



Though the superintendents' commitment to joint use hasn't wavered over the years, the CRPD sometimes encounters reluctance from school staff, especially where turnover is high. "Each time we get a new principal, we have to explain, 'No, we shouldn't be charged. We're allowed to be here,'" Lindvall says. "Of course everyone wants to protect their territory, but for the agreement to work, we have to trust each other."

Local parents, she says, have been essential to getting reluctant school staff to approve and promote new programs. "If we keep getting pushback [from a school], we'll run the programs at another school, and parents will ask, 'Why can't my children have that at *their* school?' We'll tell the parents to ask the principal."

Quarterly meetings between key staff at the park and school districts, especially superintendents and recreation supervisors, have also been critical for keeping the joint use agreements running smoothly by providing a forum for addressing problems before they can fester. The meetings also provide designated "face-to-face" time that leads to stronger relationships. "That way," says Lindvall, "if there are bumps in the road, you can just pick up the phone."

Lemoore (Kings County)

Population	19,712 (US Census, 2000)
Development pattern	Low-density rural town
Population density	2,319.1/sq mi
Median household income	\$40,314
Partners involved	City of Lemoore Lemoore Union Elementary and High School Districts Kings County Education Center West Hills College

Lemoore, a rural town in the southern Central Valley, has very few recreational facilities and “surprisingly little open space” for a rural area, says Joe Simonson, the parks and recreation director for Kings County. “We have our parks,” he says, “but if we wanted to build a walking trail, there might be 20 different owners of the property along the route.”

To compensate, the town has established several joint use agreements over the years with local educational entities – the elementary and high school districts, a community college, and an education center where the schools’ administrative offices are housed. The agreements allow for the reciprocal use of facilities such as soccer fields, a school swimming pool, and a \$22 million sports complex scheduled to open at the end of 2010.

Lemoore’s first agreement, established in 1996, is technically a “preferred use agreement,” Simonson says, giving the parks and recreation department second priority (after the district) for the high school’s facilities and a “preferred rate” for using them. “We still have to pay a per-hour charge,” he says, “but it’s tiny compared with what other organizations pay.”

The concept of joint use was brought to Lemoore and championed by the city manager at the time, who had become a proponent while serving as city manager in Clovis. “When he came to Lemoore, he brought that mind-set with him,” recalls Simonson, who also cites a general sense among the community that public facilities built with taxpayers’ money belong to the public. “The people in this community have a hard time with it if they’re kicked off a field,” he notes. The school board and superintendent strongly support shared use in Lemoore, and local residents have a significant presence at school board meetings, adding to the momentum. Lemoore’s general plan also calls for partnerships with the elementary and high school districts to optimize the use of recreational facilities.

The city parks and recreation director and the school district’s facilities director now meet quarterly to address any issues that arise. The greatest challenge, Simonson says, has been balancing school and community needs to manage the demand for facilities. Demand often outweighs availability, and sports leagues sometimes end up having to travel to practice in facilities in neighboring cities when the facilities in Lemoore are booked.

To limit these kinds of scheduling problems, Simonson says he has found it useful to specify in the agreement – with as much detail as possible – who gets each facility and when. “In our initial agreements, none of that was locked in,” he says. “In our most recent agreements, we have the days, times, and hours spelled out.”

The newer agreements also include provisions for dispute resolution, stipulating the use of a specified third party to resolve sticking points if necessary. “Someone civic-minded – whether it’s the chamber of commerce, or a superintendent from another school, or the mayor – might help you get to a conclusion a little easier,” he says.

“We’ve learned some lessons,” he adds. “We get better every time – the agreements just get thicker.”

Santa Barbara

Population	92,325 (US Census, 2000)
Development pattern	High-density suburban
Population density	4,865.3/sq mi
Median household income	\$47,498
Partners involved	City of Santa Barbara Parks and Recreation Department Santa Barbara School Districts

Santa Barbara, a largely built-out city on the central California coast, has over the past two decades seen a number of revisions to a single joint use agreement between the city and school district. With an extraordinarily strong model for keeping the partners in touch and accountable, this project has expanded access to dozens of city and school facilities, from softball fields, tennis courts, and a golf course to parks, lawn bowling greens, and a fitness center.

For a copy of the agreement establishing joint use (and regular contact) between the City of Santa Barbara and its school district, see Appendix 2.

The city and the district began partnering for access to each other's facilities in 1991. Right from the start, the agreement required regular meetings between various community leaders throughout the term of the agreement. "You have to develop working relationships, respectful working relationships," says Sarah Hanna, recreation program manager for Santa Barbara's parks and recreation department.

The city council and the school board meet twice a year specifically to talk about "overarching issues," Hanna says, especially capital projects and citywide issues that affect both agencies. Parks and recreation department staff also attend these biannual meetings, which promote not just communication and collaboration but also accountability. Another benefit: the school district regularly receives updates on public works and planning issues, such as Safe Routes to Schools guidelines.

Along with the biannual city council/school board meetings, a joint use staff committee meets quarterly to work out the nuts and bolts of implementing the agreement. The committee members – whose titles were specified in the original agreement – include school administrators, the school facilities director, and senior-level parks and recreation staff. "Usually about ten people come to each meeting," Hanna says, "and everybody gives a report" – covering maintenance, scheduling, capital projects, and so on. The committee also drafts reports on the joint use project twice a year for the city council and the school district, addressing recent progress and challenges.

Because the decision-makers work out so much of the larger vision and problem-solving in these meetings, implementation is more of an administrative effort. Initially, for instance, scheduling for each facility was handled by whichever partner owned the property. But several years after the joint use agreement was established, the city and county commissioned

an outside planning firm to assess the state of Santa Barbara's recreational resources and needs. One recommendation that emerged was to centralize the scheduling, and the parks and recreation department then became the central point of contact for all facilities covered under the agreement.

Managing the requests has sometimes presented challenges, Hanna says. To make school property available to local nonprofits and other after-school program groups, the joint use partners have tried a few different policies and systems, eventually deciding that the city would enter into separate agreements with these groups following a set protocol (including securing proof of insurance, and ensuring that staff and volunteers have been fingerprinted).

Another scheduling challenge involves balancing the schools' needs for city facilities with the parks and recreation department's interest in generating revenue where possible. To keep city facilities available for events that bring in user fees (conferences and weddings, for instance), parks and recreation staff sometimes ask the school district – which can use the facilities at no cost – to reconsider an event planned for a “prime time” slot, Hanna says, “Friday nights and weekends are our highest revenue-producing times, so we redirect school district requests wherever possible. If the football team wants to have its banquet on a Friday night, we'll say, ‘How about Thursday night?’ ”

Even with the joint use committee meeting quarterly, school administrators and parks and recreation staff sometimes meet between quarters to work through some of these challenges. “It could very well be resolved at a quarterly meeting,” says Hanna, “but if we have a special issue, we have a good enough relationship to talk it through even sooner. We are in communication with each other all the time.”

Merced

Population	63,893 (US Census, 2000)
Development pattern	Rural town
Population density	3,216.7/sq mi
Median household income	\$30,429
Partners involved	Merced Parks & Community Services Department Merced Union School District Merced City School District

In the city of Merced, in California’s Central Valley, two joint use agreements give the city and area schools reciprocal access to sports fields, gyms, and other recreational facilities.

“The city has never owned many recreational facilities,” says Alexander Hall, director of Merced Parks and Community Services. So more than 15 years ago, he says, the city manager and the superintendent of one of the two area school districts (Merced City) came together to establish the city’s first joint use agreement. A second agreement, with Merced Union, followed soon after in 1995.

Each subsequent superintendent has reauthorized the agreements, which have now been updated several times to include new facilities. The agreements give the city scheduling rights to the schools’ indoor and outdoor facilities; at the beginning of every year, Hall sits down with school facilities supervisors, who plug the city programs into their master calendar.

Hall says his approach to developing joint use agreements has been to build relationships directly with the people who make recommendations to decision-makers. (“There’s a lot you can do over lunch,” he says.) But even with good relationships, he notes, some “hot button issues” emerge, especially around maintenance, cost, safety, and liability.

Regarding maintenance, Hall has operated under the philosophy that the partners must share costs based on their projected use of the facility, and that the portion each will pay must be clearly stated for all to see. As a city employee, he says, not only does he have an obligation to be transparent when spending public funds, but he needs to be sure he is not spending any more than necessary.

On the issues of safety and security, Hall says he is careful to ensure that the city follows state mandates for public facilities and complies with the Americans with Disabilities Act. To meet the highest safety standards, “we’ve been replacing playground structures as we’ve had the funds to do so,” he says. The lighting for two middle school ball fields was recently replaced



For a copy of the agreement between Merced City School District and the City of Merced Parks and Recreation Department, see Appendix 2.

entirely through a state grant. He relies on a city engineer's estimates to arrive at fair costs for new construction and upgrades.

As for liability, all of the joint use agreements in Merced include indemnification and "hold harmless" clauses for each party, and for each agreement, both parties verify current certificates of insurance annually.

The city recently drew up new joint use agreements for two new schools, one scheduled to be built in 2017 and another for the new Bellevue Ranch High School, due to open in a couple of years. "We had to have a joint use agreement in place in order to get matching funds from the State Department of Education," Hall says. The parks and community services department and the Merced Union School District each contributed \$1.5 million to the Bellevue Ranch project, and the state committed another \$2.7 million.

Notably, a number of the city's governing documents lay the groundwork for joint use partnerships. The Merced General Plan recommends joint use as a priority. The Parks and Open Space Master Plan and the South Merced Specific Plan both suggest engaging in joint use (and the Parks and Open Space plan, updated in 2004, now recommends putting "parks adjacent to schools"). The Merced City School District's facilities plan recommends adopting joint use policies as well.

Hall considers joint use an imperative, a way to "fight for the public good," he says. "You have to build these partnerships. It's our responsibility as public officials."

4 Financing Joint Use

Maximizing the use of a single facility is almost certainly more cost-efficient than building and maintaining multiple structures for limited use. But the cost of maintaining and operating a facility increases over time with extended hours and use.

Parks and recreation agencies and other public entities can tap into a variety of funding sources to help offset the costs associated with joint use, including:

- ▶ Federal and state grants
- ▶ Development-driven funding sources
- ▶ Fee-based revenues
- ▶ Additional funding sources (public and private)
- ▶ Renewable, dedicated revenue sources (e.g., special taxes and assessments)



Of these five types, the renewable, dedicated revenue sources are the most reliable and comprehensive. While the others are important, they are usually not enough on their own to cover a parks and recreation agency's funding needs.

This chapter outlines and provides specific examples of all five types of funding sources, highlighting potential advantages and drawbacks.

1. Federal and State Grants

Local government agencies may compete for federal, state, and county grants to renovate or build recreational facilities. These grants often require matching funds from the city, which may be generated through nonprofit and private foundation grants.

Federal grant programs such as the Land and Water Conservation Fund (LWCF) Act, funded through Congressional appropriations, can provide matching funds for local parks and recreation agencies to construct facilities.

A Grant Success Story

In 2008, the City of Oakland completed a \$5 million renovation to the Ernie Raimondi Park, a baseball field at McClymonds High School. Community groups helped arrange the funding – primarily the Friends of Oakland Parks and Recreation, a local nonprofit, which raised \$2.5 million through a competitive state grant program, the Murray-Hayden Urban Parks and Youth Service Program. This grant program awards funds to government agencies for capital projects (including parks, park facilities, and youth centers) within close proximity to a neighborhood that lacks parks/open space and youth services.

In California LWCF grants are administered by the California Department of Parks and Recreation.

Voter-approved initiatives such as Propositions 40 and 84 have funded state grants that can be used to construct and rehabilitate facilities and parks. The Roberti-Z'berg-Harris Non-Urbanized Area Need-Basis program is one competitive grant program established to help meet the need for safe, open, and accessible local and parks and recreational facilities.¹

Grants tend to be of limited value to many parks and recreation agencies because they are typically awarded through a competitive process, they often require matching funds, they are narrowly focused in terms of scope and services, and they can have significant administrative overhead for a onetime or limited infusion. Still, they can be a good way to get the joint use process started.

2. Development-Driven Funding Sources

New housing development brings added demand for recreation programs. To cover costs, cities often require that parks and playgrounds be built into new development projects. Even with residential construction slowing down, cities and towns can put a variety of mechanisms for development-driven revenues into place in anticipation of future development:

▶ Quimby Act in-lieu fees

The 1975 Quimby Act authorizes local governments in California to pass ordinances requiring developers to provide land or in-lieu fees specifically to provide parkland and open space to growing residential populations. Where land may not be set aside, local government agencies can use in-lieu fees to expand park acreage.

▶ Developer impact fees

The Mitigation Fee Act² provides for development impact fees (often called “developer fees”) levied on new development to cover the cost of infrastructure or facilities necessitated by that development. Impact fees, collected through the city or county’s planning and development process, are onetime capital infusions, which will primarily affect new development and typically have a marginal effect on the overall program. Impact fees for improving school/park facilities to accommodate new development are common examples.

Historically, however, public agencies in California have often neglected to collect park impact fees – and when they do collect these fees, they often collect too



little. To ensure that sufficient fees are collected from a new development, a comprehensive park impact fee study should be part of the development approval process to determine what park use and maintenance costs will be. These estimates should be reviewed and updated every five years to incorporate changing needs.

▶ **Development agreements**

School or park facilities are often included as “conditions of development” for large development projects. This means that the developer, to get approval to build, will either have to (a) pay a park impact fee to fund park construction and services or (b) build a park or recreational facility. Agreements with developers may allow density, zoning, or other allowances in exchange for improving or creating recreational facilities. Staff from both the parks and recreation agency and the school district should ensure their needs will be met by participating in the planning and development process for new facilities.



3. Fee-Based Revenues

User fees are a common revenue source for parks and recreation agencies – whether the fees are charged each time the facility is used, upon registering for lessons or a recreation program, or through agreements among organizations for the use of a facility for a set period of time. 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.

Fees are one component of a parks and recreation agency’s revenue strategy, but, like grants and developer-driven revenues, this source is typically inadequate by itself. Because fees are usually kept low enough to allow people to afford to participate in the programs, and given that the number of participants is variable, the amount of money collected this way may fluctuate from year to year.

4. Additional Funding Sources

California cities and counties have discovered a number of alternative funding sources, both public and private, that may support joint use efforts.

Public Sources

▶ **City general funds**

Grants and contributions from city general funds can finance capital

improvements as well as maintenance and operational costs incurred through joint use.

▶ **Redevelopment agency funding**

When property values in redevelopment areas increase, redevelopment agencies can collect the tax increment that results. These funds have been spent, in a number of cases, to develop or improve school recreational facilities and park space in redevelopment areas.

▶ **Certificates of participation (COPs)**

These are a type of lease-purchase agreement that do not constitute indebtedness under the state constitutional debt limit and do not require voter approval. In a typical case, a local government entity decides to acquire a new or renovated public facility. This facility is purchased or constructed by a vendor corporation, and the local government signs a lease agreement with the corporation to use the facility. An underwriting firm then buys the lease obligation from the vendor corporation and breaks it into small units – certificates of participation (COPs). Each COP represents a share of the lease payment revenue stream. The underwriter then places the COP issue with a bank that in turn sells the certificates to individual investors who receive a tax-exempt return on their money. The local government makes the lease payments to the bank, which makes payments to the certificate holders. At the end of the lease period, title to the facility passes to the local government entity at nominal cost.

▶ **Sale or lease of surplus lands**

The sale or lease of underutilized city-owned land or other facilities can be an important source of revenue. The money the city earns from selling the property can be used to acquire new parkland or recreation facilities, or to develop new community service facilities. Revenues from long-term leases can go toward maintenance or underwrite programs. Surplus parcels also may provide opportunities for trading land with other agencies that own land more suitable for recreation purposes.

▶ **Adopt-a-park programs**

This type of program, in which businesses or community groups take responsibility for maintaining public property (often in return for public acknowledgment), could generate funds or volunteers to maintain city parks or recreational facilities.

Private Sources

▶ **Private foundation grants and nonprofit partnerships**

Private foundations may award grants specifically for developing or improving public recreational space; some cities have created their own nonprofit organizations through which such funding may be awarded.

Local governments also can partner with local nonprofits to solicit funding from sources (e.g., private foundations, businesses, individuals) that don't typically award grants to city agencies. Cities can encourage private sponsorship by naming facilities after contributors, and they can organize fund-raising concerts and other events through nonprofit partners.

▶ **Corporate sponsorship of events**

Corporate sponsors can bring in revenue in exchange for their involvement in local sports events, team sports, and various senior or youth activities.

▶ **Concessions (public/private partnerships)**

Cities can generate income by contracting with a concessionaire to build and/or operate a facility on city-owned land. The concession, in this case, could be the facility itself (rented out for a fee), or a facility that generates income by selling (healthy) food and beverages or renting out equipment on the premises.

▶ **User group contributions**

Sports groups may finance the construction or maintenance of athletic fields if the city provides a nominal lease of land for a reasonable time span so the groups can capture the value of the improvements. This relieves the city of the costs involved, but it may preclude other groups' use unless the lease specifies otherwise.

▶ **Volunteer labor**

Certain programming and maintenance tasks can be handled by volunteers, potentially reducing costs.



5. Renewable, Dedicated Revenue Sources

Renewable, dedicated funding mechanisms provide a more dependable flow of funds than the four options discussed earlier in this section.

There are **three types** of dedicated funding sources that can cover the costs of ongoing maintenance and repair for joint use facilities:

- ▶ Special taxes
- ▶ Special assessment (including benefit assessment) districts
- ▶ Bonds

Special taxes and assessments are “pay-as-you-go” funding sources, while bonds are deferred, set up to pay at a later date.

Special Taxes

A *special tax* (e.g., a parcel or property tax) is decided by all registered voters in the proposed service areas, either through a one-day election or through mailed ballot, and it requires two-thirds voter support. Among

those who vote are tenants, who will not pay the proposed tax – and among those who do *not* vote are business owners and apartment owners who do not live in the area. Because non-owner voters have a significant say in parcel tax elections and many property owners do not, the Howard Jarvis Taxpayers Association (HJTA), via Proposition 13, established a two-thirds (supermajority) requirement for parcel tax elections. For this reason, special taxes are often difficult to institute.

Other examples of taxes used to pay for parks and recreation include transient occupancy (for a stay at a hotel or other lodging), real estate transfer (for the sale or transfer of property), and admissions taxes (tacked on to the price of an event). A portion of revenues from such taxes could be dedicated for specific parks and recreation uses, either to provide funding for a bond issue or to cover defined maintenance and operating costs.

Special Assessment (including Benefit Assessment) Districts

Special assessment districts are created by local governments or by voter initiative. They are governmental entities that manage resources within a defined set of boundaries, whose geographic boundaries can range from individual cities to comprising several counties. As self-financing legal entities they have the ability to raise a predictable stream of money (such as taxes, user fees, or bonds) directly from the people who benefit from the services. The use of these special assessment districts to help pay for parks has a long history in California.

A *benefit assessment* is created by a vote of property owners in a proposed service area. The voters agree to tax their properties in order to raise revenues for infrastructure and services that will provide them with a “special benefit” they would not otherwise receive. This financing mechanism was created by Proposition 218, and voting eligibility is limited to property owners, a group that includes business owners, apartment owners, and agricultural property owners.³ Whereas new taxes must be approved by two-thirds of eligible voters, benefit assessments can be approved by a simple majority of voting property owners. Among the facilities that count as special benefits are parks and open space, and the assessments can be used to fund capital improvements, acquire land, pay off long-term debt, and pay ongoing maintenance costs.



Special Taxes and Benefit Assessments: A Comparison

	Special Taxes	Benefit Assessments
Who votes?	Registered voters	Property owners
Election venue	Polling booth (or mail ballot)	Mail ballot
Election period	1 day (or 28 days)	45 days
Does everyone who will pay get a vote?	No	Yes
Are votes proportional to how much you will pay?	No	Yes
Tax/assessment amounts based on benefit?	No	Yes
Threshold of vote required for success	Supermajority (66.6+%)	Weighted majority

For instance, the Mission Oaks Recreation and Park District (MORPD), which oversees resources in two communities 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 agreement with the district). The MORPD conducted a benefit assessment 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, and to remove a “sunset clause.” Property owners approved the measure, and the assessment funds the maintenance and improvement of the parks and recreation and school sites.

Benefit assessments can be approved by developers for areas where new residential construction is taking place. Developers are usually the primary property owners – so local agencies can determine the rate of assessment needed to fund the annual maintenance and improvement of local parks, and they can require developer approval of the assessment as a condition of their project approval.

There are a number of laws that enable the creation of benefit assessments in California:

- ▶ **Landscaping and Lighting Act of 1972** (to help finance land for parks, recreation, and open space; park construction and recreational improvements; and the maintenance and servicing of land and improvements)
- ▶ **1982 Mello-Roos Community Facilities Act** (allows for the formation of Community Facilities Districts to finance public improvements and services)
- ▶ **Improvement Act of 1911** (to help finance street paving, grading, sewers and other “necessary” improvements)

- ▶ **Municipal Improvement Act of 1913** (assessments to construct improvements and acquire necessary property)
- ▶ **Improvement Bond Act of 1915** (allows for issuance of assessment bonds)
- ▶ **Property and Business Improvement District Law of 1994** (enables assessment districts to promote tourism and build parking lots, fountains, and other facilities and services to improve commercial areas)
- ▶ **Tree Planting Act of 1931** (assessments to fund planting, maintenance, and removal of trees)
- ▶ **Open Space Maintenance Act of 1965** (allows for assessments for improvements and maintenance)
- ▶ **Proposition 218 of 1996** (established a strict definition of “special benefits” and instituted a common formation and ratification process for all benefit assessment districts)⁴

Most benefit assessments in California have been created through the Landscape and Lighting Act of 1972 and the 1982 Mello-Roos Community Facilities Act. Cities often create Community Facilities Districts (also known as CFDs or Mello-Roos Districts) or Landscaping and Lighting Assessment Districts (LLADs) to support school/park facilities near new residential development.

CFDs and LLADs are usually established during the residential development phase in negotiation with developers, because this is less politically challenging than having homeowners vote to approve them after the homes have been sold. Parks and recreation agencies should work closely with local planning professionals to require that these funding mechanisms are in place during the development phase of any new development project and that they have a school/park facilities and maintenance services component.

These funding sources usually only cover the increased maintenance and operations costs that result from the additional services provided to those living in the newly developed areas. To ensure that these funding mechanisms are put in place when new developments are being approved, public health, community leaders, and all 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 facility costs are included.

Because benefit assessments require a lower voter threshold and allow for operations and maintenance, they have come to be seen as the most politically prudent revenue-generating option for a parks and recreation agency. Communities interested in going this route may want to hire a campaign consultant with experience leading successful efforts to create

In 2005, the Southgate Recreation and Park District in Sacramento County formed a CFD to fund the maintenance and operations of a park and community center built for the new 5,000-home North Vineyard Station residential development. The CFD will raise just under \$2 million a year when the development is completely built out, at a rate of about \$430 assessed each year per single-family home. The CFD formation process was primarily administrative: a tax report was developed, and three ballots were mailed – one to each property owner (the developers) with their votes weighted by the total shares they owned. All three voted to support the proposed CFD; creating a funding mechanism for maintenance and operations had been a condition of approval for the project, and they each appreciated that a healthy parks and recreation program would add value to their real estate investment.

benefit assessment districts (SCI Consulting Group, www.sci-cg.com, is one example).

Generally speaking, the decision of whether to pursue a benefits assessment district is usually guided by a public opinion survey and a voter/property owner analysis designed to determine several key considerations:

- ▶ The dollar level of support that voters/property owners have for park services (e.g., \$25/year per single-family home)
- ▶ The park improvements and services local voters/property owners prioritize (e.g., improved playground equipment, more sports fields)
- ▶ The preferred funding mechanism (benefit assessment vs. tax)



A typical benefit assessment process, including survey, takes six to eight months. The entire process, including tabulation and final resolution, must be concluded by the local county auditor’s due date for levies, which is usually in the middle of August. Mailed-ballot benefit assessments can be sent out at any time during the year, so considerable thought should be put into determining the schedule.

A typical schedule (here drawn from SCI Consulting Group) might be:

October	District selects assessment engineer
January 15	Survey mailed out
April 15	Survey results presented, rate selected and measure designed
May 15	Ballots mailed out (pending positive survey results)
July 1	Balloting closes
July 15	District approves assessment (if results satisfy 50% weighted threshold)
August 10	Assessment levies submitted to county auditor
December	First revenues received by the a park district/department

Be sure to consider, too, whether competing bonds on the ballot might draw votes away from the measure.

Bonds

In addition to special taxes and assessments, bonds are a renewable, dedicated revenue source that can be used to cover the costs of ongoing maintenance for joint use facilities. Most bond issues require a two-thirds vote of the electorate and are therefore not widely used for this type of

funding. Still, some of the most common forms of these bonds are *general obligation* and *revenue* bonds.

- ▶ **General obligation bonds** are repaid by the governmental entity that is doing the borrowing. If this is a city, the bond is repaid out of the general fund. Only cities with a general fund surplus can issue general obligation bonds that will be repaid this way. Cities often do *not* have surplus funds, so they sometimes ask voters to approve an additional property tax assessment to pay for the debt of proposed bonds. This also requires a two-thirds majority of the electorate, and it is often difficult to get approval to follow this route. Because of the guarantee of property tax revenue, however, these bonds typically carry a lower interest rate than revenue bonds.
- ▶ **Revenue bonds** are secured by a pledge of revenues from a tax or non-tax source such as assessments or fees. Because the revenue from a particular facility is the only security, these bonds usually carry a higher interest rate than general obligation bonds. Directly issuing revenue bonds without forming a funding district may not be feasible for park and recreation purposes due to the limited income streams from these types of activities. However, revenue bonds have been used to partially fund development such as an aquatic facility where a feasibility study verified its revenue-generating capacity.



Appropriate funding sources for a joint use partnership will depend on the type of project. Joint use agreements may involve maintaining existing facilities, undergoing renovations and improvements, or constructing new infrastructure, which also involves maintenance and program costs. Acquiring, developing, and renovating land and facilities takes large, onetime sums of capital funding; covering operations and maintenance takes much less money, though this funding is required on an ongoing basis. The following table lists the typical uses of each funding source described in this chapter.

Identifying Funding Sources for Projects

Funding Source	Acquisition	Improvement	Operations	Programs
Nonprofit Foundation Partnerships	x	x		
County, State, and Federal Grants	x	x		
Private Foundation Grants	x	x		
Quimby Act / In-lieu Fee	x	x		
Development Agreements / Impact Fees	x	x		
General Obligation Bonds	x	x		
Revenue Bonds	x	x		
Certificates of Participation	x	x		
Redevelopment Agency Funding	x	x		
Fund-Raising Events	x	x		
Sponsorship (Naming of Facilities)	x	x	x	x
User Fees			x	x
Corporate Sponsorship of Events			x	x
Adopt-a-Park Program			x	x
Volunteer Participation			x	x
Concessions (Public / Private Partnerships)	x	x	x	x
Benefit Assessment District	x	x	x	x
Special Assessment District	x	x	x	x
Community Facilities Districts / LLADs	x	x	x	
Transient Occupancy Tax	x	x	x	x
Real Estate Transfer Tax	x	x		
Admissions Tax	x	x	x	x
User Group Contributions	x	x	x	x
Sale / Lease of Surplus Lands	x	x	x	x
General Fund	x	x	x	x

Table reprinted from the Santa Clarita Parks, Recreation, and Open Space Master Plan

Building Support for Local Funding Measures

Educating community members will be critical – not only to garner support for a successful vote but also to communicate to elected and appointed officials that the community is in favor of the project. Messages should focus on the need to enhance park and recreation services, highlighting the fact that the proposed project will provide more services to the public by using existing facilities more efficiently.



Key points could highlight:

- ▶ Better maintenance of sports fields and playground equipment
- ▶ Improved outdoor lighting to reduce crime and increase usage
- ▶ Long-term savings due to more efficient use of existing public resources
- ▶ Expanded public access to community facilities

These messages should be designed to educate the public about the value of increased park access for area adults and youth, noting that all of the funds raised by this assessment will be used for services and projects within a specific area (and that it cannot be appropriated by the state or county, or used for other purposes).

Other guidelines for community outreach efforts:

- ▶ **Initiate direct contact with the community.** The most effective way to build understanding and support for a local funding measure is for local volunteers to contact property owners and residents in the area, by phone or in person. Park personnel and community-based organizations are particularly effective in communicating directly with the community.
- ▶ **Use local media and community-based organizations as a conduit.** A park district or department should work with local media, particularly newspapers and local organizations that communicate to their members, to raise awareness of the proposed services and the benefits of the funding measure.
- ▶ **Involve community leaders.** Park district staff should identify important community leaders and enlist them to assist with the planning and outreach efforts.
- ▶ **Involve community stakeholders.** Those who may benefit most significantly from the improvement of school/park facilities could include seniors, families with children, and large businesses.

- ▶ **Engage owners of large properties, including businesses and apartment buildings.** Collectively, these individuals hold a significant percentage of the overall weighted votes. Park district representatives and local stakeholders should contact apartment and business owners to ensure they understand the importance of supporting a park district/department measure.

¹ *Directory of Grant Funding Sources for California Park & Recreation Providers*. CA Department of Parks and Recreation, Planning Division, Parks & Recreation Technical Assistance. March 2004.

² Cal. Gov't. Code § 66000, *et. seq.*

³ Cal. Const. art. XIIIID (provides specific requirements and procedures for creating benefit assessments).

⁴ Westrup L. *Crafting a New Benefit Assessment*. Planning Division, Park and Recreation Technical Services, California State Parks. November 2006. Available at: www.parks.ca.gov/pages/795/files/benefit_assessment_article_final_oct_17.pdf

5 Addressing Liability Concerns

Some school districts may be reluctant to open school property for after-hours use because they are concerned about the legal risks and potential costs if property is damaged or users are injured.

To understand these concerns, it is helpful to have a basic understanding of what's known as *tort liability*. A school district may be concerned about being liable, or legally obligated, for a *tort* – that is, property damage or the injury or death of a person. Usually, a person or entity found liable in tort must compensate the victim for the injury or harm suffered by paying *damages* (money).



To be found liable, four things must have occurred:

1. The person or entity must have a duty or legal obligation to use care toward the victim.
2. The person or entity must have been *negligent*, having failed to use reasonable care toward the victim. In other words, the person breached–violated or broke–the duty of care.
3. The negligence must have been the cause of the harm to the victim.
4. The victim must have suffered actual damage or harm.

In California, the Tort Claims Act (the “Act”) governs all negligence lawsuits brought against local governmental entities, including school districts!¹ The Act provides school districts with strong protection from liability for injuries to recreational users of school property.

A California school district may only be liable for an injury if a state law specifically provides for liability, such as when an entity breaches a specific duty.² (This protection holds even if the injury was caused by an action or failure to act by the district or a district employee.) The Act also limits liability by providing immunities for government entities.³

Sometimes, even if a tort is caused by negligence, the person or entity may be immune from liability. Many states have “Good Samaritan” statutes, for example, protecting citizens from liability if they attempt to help or rescue someone in imminent and serious danger. Legislatures want to encourage citizens to assist others in immediate need, so they protect those Good Samaritans from liability.

Potential Liability

There are a few statutes imposing liability that could potentially apply to a school district.

First, **a school district could be liable for a “dangerous condition” on its property.** If there is a substantial risk of injury when the property is used with due (regular) care in a regular or normal manner, the property is considered to have a *dangerous condition*.⁴ A stop sign obscured by a tree, a sidewalk with an eight-foot drop-off at the edge, and a model airplane park adjacent to uninsulated electrical wires may be considered dangerous conditions on public property.⁵ A court has found, however, that an unlocked school playground gate or a hole in the playground fence is not a dangerous condition.⁶



Even if a school district has a dangerous condition on its property, the Act provides some exceptions from liability. A district is not liable for an injury if (1) the act or omission that created the condition was reasonable, (2) the school took reasonable action to protect against the risk of injury created by the condition, or (3) the school's failure to take action was reasonable.⁷ So if the school has a dangerous condition on its property and failed to take any protective action against it, and someone was engaging in recreational activity on the property in a usual way but was injured because of the dangerous condition, a court could find a school district to be liable. School districts, however, are certainly not likely to maintain dangerous conditions on their property, because they do not want to risk injury to their students or employees during the school day.

Second, **a school district could be liable in tort if an injury is caused by the school's failure to carry out a “mandatory duty.”**⁸ Under California law, teachers have a mandatory duty to supervise students' conduct “on the way to and from school, on the playgrounds, or during recess.”⁹ California courts have interpreted this requirement to include a duty to supervise official school sports or activities occurring after-hours or off-season.¹⁰ So a school may be held liable for a student's injury during the school day, during recess, or during school-sponsored extracurricular activities – if a court finds that the student's injury was caused by inadequate supervision.¹¹

By contrast, there is *no* “mandatory duty” imposed on schools for injuries or other damages to people who use school property outside of official school activities – that is, to people using school property for recreational activity after school hours.¹² Provided that the activity occurs before or after school, and not as part of organized school or extracurricular activities, a school has no mandatory duty to supervise – and no statutory liability under the Act.

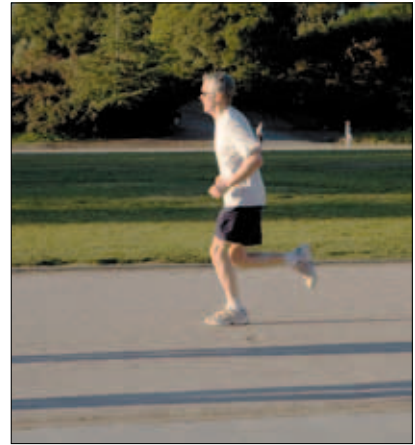
Immunity

Schools have additional protection from liability through immunity – in particular, through “hazardous recreational activity” immunity.¹³ The Act has a two-part definition of *hazardous recreational activity*. First, it defines the terms as “a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.”¹⁴ Second, it specifically lists certain activities as hazardous recreational activities, including all body contact sports (“sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants”), and tree climbing.¹⁵

The hazardous recreational immunity provides strong protection to school districts. The California Supreme Court has stated:

The Legislature had in mind immunizing public entities from liability arising from injuries sustained by members of the public during voluntary unsupervised play on public land, in order to prevent public entities from having to close off their land to such use to limit liability. Such activities may be fairly characterized as recreational.¹⁶

The courts have liberally applied this immunity to protect schools from liability for injuries to people who use school property after hours, finding school districts not liable (1) for injuries to an adult basketball player in a school gymnasium rented after hours from a school district, and (2) for the wrongful death of a 12-year-old boy who suffered fatal injuries when playing a skateboard version of crack-the-whip on the school playground after school hours.¹⁷



Other Protections

California law provides school districts with other forms of protection from liability, beyond those in the Tort Claims Act.

- ▶ **State law requires schools to be insured.** California law requires the governing body of every school district to insure against the liability of the district, board members, and district officers and employees for damages for death, injury, or property damage or loss.¹⁸ A school district may buy insurance, establish a fund for a self-insurance program, or enter into a joint powers agreement with other districts or local governmental entities to form an insurance pool.¹⁹
- ▶ **State law requires groups using school property to be insured.** The California Civic Center Law requires that organized groups using school property after hours carry insurance and defend themselves from claims

arising from their use of the property.²⁰ A school district also may require any group using school property to pay for any damages they cause,²¹ and it may require sports leagues or other groups to demonstrate proof of insurance. Individual recreational users are not required to carry insurance.

► **Schools may share risk through “indemnity clauses” in joint use agreements.** The Tort Claims Act governs tort liability under agreements between public entities.²² It provides that the entities are “jointly and

severally liable” for injuries occurring while the agreement is in effect – that is, that each entity is individually responsible for the entire liability, but the entity may have a right to be reimbursed for all or some of the damages from the other entity.²³ An *indemnification clause* is a provision in an agreement in which one party agrees to be responsible for any liability the other party might incur. A government entity may agree to indemnify another.²⁴ A school district, then, can further protect itself from liability by entering into a joint use agreement that requires the city or town to wholly or partially indemnify it for any potential liability under the agreement.



California school districts may be concerned about potential legal risks around opening their facilities to community use, but state law gives them strong protections. Districts can minimize their risk by prudently maintaining their property and by carrying (and requiring group users to carry) insurance, and by entering into joint use agreements with local governmental entities.

Overcoming the Liability Hurdle

A Case Study from Tulare County

Susan Elizabeth, who works with the Central California Regional Obesity Prevention Program (CCROPP) as community coordinator for Tulare County, has become an expert on using joint use agreements to open access to schoolyards in her part of the state. When a high school principal expressed concerns that liability issues would make the joint use of their facility impossible, Susan talked with the district’s insurance broker to learn more about what could be done to overcome this apparent obstacle.

She learned that the insurance company holding the school’s liability policy divided after-school use of school facilities into two different categories:

► **Programs run by organized groups – Boys & Girls Clubs, YMCAs, athletic leagues – that produce a certificate of insurance to the school.** Their

insurance policy becomes the policy of first resort in the event of an injury while their organization is operating a program on school grounds, and the school's insurance policy serves as a back-up policy.

- ▶ **Community members who are not affiliated with any organization or program operating on the school grounds at the time.** This includes people who just walk in to use school facilities for recreational activities in an informal, unsupervised, and unstructured manner.

According to the insurance broker, the district's existing policy – which is similar to other insurance policies held by school districts throughout the state – covers people engaged in both types of activity on school grounds. However, some school districts may be self-insured, with different policies regarding this type of unsupervised use by community residents.

Government agencies can operate collectively through what are known as *Joint Powers Agreements*. Many school districts have entered into joint powers agreements to establish insurance “risk pools” that are all covered by one insurance broker. Local pools of insured entities are covered by even larger regional insurance companies (either by Northern California Relief, Southern California Relief, or the Statewide Association of Community Colleges), who can offer more extensive coverage to their clients. Pooling resources allows agencies to save money on their own liability coverage. Statewide, the Schools Association for Excess Risk (S.A.F.E.R) combines these regional groupings and other entities, such as the Oakland Unified School District, into risk management groups. Each successive agglomeration of pools has deeper reserves of financial coverage.

With this knowledge in hand, Susan organized a lunch at which she invited the insurance broker to speak to a broad array of school representatives, including superintendents, school board members, state Office of Education staff, and staff from The California Endowment (which funds Susan's work on behalf of the CCROPP). After this meeting, a number of schools in Tulare County deemed their liability risk to be sufficiently covered and began opening their gates to the public.



- 1 Cal. Gov't. Code § 810 *et. seq.* The Act provides a comprehensive statutory scheme governing the procedural and substantive requirements for imposing liability on government entities in California.
- 2 Cal. Gov't. Code § 815(a).
- 3 Cal. Gov't. Code § 815(b).
- 4 Cal. Gov't. Code § 835.2.
- 5 *Bonanno v. Central Contra Cost Transit Authority*, 30 Cal. 4th 139, 149-151 (2003).
- 6 *Bartell v. Palos Verdes Peninsula School District*, 83 Cal. App. 3d 492, 497-498 (1978).
- 7 Cal. Gov't. Code § 835.4.
- 8 Cal. Gov't. Code § 815.6.
- 9 Cal. Educ. Code § 44807.
- 10 *Avila v. Citrus Community College District*, 38 Cal. 4th 148, 154-160 (2006) (duty to supervise students extends to school-sponsored and supervised athletic practice and play); *Dailey v. Los Angeles Unified School District*, 2 Cal. 3d 741, 747-748 (1970) (duty to supervise extends to recess); *Acosta v. Los Angeles Unified School District*, 31 Cal. App. 4th 471, 475-480 (1995) (duty to supervise extends to school-sponsored athletic practices under the supervision of school personnel after school or during the off season); *Iverson v. Muroc Unified School District*, 32 Cal. App. 4th 218, 227 – 228 (1995) (duty to supervise extends to physical education class required by school and conducted during school day).
- 11 *Id.*
- 12 *Avila v. Citrus Community College District*, *supra*, 38 Cal. 4th at 154-160.
- 13 Cal. Gov't. Code § 831.7.
- 14 Cal. Gov't. Code § 831.7(b).
- 15 Cal. Gov't. Code § 831.7(b)(1)-(3).
- 16 *Avila v. Citrus Community College District*, *supra*, 38 Cal. 4th at 159.
- 17 *Yarber v. Oakland Unified School District*, 4 Cal. App. 4th 1516 (1992); *Bartell v. Palos Verdes Peninsula School District*, *supra*, 83 Cal. App. 3d at 500. (“We find no special circumstances here which would impose a general duty on the school district to supervise and control the conduct of persons on its premises apart from school-related activities and functions which require persons to be on school grounds.”)
- 18 Cal. Educ. Code § 35208.
- 19 Cal. Educ. Code § 1274 (county superintendent may establish a fund for losses and payments to cover deductible amounts, losses or payments under self-insurance programs, or losses or payments due to noninsured perils); § 35214 (authorizes self-insurance); § 117566 (school district governing body may establish a fund for losses and payments, including health and welfare benefits for employees, school district property, any liability, and workers’ compensation for the purpose of covering the deductible amount, losses or payments arising from self-insurance programs, or losses or payments due to noninsured perils); § 17567 (authorizing school districts to enter into joint powers agreements for insurance programs or to establish insurance funds).
- 20 Cal. Educ. Code § 38134(i). (“The district and *the group* shall each bear the cost of insuring against its respective risks and shall each bear the costs of defending itself against claims arising from those risks.”, emphasis added); *see also* § 82548. (“The governing board of any community college district may require any person, group, or organization granted the use of community college property pursuant to this article for the purposes of athletic activities to obtain a certificate of insurance from a liability insurance carrier and to submit such certificate to the district for approval prior to using any district property. The certificate shall evidence a minimum coverage of three hundred thousand dollars (\$300,000) for any liability for injury or damage to property which may arise out of such use of community college property. The governing board of any community college may require more than such minimum coverage.”)
- 21 Cal. Educ. Code § 38134(f).
- 22 Cal. Gov't. Code §§ 895 – 895.8.
- 23 Cal. Gov't. Code § 895.2.
- 24 Cal. Gov't. Code § 895.4.

6 Strategies for Scheduling, Relationship-Building, and Maintenance

Even after operating costs and liability concerns have been addressed, the implementation of a joint use agreement could be stalled by other issues. Though challenges vary from place to place, research in California indicates a few areas where the agreements tend to run aground:¹

- ▶ Scheduling access to the facility
- ▶ Establishing effective relationships with stakeholders, including unionized school-site personnel
- ▶ Understanding responsibilities for maintenance and upkeep

This chapter outlines some of the common misunderstandings that hamper many joint use agreements, exploring strategies for scheduling, communicating effectively (and proactively) with unions, and clarifying roles and responsibilities around maintenance.

Scheduling Access to the Facility

Schools appropriately see their buildings and property as being first and foremost for school district and student use, and they generally want to keep the flexibility to schedule activities at times that suit them. School team coaches, for instance, may block out more time than necessary to ensure the facilities will be available when needed, and school officials may cancel public use of their facilities to accommodate last-minute school activities. This can interfere with a joint use partner's ability to schedule its own programs – in turn damaging its credibility with the public, including fee-paying clientele.

The remedy to this problem begins with the understanding that even though joint use agreements are usually written at the district level, school personnel usually control access to the facilities on school grounds. The superintendent may sign the agreement, but the principal, coach, or custodian has the keys. Local personnel put a lot of hard (sometimes unpaid) work into their schools, buying equipment for their facilities, sometimes with their own money. It is critical to respect their position and ensure that





school staff always feel their facilities will be carefully maintained.

Even when a master joint use agreement is in place, there are no guarantees that partner agencies will have access to specific facilities at specific times. Reliably getting through the gates or inside the doors at a specific time will likely require a clear statement of which partner will access which facility at which time and with what exceptions.

The table on the next page, for example, is Exhibit B of a joint use agreement between the City of Fresno and the Fresno Unified School District (FUSD). It clearly delineates the *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 3pm.

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.

Such exhibits are common in joint use agreements throughout the state. The more partners or sites involved, the more specific the exhibits covering scheduling need to be. In cases where the agreement covers many facilities, or only applies to parts of the facilities, it can be very helpful to include maps outlining which parts are and are not opened to joint use, and the desired points of entry and exit during joint use hours.

Building Relationships with Staff at the Site

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 to show up and let 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.



Building and maintaining relationships should be a central part of the job of those who oversee the joint use agreement. Overlooking or avoiding this aspect of the process would be perilous.

For a good example of strong relationship maintenance, consider an ongoing effort in the small unincorporated town of Earlimart in Tulare County. Since the middle of 2007, Susan Elizabeth of CCROPP and other advocates have sought community access to an undeveloped 3.5 acre piece of school district property in the middle of town. The school superintendent was concerned

the school might need the land in the next decade or two, Elizabeth says, and was also reluctant to assume responsibility for the community’s recreation needs. Faced with no other prospective sites for a park, Elizabeth reached out to other local agencies – including the Tulare County Resource Management Agency and the Earlimart Public Utilities District – that were interested in increasing park space and had financial resources that could tempt the school district into reconsidering its stance.

The new “Earlimart Safe Places for Children to Play” work group developed a plan for establishing a joint use agreement, specifically including relationship-building steps throughout the process. The work plan is adapted below, outlining tasks (and in some cases, outcomes) for each step.

Work Plan

Earlimart Safe Places for Children to Play Joint Use Agreement Work Group	
Step	Work / Outcome
1. Identify community and school needs	<ul style="list-style-type: none"> ▶ Community survey (articulated need for Safe Places for Children to Play) ▶ Community meeting (public park is named as high priority) ▶ Both the survey and meeting identified a need for additional outdoor recreational space at Earlimart Elementary School
2. Inventory possible park sites	<p>Sites identified:</p> <ul style="list-style-type: none"> ▶ Sierra Avenue and Howard ▶ Howard Road and Washington ▶ Center Street Park ▶ Elm and School Streets <p>The Elm and School Street property belonging to Earlimart School District is deemed to have greatest potential as a joint use project for safe outdoor play space for students, recreational space for community members, and a retention basin for flood control</p>
3. Build relationships with appropriate decision-makers	<p>The Safe Places for Children to Play work group includes representatives from the following organizations:</p> <ul style="list-style-type: none"> ▶ Central California Regional Obesity Prevention Program (CCROPP) Healthy for Life and PARK advocacy group ▶ Earlimart School District (ESD) ▶ Earlimart Public Utilities District ▶ Tulare County Resource Management Agency ▶ California Rural Legal Assistance ▶ Public Health Law & Policy <p>Representatives are accountable to and receive directives from their respective organizations</p>
4. Inform decision-makers about the proposed joint use agreement and develop their support for the project	<p>Create low-pressure opportunities in which decision-makers can come together and hear the pros and cons of the project without needing to vote on it (this should be an iterative process, allowing everyone an opportunity to give their input into the proposal)</p>
5. Obtain approval from governing entities	<p>Define the joint use project: To create a student recreation space/public park/flood water retention basin in preparation prior to a presentation to the ESD Board</p>
6. Select negotiators	<p>The representatives on the Safe Places for Children to Play work group currently have negotiating authority; as the development of the joint use agreement proceeds, those with executive power will be involved</p>
7. Identify and reach agreement on use terms	<p>Issues may include but are not limited to:</p> <ul style="list-style-type: none"> ▶ Priority of uses: Who has priority access? ▶ Scheduling: Who will be responsible for calendar? ▶ Access and security: Staff and security protocol? ▶ Maintenance: Irrigation and mowing? ▶ Inspection and notification of damage? ▶ Restitution and repair?
8. Address liability issues	<p>Consult with risk management and legal counsel:</p> <ul style="list-style-type: none"> ▶ Allocate liability risk ▶ Determine insurance requirements and documentation ▶ Ensure agreement is consistent with existing regulations
9. Identify and resolve employment issues	<p>Consult with legal counsel to resolve employee / labor issues and the involvement of volunteers</p>

Earlilmart Safe Places for Children to Play Joint Use Agreement Work Group

Step	Work / Outcome
10. Develop a communication protocol	Identify the employee from each party to the agreement who is responsible for communicating with the other parties about the agreement, and establish a process for resolving disagreements regarding any aspect of the agreement
11. Agree on cost analysis and allocation	Determine costs to create the new park and agree on the allocation of costs among the parties
12. Determine terms of agreement, evaluation, and renewal	Determine the length and duration of the agreement, its evaluation process, and conditions for renewal
13. Receive formal approval of the agreement by governing entities	Celebrate – and move onward to implementation

At first glance it may seem like relationship-building only took place at step 3. But if you read closely, you'll see that relationship-building permeates all of the work group's activities.

Staffing Issues

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 might handle some tasks during joint use hours that unionized labor performs during school hours.

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 would leave the agency open to a union action of some sort, which could result in negative publicity and bad relations with the workforce and union leadership.

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.

Some tips on establishing clear communication with unions:

1. Review 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 cooperate 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 to give all parties an opportunity to review plans for the joint use agreement in the context of the bargaining unit's contract, and for 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. 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 all the stakeholders – with 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.

Agencies looking to enter a joint use agreement that might involve volunteer work in and around the facilities should communicate early and often with all stakeholders.



Maintenance and Upkeep

Schools are public facilities, of course, but when the school day begins, school staff – teachers, principals, coaches, and custodians – are the ones who have either the pleasure of seeing a facility at least as good as 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 commonly express concerns about having to deal with vandalism, damage, or poorly maintained facilities due to other users not taking appropriate care.



As with scheduling, there are ways to make sure facilities are well supervised after school hours, and ways to establish *upfront* 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 may also include clauses that stipulate reasonable time frames for repairs and maintenance.

The following excerpt from a joint use agreement between the El Dorado Hills Community Services District (EDHCSD) and the Buckeye Union School Districts (BUSD) stipulates each partner’s responsibility for maintenance, repair, and sharing the cost of utilities:

Excerpt

4. Maintenance and Repair and Capital Contributions.

BUSD and the EDHCSD shall be jointly responsible for the maintenance of the multi-purpose room and restrooms located therein, sharing the labor and material costs thereof in proportion to the hours of actual usage by each party. The semi-annual maintenance work on the multi-purpose room and associated restrooms will be jointly shared by EDHCSD and BUSD on a pro-rata basis as discussed herein. EDHCSD may elect to compensate BUSD in cash in lieu of providing assistance with semi-annual maintenance. If cash, the amount is to be mutually agreed upon annually.

BUSD shall maintain BUSD Multi Purpose room. Compensation for associated costs will be on a mutually agreed upon amount in proportion to the hours of actual usage by each party and reviewed annually in advance of any expenditures. Any repairs, ordinary wear and tear excepted, that are the direct result of EDHCSD’s exclusive use of the School Property will be performed by EDHCSD. Any repairs, ordinary wear and tear excepted, that are the direct result of BUSD’s exclusive use of the School Property will be performed by BUSD.

EDHCSD shall maintain BUSD athletic/playfields. EDHCSD shall make every effort to schedule large or seasonal maintenance activities outside of school hours, however, regular weekly maintenance can be scheduled during school hours, and the EDHCSD will coordinate with BUSD to minimize impact to school programs. Compensation for associated maintenance costs will be in proportion to the hours of actual usage by each party and on a mutually agreed upon amount and reviewed annually in advance of any expenditure.

EDHCSD will provide a schedule of not less than 48 hours notice for extraordinary maintenance activity of the EDHCSD maintained School Fields and Park Property. No notice may be provided for hazardous or unsafe conditions requiring immediate attention.

The EDHCSD and BUSD shall each construct the facilities located on their respective properties; provided, however, that the parties shall share in the costs of increasing the size of the multi-purpose room joint-use facility as provided under Education Code Section 17077.42. If the grant application is successful, the EDHCSD and the BUSD will each contribute twenty-five percent (25%) toward the eligible project costs under the grant application for the Joint-Use Project submitted pursuant to Education Code Section 17077.42. It is understood that the application for funding for the Joint-Use Project to OPSC is made for new construction of a multi-purpose room, which will be used jointly by EDHCSD and BUSD for the benefit of the entire community. Unless mandated otherwise by the State or required by the terms of the grant, the eligible project costs under Education Code Section 17077.42 to be shared as herein provided shall be mutually agreed upon by the parties prior to the submittal of the plans for the Joint-Use Project to the Division of the State Architect based upon the Architect's estimate of the eligible costs. If the grant application is not successful, or if the parties cannot agree on the amount of the eligible costs, the parties shall renegotiate the terms of this agreement. If the parties are not able to agree on the terms of a renegotiated agreement, this agreement shall terminate.

5. Cleaning after use.

Each party shall be responsible for general cleaning of the multi-purpose room, lobby and restrooms after each period of respective use by the party or by third parties authorized by that party to use the facilities. General cleaning after each use shall be completed at such times so as to ensure that the facilities are in a clean condition and ready for use by the time of the next scheduled use of the facilities. General cleaning shall mean picking up litter in and around the facility, dry mopping or sweeping floors, wet mopping liquid spills and dumping filled trash containers. At those times that EDHCSD uses the restrooms beyond the workday of BUSD's custodial staff; EDHCSD shall be responsible for cleaning the restrooms to a standard that is sufficient to leave them in a satisfactory condition for use by BUSD's staff and students the following day.

Payment amount may be negotiated annually based on EDHCSD's scheduled use at the time of the Master Calendar review.

6. Utilities.

BUSD shall be responsible for providing electrical and other utility services to the School Property. The EDHCSD shall reimburse BUSD for utility charges attributable to the use of the School Property at a flat hourly fee based upon the building use fee schedule. To calculate "attributable charges," BUSD will receive from EDHCSD a quarterly log, which will list daily and total usage of School Property by EDHCSD for each quarterly period. BUSD shall provide EDHCSD access to the HVAC thermostat. If thermostat setting is modified during EDHCSD use, EDHCSD shall reset thermostat to temperature setting required by BUSD prior to closing the facility.

7. Alterations.

The EDHCSD shall not permanently add to or alter the School Property without prior written consent of BUSD. BUSD shall not permanently add to or alter the Park Property without the prior written consent of the EDHCSD.

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 an agreement. In Vallejo, for instance, a joint use agreement between the city’s recreation and school districts 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.



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 Shasta County town of Anderson, 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.” An agreement in the Sacramento County town of Folsom goes further to list the number of times the agreement has been revised since it was created in 1972 – six times, to date – as a way of indicating that the agreement is a living document, to be modified on a continuing basis.

Joint use agreements that serve as a tool for ongoing communication among schools, city 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.

¹ 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. This paper is available at: www.cprs.org/training-information.htm.

APPENDICES

A Legal Framework Supporting Joint Use

There is a long history in California of laws promoting community use of school facilities. Understanding the purposes and parameters of these laws can help local advocates and decision-makers determine the best way to proceed to open schools in their community.

- ▶ The **Community Recreation Act** focuses exclusively on recreation, authorizing school districts and local governments to enter into agreements to use school facilities to establish community recreation programs.
- ▶ The **School Facility Joint Use Program** provides grant funding to remodel or construct new joint use facilities on school sites.
- ▶ The **California Civic Center Act** and the **Community College Civic Center Act** focus more generally on community use of public schools, directing public schools and community colleges to make their facilities available for after-hours use for many different purposes, including recreation.
- ▶ The **After School Education and Safety Program** provides funding for schools to host before- and after-school and summer academic and enrichment programs for children.
- ▶ The **21st Century Community Learning Centers program**, part of the No Child Left Behind Act, provides funding for schools to host after-school academic and enrichment programs.

The Community Recreation Act¹

The Community Recreation Act is the primary law that authorizes school districts to establish community recreation programs. The Legislature passed the Act to “promote and preserve the health and general welfare of the people of the state,”² authorizing cities, counties, recreation districts, and school districts (“public authorities”) to organize community recreation programs, establish systems of playgrounds and recreation, and acquire (or construct) and maintain recreation centers.³

The Act explicitly authorizes public agencies to work together to promote community health and recreation, giving the governing entities the

authority to enter into agreements with each other and “do any and all things necessary or convenient to aid and cooperate in carrying out the purposes of this chapter.”⁴ In addition, two or more public authorities having jurisdiction over any of the same or adjoining territories may jointly establish a recreation system and may jointly undertake any action authorized under the Act.⁵

The Act allows the governing body of any school district to use the district’s buildings, grounds, and equipment to carry out the purposes of the Act. It also authorizes a school district to grant use of its property and facilities to any other public authority to conduct community recreation programs, whenever such use does not interfere with the other purposes of the public school system.⁶

In 1976, the Legislature amended the Act to allow a school district to charge fees to individuals, other than students or organizations, to use school recreation facilities.⁷

School Facility Joint Use Program⁸

In 2002, the California Legislature enacted legislation to provide schools with funds to construct new joint use facilities, including those used for recreation.⁹ The Joint Use Program of the School Facility Program provides grant funding, subject to local matching funds, to construct qualifying types of joint use projects on K-12 school sites.¹⁰ Generally, to qualify, a project must construct new or reconfigure existing school buildings to build or increase the size of a multipurpose room, gymnasium, child care facility, library, or teacher education facility.¹¹

In addition to other requirements, the district must have entered into a joint use agreement with a governmental agency, public community college, college or university, or a nonprofit organization approved by the State Allocation Board. The joint use agreement must specify the method of sharing capital and operating costs, the responsibilities for the operation and staffing of the facility, and the manner in which the safety of the pupils will be ensured. The agreement must also specify the amount the school district and joint use partner will contribute toward the 50 percent local share of eligible project costs.¹²

The California Civic Center Act¹³

The Civic Center Act also promotes the use of school facilities for community recreation, but it has a much broader focus than the Community Recreation Act. Its purpose is to establish at each public school a space for citizens and organizations to engage in activities, including supervised recreation.

When the California Legislature enacted the Civic Center Act in 1917, it declared:

[T]here is a civic center at each and every public school facility and grounds within the state where the citizens, parent teacher associations, Camp Fire girls, Boy Scout troops, veterans' organizations, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions that in their judgment pertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside.¹⁴

Under the Civic Center Act, the governing board of any school district may grant use of school facilities or grounds for a broad list of purposes, including “public, literary, scientific, recreational, educational, or public agency meetings” and “supervised recreational activities, including, but not limited to, sports league activities for youths that are arranged for and supervised by entities.”¹⁵

Community use is subject to the requirements set forth in the Act and the terms and conditions set by the board. The governing board must enact all rules and regulations necessary to encourage the activities authorized in the Act, to protect and preserve school grounds and facilities, and to ensure that the use of school facilities does not interfere with their use for school purposes.¹⁶

The Civic Center Act allows schools to recover costs and, in certain circumstances, charge fair market value for use of its facilities.¹⁷ The governing body may charge no more than its direct costs to any entity that arranges for and supervises sports league activities for youth,^{18, 19} defining *direct costs* as “those costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid school district employees necessitated by the organization’s use of the school facilities.”²⁰ Before charging for the use of its facilities, the governing body must adopt a policy specifying which activities qualify for fees limited to direct costs.²¹

The Act also offers some protections to school districts in the event of property damage or injury suffered by a community member. First, it provides that if any group activity results in the destruction of school property, the district may charge the group an amount necessary to repay the damages, and it may deny the group further use of the facilities.²² Second, it establishes responsibility for injuries resulting from the property use: the district is liable for any injuries resulting from the its negligence in

the ownership and maintenance of those facilities or grounds. The group using the facilities is liable for any injuries resulting from its negligence during the use of the facilities. The district and the group each bear the cost of insuring against its respective risks and of defending itself against claims arising from those risks.²³ The Act does not permit the parties to waive these protections.²⁴

The California Community College Civic Center Act²⁵

The California Community College Civic Center Act is very similar to the Civic Center Act, but it provides that there is a civic center at each and every community college within the state, and that “[g]overning boards of the community college districts may authorize the use, by citizens and organizations, of any other properties under their control for supervised recreation activities.”²⁶

The governing body may grant use upon the terms and conditions it deems proper and subject to the requirements set forth in the Act. The governing board must enact all rules and regulations necessary to encourage the activities authorized in the Act and to ensure that the use of college facilities does not interfere with the college’s educational purposes.²⁷

The Act allows the governing board to charge fees for use in certain situations.²⁸ The governing board must grant use of school facilities without charge “when an alternative location is not available to nonprofit organizations and clubs and associations organized for general character or welfare purposes.”²⁹ The board may charge groups the costs of (1) opening and closing the facilities, (2) a community college employee’s presence, and (3) required janitorial services, but only if these services are not otherwise performed as part of the community college employees’ normal duties.³⁰ The college also may charge the cost of utilities directly attributed to the groups’ use of the facilities.³¹

Finally, the governing body may require any person or group granted the use of community college property for athletics to obtain a certificate of insurance and to submit it to the district for approval prior to using any district property. The certificate must demonstrate a minimum coverage of \$300,000 for any liability for injury or damage to property, but the governing body may require additional coverage.³²

The After School Education and Safety Program^{33, 34}

In 2002, California voters approved Proposition 49, the After School Education and Safety (ASES) Program, designed to create incentives for establishing local before- and after-school programs (during school days

as well as summer, intersession, or vacation days) “that partner public schools and communities to provide academic and literacy support and safe, constructive alternatives for youth.”³⁵

The ASES program serves students in kindergarten through ninth grade from participating public schools.³⁶ Applicants apply to the California Department of Education for grant funds to establish before- or after-school programs.³⁷ A local educational agency – including a charter school, or a city, county, or nonprofit organization partnering with a local educational agency – may apply for the grant funding.³⁸ A program may be conducted on a school site or, if approved by the State Department of Education, at a community park, recreational facility, or other site, provided that safe transportation is provided to students in the program.³⁹

To qualify for a grant, a program must contain two elements: (1) an educational and literacy element in which tutoring or homework assistance is provided in specified subject areas, and (2) an educational enrichment element that may include fine arts, career technical education, recreation, physical fitness, and prevention activities.⁴⁰ In addition, the program must be planned through a collaborative process that includes parents, youth, and representatives of participating public schools, governmental agencies, and the private sector.⁴¹

Priority for funding is given to schools where at least half of the pupils in elementary and middle or junior high school are eligible for free or reduced-cost meals through the U.S. Department of Agriculture’s school lunch program.⁴² All students attending a school operating a program are eligible to participate in the program, subject to program capacity.⁴³

The ASES program contains several provisions to ensure that the 21st Century Community Learning Centers program (see next section) complements the state program, and that the learning centers established under the federal law are eligible for the state funding.⁴⁴

21st Century Community Learning Centers⁴⁵

As part of the No Child Left Behind Act, Congress established a grant program to fund “community learning centers.” The purpose of this part of the Act was to provide opportunities for communities to establish or expand activities that (1) provide academic enrichment, including tutorial services to help students meet state and local standards; (2) offer services and activities, including recreation programs, to reinforce students’ regular academic program; and (3) offer families of students served by the centers opportunities for literacy and related educational development.⁴⁶ The grant funding is distributed to qualified states; the designated state educational

agency then distributes the funds to local entities based on an application process.^{47, 48}

Local educational agencies, community-based organizations, other public or private entities, or a consortium of two or more of such agencies may apply for funding for a community learning center that meets the criteria described above.⁴⁹

1 Cal. Educ. Code §§ 10900 – 10914.5.

2 Cal. Educ. Code § 10900.

3 Cal. Educ. Code § 10902.

4 Cal. Educ. Code § 10905.

5 *Id.*

6 Cal. Educ. Code § 10910.

7 Cal. Educ. Code § 10912.

8 Cal. Educ. Code §§ 17077.40 – 17077.45.

9 According to the State Allocation Board up to 150 million dollars have been made available for joint use programs between July 2003 and July 2008. State Allocation Board, “School Facility Program Handbook.” May 2008, p. 51.

10 Cal. Educ. Code § 17077.40.

11 *Id.*

12 Cal. Educ. Code § 17077.42.

13 Cal. Educ. Code §§ 38130 -38138.

14 Cal. Educ. Code § 38131(a).

15 Cal. Educ. Code § 38131(b).

16 Cal. Educ. Code § 38133.

17 Cal. Educ. Code § 38134(b).

18 Cal. Educ. Code § 38134(c).

19 For other types of activities, the district may charge direct costs or fair rental value. *See* Cal. Educ. Code § 38134.

20 Cal. Educ. Code § 38134(g).

21 Cal. Educ. Code § 38134(b).

22 Cal. Educ. Code § 38134(f).

23 Cal. Educ. Code § 38134(i).

24 Cal. Educ. Code § 38134.

25 Cal. Educ. Code §§ 82537 – 82548.

26 Cal. Educ. Code § 82537(a).

27 Cal. Educ. Code § 82537(b),(d),(f).

28 Cal. Educ. Code § 82542.

29 Cal. Educ. Code § 82542(a). The statute does not provide guidance in making the determination that there are no alternate locations available.

30 Cal. Educ. Code § 82542(b).

31 Cal. Educ. Code § 82542. (Other types of groups using the college facilities may be charged either direct costs or the fair rental value.)

32 Cal. Educ. Code § 82548.

33 Cal. Educ. Code §§ 8482 – 8484.9.

34 The state law also describes the mechanisms for determining the total funding for the Program and the amounts of individual grants, restrictions and requirements for expenditure of the grant funds, and additional criteria for selecting grant recipients.

35 Cal. Educ. Code § 8482.

36 Cal. Educ. Code § 8482.3.

37 Cal. Educ. Code § 8482.4.

38 Cal. Educ. Code § 8482.3(e).

39 Cal. Educ. Code § 8484.6.

40 Cal. Educ. Code § 8482.3(c).

41 Cal. Educ. Code § 8482.5(b).

42 Cal. Educ. Code § 8482.5(a).

43 Cal. Educ. Code § 8482.6.

44 Cal. Educ. Code §§ 8484.7 – 8484.8.

45 Title 20, United States Code Annotated §§ 7171 – 7575.

46 Title 20, United States Code Annotated § 7171.

47 Title 20, United States Code Annotated §§ 7172, 7174.

48 The federal law also describes the mechanisms for determining the total funding for the program and the amounts of individual grants to states, restrictions and requirements for expenditure of the grant funds, and additional criteria for selecting local grant recipients.

49 Title 20, United States Code Annotated § 7174.

Sample Agreements and Related Documents

This Appendix features agreement language and other materials formalizing the joint use partnerships profiled in Chapter 3.

1. Burlingame (San Mateo County)

Agreement with Burlingame American Youth Soccer Organization (AYSO) to Support Funding of a Synthetic Grass Back Field at Burlingame High School

2. Claremont (Los Angeles County)

Claremont City/School District Joint Programs and Projects

3. La Mesa (San Diego County)

Agreement Between the City of La Mesa and the La Mesa-Spring Valley School District

4. San Francisco

Memorandum of Understanding

5. Corning (Tehama County)

Corning Union Elementary School District Facilities Use Agreement

6. Santa Clarita (Los Angeles County)

Santa Clarita Valley Boys & Girls Club / Sierra Vista Joint Use Facility Capital Budget

7. Vallejo (Solano County)

Joint Facility Use Agreement Between Greater Vallejo Recreation District and the Vallejo City Unified School District

8. Santa Barbara

Agreement for Joint Use, Programming, Maintenance and Development

9. Merced

Compact Between Merced City School District and City of Merced

**AGREEMENT WITH BURLINGAME AYSO TO
SUPPORT FUNDING OF A SYNTHETIC GRASS BACK FIELD
AT BURLINGAME HIGH SCHOOL**

THIS AGREEMENT, made and entered into this ____ day of _____, 2006, by and between the CITY OF BURLINGAME, a municipal corporation [hereinafter "Burlingame"], and Burlingame AYSO, a nonprofit organization [hereinafter "AYSO"],

RECITALS

WHEREAS, City and AYSO desire to add more athletic field space in Burlingame for use by the City's recreational programs and by local nonprofit organizations; and

WHEREAS, Burlingame is entering into an Agreement with the San Mateo Union High School District to install a synthetic grass back field ("Field") at Burlingame High School; and

WHEREAS, AYSO is willing to assist in the funding of that project;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. AYSO agrees to pay City the following payments:
 \$4,000 on or before June 30, 2007; and
 \$4,000 on or before June 30, 2008; and
 \$4,000 on or before June 30, 2009; and
 \$4,000 on or before June 30, 2010; and
 \$4,000 on or before June 30, 2011
2. AYSO agrees that any payments under this Agreement are in addition to the Field User Fees assessed to non-profit organizations under the City's Master Fee Schedule.
3. AYSO agrees that payments under this Agreement do not guarantee any amount of Field usage.
4. AYSO agrees to assign a Parking Coordinator to assist in alleviating the parking congestion in the area surrounding the Field.

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

CITY OF BURLINGAME

BURLINGAME AYSO

By _____

By _____

City Manager

Attest:

Approved as to form:

By _____

By _____

City Clerk

City Attorney

CITY OF CLAREMONT / CLAREMONT UNIFIED SCHOOL DISTRICT JOINT PROGRAMS AND PROJECTS

The City of Claremont and the Claremont Unified School District share dozens of facilities and resources through a series of joint use partnerships. A 2002 document outlines the range of partnerships; the following excerpt describes some of the programs addressing youth and recreation.

INTRODUCTION

The City of Claremont, population 34,500, is located in the San Gabriel Valley and is the easternmost city in Los Angeles County. Home to the six Claremont Colleges, 22,700 trees, and a very active, involved citizenry, the City and the School District have taken very seriously the call to “reinvent government.” We believe that there are many efficiencies, in terms of both human and fiscal resources, that directly benefit the community when two local governmental agencies join forces. Following are brief descriptions of the joint programs and projects that the City Council and School Board have initiated as well as some others currently under consideration.

CURRENT PROGRAMS

YOUTH MASTER PLAN

With the City and the District taking the lead, the Claremont community conducted a highly participatory process to develop a Youth Master Plan. Over 4,000 citizens of all ages provided input into the process of identifying existing resources for youth and youth-related demographic, socioeconomic, and program information. Having compiled this information, the community was then able to determine the needs of youth and identify service gaps. This enabled the community to develop a priority listing of programs needed for youth over both the short and long term, which in turn provides a guide for how financial resources should be allocated. Progress and program successes are measured annually via the “Scorecard,” a report card of activities coordinated under the Youth Master Plan umbrella. The Plan has served as a model for communities across the nation and has been recognized with the 1995 James C. Howland Award for Urban Enrichment and the 1996 Special Achievement Award from the California Healthy Cities Project.

The City and the School District jointly provide funding to support the Claremont Youth Partnership, a community organization established by the City Council and the Board of Education to promote and monitor the implementation of the Youth Master Plan.

CITY FUNDING FOR YOUTH PROGRAMS

A frequently heard suggestion from our citizens is that more funding be allocated for youth programs. When school funding was particularly tight, the City Council acted on this suggestion by allocating \$250,000 per year for two years to the School District to be used for youth programs. The District administered the funds and used them for noneducational activities such as athletic programs, community and health outreach aides, and proctors.

4TH-6TH GRADE AFTER-SCHOOL PROGRAM

Providing expanded after school activities for elementary school students has been a goal of the City and School District for several years, and is specifically mentioned as a goal in the Youth Master Plan. The City and District agreed that the schools would provide programming for K-3 students while the City would focus on the older students. In 1996, the City introduced an after school program for fourth through sixth graders that features a mix of activities including arts, sports, and drama in a supervised recreational setting. The program is offered at three sites throughout the City. Transportation from local schools to the program site is provided through an arrangement with the local public transit authority.

JOINT RECREATION ACTIVITY/ADULT SCHOOL CLASS BROCHURE

The City’s Human Services Department and School District’s Adult School began publishing and distributing a joint activity/class schedule in an effort to cut costs by sharing expenses, especially for postage and printing.

The collaboration has resulted in a number of other benefits as well, including being able to improve the technical quality and appearance of the piece. Residents benefit from having class and activity information listed in a single, easy-to-read publication instead of the two different schedules they used to receive.

JOINT BIDDING/PURCHASING/CONTRACTING

Staff from the City and the District meet regularly to determine what projects (e.g., asphaltting, fencing, painting, fire extinguisher maintenance, tree trimming) can be jointly bid and what products (e.g., playground equipment, paper, vehicles, equipment) can be jointly purchased. The idea is to take advantage of the reduced overhead costs and other “economies of scale” that result when certain types of projects and products are jointly bid and purchased. One example involves having the City “piggyback” onto the District’s bus transportation contract for youth field trips. This arrangement saves the City several hundred dollars per trip.

MASTER FACILITY AGREEMENT

The City and the District have entered into an Agreement whereby each agency may use the other’s buildings and facilities free of charge. Each entity is responsible for maintenance and repair of its own facilities and is also responsible for damages that may be caused when using the other’s buildings or facilities. The Agreement also outlines priorities for scheduling use of buildings and facilities.



**JOINT USE AND OPERATION AGREEMENT
FOR DISTRICT AND CITY FACILITIES BETWEEN
CITY OF LA MESA AND LA MESA-SPRING VALLEY SCHOOL
DISTRICT**

THIS JOINT USE AND OPERATION AGREEMENT (“AGREEMENT”) is entered into between the CITY OF LA MESA, California (hereinafter designated as the “CITY”) and the LA MESA - SPRING VALLEY SCHOOL DISTRICT, of San Diego County (hereinafter designated as the “DISTRICT”).

The intent of the parties entering into this AGREEMENT is to maintain what is considered to be an important cooperative relationship. The CITY and DISTRICT believe that the community will benefit from the cooperative spirit intended to be expressed within this document. By this AGREEMENT, the parties desire that the facilities covered by this AGREEMENT be safe for use by the community and its schools.

WITNESSETH

WHEREAS, the CITY and the DISTRICT are mutually interested in and concerned with the provision of adequate facilities for the recreation and physical well being of the people of La Mesa;

WHEREAS, the DISTRICT has certain play areas, toilets, multipurpose rooms, and other educational facilities under its jurisdiction, suitable for community recreation programs;

WHEREAS, Education Code section 38130 et seq. and Education Code section 10900 et seq. help ensure that adequate programs of community recreation are developed, which is a goal the legislators set to achieve by authorizing school districts to organize, promote, and conduct programs of community recreation as it will contribute to the attainment of general education and recreational objectives for children and adults of the state of California; and

WHEREAS, the Legislature of the State of California has prescribed that the governing body of any school district may use the buildings, grounds, and equipment of the district, or any of them, to carry out the purposes of Education Code section 10900 et seq., or may grant the use of any building, grounds, or equipment of the School District to any other public authority for certain purposes, whenever the use of the buildings, grounds, or equipment for community recreational purposes will not interfere with the use of the buildings, grounds, and equipment for any other purpose of the public school system; and

WHEREAS, Government Code section 6500 authorizes the parties hereto by agreement to jointly exercise any power common the contracting parties; and

WHEREAS, the CITY and DISTRICT have maintained a cooperative working arrangement whereby many DISTRICT and CITY grounds and facilities have been and are being used by the two agencies for general recreational purposes, thus affording to the community greatly increased recreational opportunities at costs much below those which would otherwise be necessary; and

NOW, THEREFORE, in order to continue and improve the cooperative efforts of the CITY and the DISTRICT, it is hereby mutually agreed as follows;

1. TERM

The term of this AGREEMENT shall be continuing until canceled or revoked by either party with 90-days written notice, with the exception of Parkway Middle School-Junior Seau Sports Complex. For Parkway Middle School-Junior Seau Sports Complex, the terms of this AGREEMENT shall be for the period beginning on the date of execution of this AGREEMENT through March 20, 2026, and continuing thereafter until canceled or revoked by either party with 90-days written notice.

2. USE OF FACILITIES

- A. The DISTRICT will make available to the CITY for community recreation activities the following:
 - a. DISTRICT Athletic Fields. All currently existing athletic fields (such as baseball, softball, football, and soccer fields) and play areas as set forth in Exhibit A, attached hereto and incorporated herein as part of this AGREEMENT.
 - b. OTHER DISTRICT Facilities. Other selected school facilities which are suitable and recommended by the Director of Community Services of the CITY and subject to approval by the Manager of the CITY and the Governing Board of the DISTRICT.
- B. The CITY will make available to the DISTRICT for school activities the following:
 - a. CITY Facilities. The La Mesa Community Center complex will be made available for the DISTRICT's and/or DISTRICT Partner's use up to three (3) times per year subject to approval by the CITY's Director of Community Services. The DISTRICT may utilize these facilities for events sponsored by the DISTRICT Monday through Thursday at no cost except for set up and staffing costs for after-hours use (after 5:30 p.m.) for up to three (3) events annually. Said use is subject to facility availability on a first come, first served basis as determined by the CITY. Events scheduled Friday through Sunday or use over three (3) events in a calendar year at these facilities shall be charged to the DISTRICT at the non-profit rate. All use of these facilities by the DISTRICT shall be pursuant to a CITY facilities use agreement signed by the Superintendent or his or her designees and brought to the attention of the Facilities Specialist at the La Mesa Community Services Department.

3. FEES

Each party shall have the right to charge a reasonable fee to the participants for participation in the recreational activities sponsored by it or other organizations at the other's facilities or fields. The fee must be directly related to projected costs or other allowable expenses under Education Code section 38134.

The fees collected will be deposited in a special account administered by the CITY. The account will be audited annually by an independent financial auditor selected and paid for by the DISTRICT. Expenditures from the account must be jointly approved by the parties.

4. SCHEDULING OF FACILITIES

School events and events scheduled under Education Code Sections 38130–38139 shall have the first priority, the recreation program established by the La Mesa Community Services Department shall have second priority, and any other events by other groups or agencies shall have third priority. Since properties and facilities are intended primarily for school programs and for the benefit of children of school age, in planning programs and scheduling activities on school grounds, the school requirements will be met first, with consideration being given to recreational needs after the time and space essential for school activities have been determined.

The CITY, through its employees in the Community Services Department, will schedule non-DISTRICT sponsored community recreation programs and events; issue use of facility agreements; and secure DISTRICT and CITY required insurance coverage for all CITY scheduled activities on DISTRICT property as listed in Exhibit A. Required insurance documents will include Certificates of Insurance naming the DISTRICT as an additional insured, accompanied by a Policy Endorsement. The insurance coverage limits shall be no less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. These will be kept on file at the CITY Department of Community Services.

5. MAINTENANCE, REPAIRS, AND IMPROVEMENTS

The DISTRICT will prepare and maintain the school play areas for regular school activities, and, in the event that the school areas are used by the CITY for a community recreation purpose, the CITY will prepare and maintain said school play areas for said recreation activities, with the provision that all preparation and maintenance is subject to the approval of the DISTRICT. The

five sports fields at the Parkway Middle School-Junior Seau Sports Complex shall be maintained by the CITY.

Requests to make improvements on DISTRICT property by community organizations will be channeled through the La Mesa Community Services Department and delivered to the DISTRICT Assistant Superintendent of Business Services by the CITY. When capital projects are delivered to the DISTRICT by the CITY, the CITY will coordinate these projects with the DISTRICT and will act as the liaison between the community organizations and the DISTRICT. All capital improvements must be approved by the DISTRICT prior to commencement of project. The requests will give complete details of proposals, including detailed plans and specifications prepared by a licensed architect. Said modifications shall not be authorized until approval has been granted by the DISTRICT. In authorizing such modifications, that athletic league or association requesting same shall then be responsible for the following: utility bills, including hookups for fields on district property, toilet facilities (rentals) during the league season, cleanliness of grounds, costs of modifications and any other upkeep related to same. All facilities and equipment so furnished may be used by the DISTRICT for school purposes.

The DISTRICT's repair and maintenance schedule shall be planned to avoid interference with scheduled use by the CITY insofar as circumstances will permit.

CITY shall make every effort to schedule in advance any large or seasonal maintenance activities at the Parkway Middle School-Junior Seau Sports Complex so as not to impact school activities. No notice need be provided for hazardous or unsafe conditions requiring immediate attention.

Each party further agrees to notify the other party in writing within three days of notice of any safety concerns from the perspective of a reasonable user. In addition, immediate repair, replacement or protection of the property shall be made by the party who discovers it. DISTRICT will provide all the custodial services for auditoriums, gymnasiums, toilets, and other indoor facilities of any DISTRICT facility used by the CITY with the exception of the restrooms located adjacent to the sports fields at the Parkway Middle School- Junior Seau Sports Complex, which shall be maintained by the CITY and the Sports Leagues jointly. Any overtime expenditures incurred by the DISTRICT because of CITY activities shall be reimbursed by the CITY.

CITY will provide all the custodial services for community centers, parks, toilets, and other indoor facilities of any CITY facility used by the DISTRICT. Any overtime expenditures incurred by the CITY because of DISTRICT activities shall be reimbursed by the DISTRICT.

Each party can, outside of the provisions herein, request support of the other in paying for repair and maintenance costs at facilities that are, heavily used under this AGREEMENT.

DISTRICT agrees to pay all charges for water, gas, electricity, and all other similar charges that may accrue with respect to the CITY's use of DISTRICT property, with the exception of the Parkway Middle School-Junior Seau Sports Complex for which the CITY shall pay for electricity and the DISTRICT shall pay for water at the sports fields.

CITY agrees to pay all charges for water, gas, electricity, and all other similar charges that may accrue with respect to the DISTRICT's use of CITY property.

6. INDEMNITY

The parties intend that in the event of injury or damage occurring on the facilities listed in Exhibit A, the indemnity obligations set forth below will rest with the agency in control of the facilities at the time of the injury or damage. For example, the CITY would defend and indemnify the DISTRICT for a claim arising from an incident occurring at the Northmont Elementary soccer field during an AYSO soccer game; the DISTRICT would defend and indemnify the CITY for an incident not occurring during an activity scheduled by the CITY or for any dangerous condition not at the field facilities (such as a dangerous condition of the parking lot). The above example

is merely meant to illustrate the intent of the parties and is not to be viewed as a limitation of the indemnity obligations set forth below.

The CITY shall defend, indemnify, and hold harmless the DISTRICT, its officers, officials, employees, and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, arising from an incident during the CITY's use of the facilities listed in Exhibit A; regardless of the DISTRICT's negligence (active, passive, or sole) or other fault, except for willful misconduct by the DISTRICT.

The DISTRICT shall defend, indemnify, and hold harmless the CITY, its officers, officials, employees, and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, arising from an incident during the DISTRICT's use of the facilities listed in Exhibit A, regardless of the CITY's negligence (active, passive, or sole) or other fault, except for willful misconduct by the CITY.

In the event a claim is made against either party, the parties will immediately meet and confer regarding the handling of the claim, and in no case later than 30 days from receipt of the claim. The obligation to defend the other party will not begin until such defense is requested in writing pursuant to the notice provision in section 17 of this AGREEMENT. A party defending the other without a reservation of rights may select defense counsel.

7. IMPROVEMENTS TO FACILITIES

The CITY and DISTRICT shall jointly identify resources and capital and equipment needs that will facilitate future joint and enhanced public use. Both parties agree to pursue other opportunities utilizing sub-agreements to this AGREEMENT to expand on the concept of joint use. Other opportunities to be pursued may be joint maintenance and repair of shared facilities, joint master planning of properties to meet the needs of both agencies and public at large. It is expected that for each site a Memorandum of Understanding that is site-specific may be developed to address details required for the satisfactory design and use of those sites that have not been anticipated in this AGREEMENT.

Any new joint development will be directed by a Steering Committee made up of DISTRICT and CITY representatives that will be responsible for reviewing project design, monitoring construction and representing the interest of their respective agency. Upon completion of any new joint development, both the CITY and DISTRICT will inspect and jointly sign off on the Notice of Completion for the project. The ownership of the new development will rest with the property owner.

The CITY and DISTRICT shall develop a reasonable cost sharing agreement that will be made a part of the Memorandum of Understanding for each site on those capital and equipment items that are directly or indirectly related to future joint and public use. The cost sharing agreement shall be based on the proportional usage of the facilities or equipment by each agency. The owning agency shall repair or replace those items mutually agreed upon by the two agencies.

The CITY may install sprinkler systems, turf, fencing, lighting and additional recreational equipment on DISTRICT facilities provided such installation is not in conflict with school use and subject to advance written approval of the DISTRICT, which will not be unreasonably withheld.

The CITY and DISTRICT shall meet annually to inspect joint facilities.

8. ATTORNEY'S FEES AND COSTS

In any legal action (including arbitration) between CITY and DISTRICT regarding this AGREEMENT, the prevailing party therein shall be entitled to recover from the other party all of its reasonable costs, expenses and attorney's fees.

9. TIME OF THE ESSENCE

Time is of the essence for each term and condition of this AGREEMENT.

10. ASSIGNMENT

Parties shall not assign this AGREEMENT or any interest therein, except as consistent with the purpose of this AGREEMENT, without the prior written consent of CITY and DISTRICT.

11. CONTAINS ALL AGREEMENTS

This AGREEMENT supersedes all prior joint use and operation agreements for DISTRICT and CITY facilities for properties listed in Exhibit A. This AGREEMENT constitutes a complete expression of the agreement between the CITY and the DISTRICT regarding the subject matter hereof and there are no premises, representations, warranties, or inducements except such as are made herein. No alterations of any of this AGREEMENT's terms, covenants or conditions shall be binding unless reduced to writing and signed by the parties hereto.

12. COUNTERPARTS

This AGREEMENT may be executed in duplicate counterparts.

13. TERMINATION OF AGREEMENT FOR CAUSE

Either party may terminate this AGREEMENT for cause upon tendering thirty (30) days' written notice to the breaching party, for material breach of any term or covenant of the AGREEMENT, Should either party fail to faithfully perform or observe any covenant, condition or agreement herein contained and should such default continue for a period of thirty (30) days after written notice thereof, then the other party may terminate this AGREEMENT immediately. In the event of any such breach of this AGREEMENT, either party may pursue the foregoing remedy or pursue or seek any other remedy or enforce any right to which either party may by law be entitled. The said 30-day period to cure may be extended only upon the express written consent of the City Manager or Superintendent or his or her designee, which shall not be unreasonably withheld.

14. TIMELY APPROVAL

No approval required hereby shall be unreasonably withheld or delayed.

15. JOINT DRAFTING

This AGREEMENT was drafted jointly by the parties and thus any rule of construing ambiguous provisions against the drafter shall not apply.

16. ARBITRATION

Any unresolved dispute regarding the defense/indemnity obligations established by this AGREEMENT shall be submitted to binding arbitration as follows:

- A. Within twenty (20) days of notice of intent to arbitrate, the parties will agree to an arbitrator; if the parties cannot agree, either party may petition the Superior Court to appoint an arbitrator, pursuant to section 1281.6 of the Code of Civil Procedure.
- B. The arbitration hearing shall commence within 90 days of selection of an arbitrator, who shall render a written decision within 10 days of the conclusion of the hearing. All procedural rules, including those concerning discovery, shall be as set forth in the California Code of Civil Procedure.
- C. The arbitration proceedings shall remain confidential until any underlying case has been finally resolved.

17. NOTICE

Any notice required under this AGREEMENT will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

City Manager, City of La Mesa
8130 Allison Avenue
La Mesa, CA 91941

Superintendent, La Mesa-Spring Valley School District
La Mesa-Spring Valley School District Education Service Center
4750 Date Avenue
La Mesa, CA 91941

IN WITNESS WHEREOF, the CITY has caused this AGREEMENT to be executed by its Mayor and CITY Clerk, duly authorized, and the DISTRICT has caused this AGREEMENT to be executed by its Governing Board, likewise duly authorized, the ____ day of _____, 2009.

Exhibits: A – Inventory of Athletic Fields and Agency Responsibilities

ATHLETIC FIELD/ CITY PARKS ON DISTRICT PROPERTY INVENTORY

Field Location by School	Type of Field	Maintenance Responsibilities	
		City	District
Parkway Middle – Junior Seau Sports Complex	Football	Synthetic turf maintenance and repairs, drainage, lights	Keeping sidewalks clean
	Soccer	Natural turf maintenance to include: seeding, mowing, fertilizing, aerating, irrigation, lights	Keeping sidewalks clean
	Baseball Field #1		
	Baseball Field #2		
	Baseball Field #3		
Miscellaneous complex amenities	Restroom/snack bar building, fences, gates, bleachers, lights, scoreboards, parking lots	None	
La Mesa Dale Elementary	Softball	None	All
La Mesa Middle	Upper Field – Baseball	None	All
	Lower Field – Soccer	None	All
Lemon Avenue Elementary	Baseball	None	All
Maryland Avenue Elementary	Baseball	None	All
Murdock Elementary	Baseball	None	All
Murray Manor Elementary	Baseball	None	All
Northmont Elementary	Baseball/Soccer	None	All
Rolando Elementary	Baseball	None	All
Highwood Park	Park	All	None
Jackson Park	Park	All	None
Sunshine Park	Park	All	None

MEMORANDUM OF UNDERSTANDING BETWEEN CITY & COUNTY OF SAN FRANCISCO AND SAN FRANCISCO UNIFIED SCHOOL DISTRICT

This Memorandum of Understanding (this “MOU”) describes and confirms the expectations and responsibilities of the City & County of San Francisco (“City”) and San Francisco Unified School District (“District”) related to “Schools as Community Hubs Project” (this “Project”) as described in this MOU.

The term of this MOU will be from the date of final signature(s) through June 30, 2009 for the involved school sites (Attachment A), unless partially or wholly terminated earlier pursuant to the conditions outlined in Section III.

I. DESCRIPTION OF PROJECT

- A. Project Description:** The City may open the selected school site playgrounds identified on Attachment A for use by their surrounding communities on weekends and on selected school holidays during daylight hours during the pilot period. Playgrounds that are part of this project will not be opened for community use on any school day. The parties have the right to add or delete school site playgrounds or change the hours of operation for such playgrounds during the term of this MOU, provided any such change shall be in writing and approved by both the City and the District.
- B. City Responsibilities:**
- a. The City will be wholly responsible to replace, remediate, or fund the replacement or remediation of any and all school site damage or vandalism that occurs during Public Access Hours (as defined below).
 - b. The City will be responsible for any and all liability associated with claims and/or lawsuits for injury, property damage or other loss that occurs during Public Access Hours.
 - c. The City will provide the staff necessary to open and close the selected sites, and this staff will inspect and ensure that these sites are returned in the condition they were received. The hours during which the City opens a school site playground for community use as set forth in this MOU shall be referred to as the “Public Access Hours.” The City staff person responsible for the administration of this MOU shall be Dennis Kern, Director of Operations, Recreation & Park Department (the “City Representative”), subject to change by the City’s Recreation and Park Director, and will provide the District with a calendar of planned times for opening and closing of each school site throughout the project period.
 - d. The City will provide a list of staff responsible for repairs required as a result of use during the Public Access Hours and will make reasonable efforts to make such repairs before the beginning of the next school day.
 - e. The City Representative shall call the SFPD for support when needed to ensure that any and all illegal activity that may occur during Public Access Hours is promptly addressed.
 - f. The City will provide removable signage stating the governing rules and regulations for the use of school sites during this Project and will post and remove these signs at the opening and closing of each site entrance.
- C. District Responsibilities:**
- a. The District will provide access to the identified school site playgrounds during this Project.

- b. The District will provide locks, keys, and instructions for their use to the City Representative during this Project.
- c. The District will inspect each site after the last Public Access Hour immediately preceding a school day pursuant to the closing schedule outlined by the City Representative and will report any damage found to the City Representative. Usually the inspection will be on Sunday evening except when there is a Monday holiday then it will occur on that evening just after closing.
- d. The District will not make restroom facilities available during this Project.
- e. The District will allow use of its trash receptacles during this Project, however, if there is a significant increase in trash volume or if the receptacles are overflowing or trash dumping or large discarded items are found, the City will be called in to remediate.
- f. The District will bear the cost of any overtime incurred by District personnel in conjunction with this Project.
- g. The District will maintain the school site play grounds consistent with past practices, and will inform the City Representative of any known dangerous or hazardous condition, and any known restriction on the use of any equipment or facility.

D. Mutual Responsibilities:

- a. The City and District will establish a work group to monitor this Project for its duration and this group will hold conference calls or meetings, as appropriate, to review the performance of the Project.
- b. The City and District work group (including others as appropriate) will additionally meet and confer as to the most efficient and appropriate way to remediate any issues, vandalism or damage that may occur to any of the pilot playground sites during the Public Access Hours of the term of the Project and which cannot be remediated prior to the next school day to minimize impact on the local school community.
- c. The City and District will review and evaluate this Project at least 90 days prior to its conclusion to gather data, and will meet and confer to determine if mutually agreeable continuation or expansion of the Project is possible.
- d. Subject to the terms and conditions of this MOU, the City and District staffs agree to cooperate and use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU.

II. INDEMNIFICATION

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, 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 may, at its sole option, elect to defend such claim by attorneys in City’s Office of the City Attorney, by other attorneys selected by the City, or both. The City shall have the right 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.

III. TERMINATION

This MOU may be wholly or partially terminated at any time during this Project with 48 hours written notice by either party. In addition, any school site administrator may terminate their site participation in the Project governed by this MOU on 48 hours notice should the school site administrator determine that the Project’s impact on that specific school site is detrimental to its core mission.

IV. NOTICE TO ALL PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and registered, as follows:

TO THE DISTRICT:	Myong Leigh, Deputy Superintendent SFUSD 555 Franklin Street, 3rd Floor San Francisco, CA 94102
TO THE CITY:	Yomi Agunbiade, General Manager Recreation and Park Department McLaren Lodge, Golden Gate Park 501 Stanyan San Francisco, CA 94117
AND TO:	Edward D. Reiskin, Director of Public Works 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

V. MISCELLANEOUS

(a) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City hereunder may be made in the sole and absolute discretion of the City, and all approvals, consents and determinations to be made by the District hereunder may be made in the sole and absolute discretion of the District. (b) This instrument (including the exhibit) contains the entire agreement between the parties with respect to matters set forth herein and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (c) The section and other headings of this MOU are for convenience of reference only and shall be disregarded in the interpretation of this MOU. (d) California laws and with respect to the City the City’s Charter shall govern this MOU. (e) No addition to, or alteration of, the terms of this MOU, whether by written or verbal understanding of the parties, their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this MOU, which is approved and executed by both parties.

VI. PARTY SIGNATURES TO MOU

I have read all of the provisions outlined in this MOU, and agree to comply with every provision listed herein.

CORNING UNION ELEMENTARY SCHOOL DISTRICT FACILITIES USE AGREEMENT

THIS FACILITIES USE AGREEMENT is dated as of May 23, 2008, by and between CORNING UNION ELEMENTARY SCHOOL DISTRICT, a public school district organized and existing pursuant to California law (“District”) and the CITY OF CORNING, a California municipal corporation (“City”), with respect to the following facts:

- A. Education Code section 10900, et seq., authorizes public school districts and municipalities to cooperate with each other for the purposes of providing meaningful leisure and educational opportune, and toward that end enter into agreements with each other for the purpose of organizing, promoting and conducting such programs of community recreation and education objectives for children and adult citizens of the State. Worthwhile recreational activity contributes to the well being of individuals and, in turn to the progress of society; provision of meaningful leisure opportunities can be properly recognized as a governmental service.
- B. The City, to the extent provided in this Agreement, desires to use the facilities of the District for its recreational and educational programs and other community programs. The use of these facilities shall be limited to after-school hours subject to the District’s exclusive primary use rights as set forth in this Agreement. The City intends to operate recreational and educational programs for youth and adults and conduct other community services using the facilities owned by the District. The parties intend that the City use of the District’s facilities shall be limited to after-school-hours, weekends, and any non-operational hours, as set forth the in this Agreement. The City shall comply with all rules, regulations and security measures that are adopted by the District to provide for the safety of students during regularly scheduled school hours and District and School activities, including providing adequate staff to properly supervise the City’s activities. Such rues, regulations and security measures must include requirement compliance with Education Code, including but not limited to such things as Tobacco and Drug Free Zone.
- C. The District’s facilities which are the subject of this agreement are described in Exhibit A to this agreement and shall hereafter be referred to as “Facilities.” Facilities are intended for the District’s exclusive use, however the City may use Facilities during after-school hours subject to a prior scheduling agreement that is acceptable to the District. Subject to the foregoing, the District shall be responsible for reasonably establishing and maintain the schedule for the use of the Facilities. For purposes of this section, the District shall have the right to pre-empt all Facility use with reasonable notification to the City.
- D. At a regularly scheduled meeting of their respective governing bodies, the District and the City approved entering into this agreement to permit the City to use the Facilities in accordance with the terms of this Agreement.
- E. The parties intend that the City shall have nonexclusive use of the Facilities, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the District and City agree as follows:

ARTICLE I

1.1 Agreement for Use

Subject to the provisions of the Agreement, the District agrees to permit the City to use the Facilities.

**ARTICLE II
USE AND OCCUPANCY**

2.3 City Use of Facilities

The City, subject to all provisions of this Agreement, shall be permitted to use the Facilities for purposes of providing, conducting, and supervising community recreational and educational activities, for purposes of providing a comprehensive, supervised, and safe before and after-school activities program, and for other purposes permitted pursuant to this Agreement. The City shall coordinate its use of the Facilities with the use of those facilities by the District as contemplated by all of the provisions of this Agreement and no such use of the Facilities by the City shall interfere with the scheduled educational or recreational activities of the District or any of its schools. The parties acknowledge that the District and School's scheduled events may change during the term of this Agreement. The City shall use the Facilities solely for community recreational purposes and in conformance with all federal, state and municipal regulations and ordinances, as well as the District and City's administrative regulations and/or District Board policies.

2.2 Scheduling of Activities

The parties shall confer, at mutually agreeable dates and times, for the purpose of developing a schedule, and for revising such schedule from time to time as necessary, for use by the City of the Facilities, consistent with all provisions of this Agreement. Subject to the exclusive and primary use rights of the District, the City shall be responsible for maintaining the schedule for use during times the City is allocated use for the gymnasium(s) which they will be using. For purposes of scheduling the hours of use of the Facilities, the Superintendent of the school or his or her designee shall be the District's representative and the City Manager of the City or his or her designee shall be the City's representative. Each party shall have the right to change its designated representative by written notice to the other party. Either party shall have the right to request a meeting to discuss any necessary revisions to the schedule.

2.3 Safety of Users / Responsibility for Staffing and Operating the Facilities

The City is responsible for the safety of its users and the operation and staffing of the Facilities during the time City is using the facilities. The District shall provide training on safety and crisis plans for all involved sites used by the City at the commencement of each Term on a mutually agreeable training schedule. Both parties shall have the responsibility to inspect the Facilities for dangerous conditions of property prior to that party's use to ensure the property is safe to use. Dangerous conditions shall be repaired or adequate warning signs shall be installed before use.

**ARTICLE III
TERM OF AGREEMENT**

3.1 Term

The initial term of this Agreement shall be one (1) year, or until June 30, 2009. If the City has not defaulted under this Agreement after notice and expiration of any applicable cure period during the prior twelve (12) month period, the City shall have the right to extend the term of this Agreement annually. The City shall provide notice to the District no later than six (6) months prior to the expiration of the annual term of this Agreement, or any extension thereof, that the City desires to renew. The maximum duration of successive terms shall in no event exceed one (1) year unless otherwise agreed in writing between the parties. This Agreement will be reviewed every year to maintain accurate information and to make current any change in administration.

3.2 Expiration and Termination

In addition to any other grounds for termination of this Agreement set forth herein, this Agreement shall terminate upon expiration of the initial term of the Agreement without extension thereof, or upon expiration of any extension to the initial term without additional extensions

thereof (“Expiration”). Notwithstanding any other provisions of this Agreement, the District may terminate this Agreement prior to the Expiration in the event the Board, in its sole discretion, determines to close the Schools, either permanently or temporarily, for a period exceeding one (1) school year. Notwithstanding the foregoing, either party may terminate this Agreement for convenience by providing the other party with at least sixty (60) days written notice of such termination.

3.3 Equipment and Fixtures

Prior to the Expiration, the City may remove any equipment and non-fixture furnishings that are not permanently attached to the Facilities or the School grounds, the cost of which was paid by the City (“Furnishings”). Any Furnishings and other personal property remaining within, on or at the Facilities after Expiration shall be deemed the sole property of the District. The City may not, without the express prior written permission of the District, remove any fixtures that are built-into or attached to any portion of the Facilities or that were paid for with State or District funds (“Permanent Improvements”). In the event the removal of any Furnishings from the Facilities causes damage to the Facilities or any Permanent Improvements, the City shall promptly make all repairs necessary to restore the Facilities or the Permanent Improvements to their condition prior to such damage. In the event of any termination of this Agreement prior to Expiration the City shall remove all Furnishings and other personal property purchased by the City within thirty (30) days after receipt of notice of such termination or the City shall be deemed to have relinquished to the District all right and title to such Furnishings.

3.4 Reimbursement for Loss or Damage

Upon Expiration or earlier termination of this Agreement, the City shall give the District copies of all keys in the City’s possession for control for all doors, cabinets, or other locks in the Facilities. Upon return of possession to the District, the Facilities shall be in a safe and well-maintained condition, comparable to their condition upon commencement of the City’s possession thereof, less reasonable wear and tear and any damage cause by the District or any of its schools or by any pupils or invitees of the District or its schools. Upon surrender of possession, if the Facilities are not in such condition, at the election of the District, the City shall either restore them to the required condition or shall pay to the District the reasonable cost of such restoration.

ARTICLE IV COSTS AND OTHER OBLIGATIONS

4.1. Direct Costs

Unless otherwise specifically agreed in writing by the parties, the city shall not be charged a fee by the District for use of the Facilities and the District’s routinely budgeted maintenance and repair costs for said Facility. The use of Facilities includes water, electricity, and gas as needed. The District, upon review of gas, and electrical use during City sponsored activities, reserves the right to place a fee on gas and electricity based on the increasing usage.

4.2. Furnishings, Equipment, and Supplies

Subject to the District’s advance approval, the City shall have use of the furnishings and equipment of the District as deemed necessary for all events, activities, and programs that the City sponsors. The District’s Superintendent or designee shall be the representative for purposes of the District consent required pursuant to this Section.

4.3. Maintenance

A. The City is responsible for cleaning the facilities and the maintenance thereof for City’s use of the Facilities. After the conclusion of an event, activity, or program sponsored or conducted by the City, the City shall immediately thereafter perform any necessary cleaning of the Facilities and shall ensure its completion in such time as to preclude any interference with the District’s

educational and recreational programs. If, after the conclusion of an event, activity, or program sponsored or conducted by the City, the City fails to perform the necessary cleaning of the Facilities to ensure its completion in such time as to preclude any interference with the District's educational and recreational programs, the District shall bill City the reasonable cost thereof of having such work completed by others. City shall reimburse to the District one hundred percent (100%) of the reasonable cost to the District of any such janitorial services.

- B. The District shall be responsible for performing all other routine maintenance, repairs, and cleaning of the Facilities.
- C. The District shall be responsible for, and shall pay for the cost of, any capital improvements or replacements (excluding replacements resulting from damage caused by City's use of Facilities), which for purposes of this Agreement are defined as:
 - a. any building additions;
 - b. other than normal repair and maintenance, any reconstruction, renovation, or replacement of (i) building structural members; roof or roofing materials, or (ii) electrical, plumbing, and other utility systems; and
 - c. any repairs of damage for which the District has received insurance proceeds and any repairs that must be capitalized pursuant to generally-accepted accounting principles.

4.4. **Responsibility for Damage**

The City shall be responsible for the repair of any damage to the Facilities due to, or as a result of, the City's use of such facilities. The repairs shall be sufficient to restore the damaged item to its condition prior to such damage. The City shall ensure that such repairs are made within a reasonable time after the damage occurs. The District shall be responsible for the repair of the Facilities damaged due to, or as a result of, the District's use of the Facilities. District shall also be responsible for the repair of any damage arising from casualty or event that is covered by insurance excepting any damage caused by the City or any of its invitees, representatives, employees, volunteers, or administrators. Should Facilities require repair that results from the increase of use by the City over time, both parties agree to share in the cost of the repair of Facilities. This shared cost shall be based on an amount mutually agreed upon at least one (1) year in advance of said repair and be limited to repair of floors, basketball backboards, furniture, playground equipment, playing fields and such other items as mutually agreed to by the parties.

4.5. **Annual Budget**

The City will not be held responsible for or contribute to District budget decisions. The City is exempt from paying District fees through this Agreement for use of the Facilities. Either party shall have the right to schedule a meeting, from time to time, to discuss necessary services required by this Agreement to maximize the benefit of the Facilities for both the District and City while minimizing costs to the greatest extent possible.

ARTICLE V INDEMNIFICATION AND JOINT DEFENSE

5.1 **Claims Arising From Acts or Omissions of City**

The City hereby agrees to indemnify, defend, and hold harmless the District and its directors, officers, administrators, employees, volunteers, and agents against and from any liability, including for damage to property and injury or death of any person, and any claim, action, or proceeding against the District, arising in whole or in part out of any acts or omissions of the City in the performance of this Agreement unless caused by the sole negligence or willful misconduct of the District. In its sole discretion and at its own cost and expense, the District may participate in the defense of any such claim, action, or proceeding, utilizing legal counsel of its choice. However, such participation shall not relieve the City of any obligation imposed pursuant to this Agreement.

The District shall promptly notify the City of any such claim, action, or proceeding and shall cooperate fully in the defense of same.

5.2 Claims Arising From Acts or Omissions of District

The District hereby agrees to indemnify, defend and hold harmless the City and its directors, officers, administrators, employees, volunteers, and agents against and from any liability, including for damage to property and injury or death of any person, and any claim, action or proceeding against the City, arising in whole or in part out of the acts of omissions of the District in the performance of this Agreement unless caused by the sole negligence or willful misconduct of the City. In its sole discretion and at its sole cost and expense, the City may participate in the defense of any such claim, action, or proceeding, utilizing legal counsel of its choice. However, such participation shall not relieve the District of any obligation imposed pursuant to this Agreement. The City shall promptly notify the District of any such claim, action, or proceeding and shall cooperate fully in the defense of same.

5.3 Claims Arising From Joint Acts or Omissions

Each party shall provide its own defense with respect to any claims, action, or proceeding arising out of the joint acts or omissions of the parties. In such cases, each party shall retain its own legal counsel and bear its own defense costs, and each party shall waive any right to reimbursement of such defense costs from the other party.

**ARTICLE VI
INSURANCE**

6.1 Liability Insurance Policy

Each party shall obtain, and shall maintain, at its own cost and expense, for the term of this Agreement, a policy of commercial general liability insurance (“Policy”), written on an “occurrence” basis, with a combined single limit of no less than five million dollars (\$5,000,000) per occurrence covering claims for bodily injury, including death, property damage, and damages that may arise out of or result from actions taken by such party, or any of its directors, officers, employees, agents, volunteers, invitees, or contractors, or any person directly or indirectly employed by any of them. For purposes of this agreement, it is understood that the City insurance will be primary insured for City sponsored events with the District as additional insured, and the District will be primary insured for all District events. The coverage provider shall be subject to each party’s reasonable approval. Any deductible shall be the responsibility of and paid by the insuring party with the deductible. Each party shall have the right of reasonable approval over any policy of insurance obtained by the other party to satisfy the requirements of this Article.

6.2 Reconstruction, Replacement, or Repair

The District is responsible for keeping the Facilities in good repair and insured against loss for the entire term of this agreement. During the term of this Agreement, if all or any portion of the Facilities is destroyed or damaged, the District shall be entitled to retain all insurance proceeds related thereto. Notwithstanding the foregoing, the City shall be entitled to retain all insurance proceeds attributed to the City’s Furnishings or other personal property not permanently attached to the Facilities obtained as a result of any insurance coverage separately maintained by the City.

6.3 Worker’s Compensation Insurance

Each party shall, in accordance with all applicable laws, rules, and regulations, including section 3700 et seq. of the Labor Code, obtain and maintain in full force and effect during the term of this Agreement a policy of workers’ compensation insurance. Such workers’ compensation insurance shall provide coverage for all of such party’s employees, agents, and volunteers, if applicable, who will be undertaking any actions on behalf of such party pursuant to this Agreement in or upon the Facilities.

6.4 Certificates of Insurance

Prior to any use by City of District facilities pursuant to this Agreement, each party shall provide to the other party copies of all Memoranda of Coverage or all insurance policies required to be obtained pursuant to this agreement, and copies of the certificates of coverage issued by the insured or the JPA evidencing that the City has obtained such coverage. The Certificate of Coverage shall request that the JPA endeavor to provide written notice to the party not later than thirty days prior to cancellation, termination, or expiration without renewal of such changes. The Certificate of Coverage shall be renewed annually.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

7.1 Use

The City agrees that it will, during the term of this Agreement, utilize the Facilities for the conduct of its Parks and Recreation programs included but not limited to those identified in Exhibit B.

7.2 Early Termination

Either party may terminate this Agreement, for cause, thirty (30) days after written notice to the other party. Termination shall be deemed, for all purposes, to be effective upon the thirty-first (31st) day following the giving of such notice unless: (i) the defaulting party has cured the default and provided evidence of such cure to the non-defaulting party within the specified thirty (30) day period, or (ii) prior to the expiration of the specified thirty (30) day period, the defaulting party provides reasonable evidence to the non-defaulting party that the defaulting party has been making reasonable efforts to effect such cure within the thirty (30) day period and is diligently pursuing such cure, but that such cure can not reasonably be completed during the thirty (30) day period. In the event termination is delayed for the reason set forth in (ii) of the preceding sentence, the Agreement shall thereafter terminate if the cure is not affected within a reasonable time, which in no event shall be more than ninety (90) days after written notice to the defaulting party. Cause for termination would include any material breach of this agreement.

7.3 Notices

Notices pursuant to this Agreement shall be given by personal service, registered or certified U.S. Mail (postage pre-paid), or reliable private delivery service such as Federal Express, California Overnight, or United Postal Service. Such notices shall be addressed to the applicable party as set forth in this section. Notices shall be effective upon receipt.

DISTRICT:

Corning Union Elementary School District
1590 South Street
Corning, CA. 96021
Attention: Superintendent

CITY:

City of Corning
794 Third Street
Corning, CA. 96021
Attention: City Administrator

7.4 Reports

The City shall file with the District, periodically, and at all times agreed upon by representatives of the City, written reports describing the nature and the extent of the services provided by the City pursuant to this Agreement. Such reports shall be in sufficient detail so as to allow a representative of the District and interested members of the public to review the same and determine the manner and extent of the services provided and whether the rendering of such services meets the minimum services required to be provided by the City pursuant to this Agreement.

7.5 Assignment and Delegation

The City shall not assign any right or delegate any duty in this Agreement without the written consent of the District.

7.6 Governing Law and Venue

This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California, and any arbitration, mediation, litigation, or other proceeding arising out of this Agreement shall be conducted only in the County of Tehama unless otherwise agreed by the parties.

7.7 Interpretation

In interpreting this Agreement, it shall be deemed to have been prepared by the parties jointly and no ambiguity shall be resolved against either party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof. The captions and headings set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Article, Section, or other provisions of this Agreement. Any reference in this Agreement to an Article or Section, unless specified otherwise, shall be a reference to an Article or Section of this Agreement. Where required by context in this Agreement, any reference in the singular sense shall include the plural, and any reference in the plural sense shall include the singular.

7.8 Waiver

Failure by the District or by the City to enforce any term, condition, restriction, or provision herein, in any certain instance or on any particular occasion, shall not be deemed a waiver of such enforcement right, with respect to that or any material breach of the same or any other term, condition, restriction, or provision.

7.9 Compliance with Law

In taking any action pursuant to, in performance of or in connection with this agreement, and in its use of the Facilities both parties, at their own cost and expense, shall comply with all applicable federal, State, and local laws, ordinances, rules, and regulations, either now in effect or that may hereafter be promulgated or enacted. Any failure by either party to so comply shall be deemed a material breach of this Agreement.

7.10 Encumbrances

The City shall neither encumber, nor permit the encumbrance of, the Facilities for any purpose. The City shall neither record, nor permit the recording of, any lien, including any mechanics or other liens or encumbrances of any nature with respect to the Facilities. The city shall not pledge, assign or transfer, or collaterally assign, pledge or transfer any portion of the Facilities, including any Permanent Improvements thereon. Upon request of the District, the City shall take all actions required to subordinate its interests arising from this Agreement, if such subordination is necessary, advisable, or helpful to the District, which determination shall be made by the District in its sole discretion.

7.11 Entire Agreement

This Agreement contains the entire agreement and understanding concerning the use of the Facilities by the City, and this Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral, except, as they are included in this Agreement. The parties acknowledge that neither the other party nor its agents or attorneys have made any promise, representation, or warranty whatsoever, expressed or implied, not contained herein to induce the execution of this Agreement and acknowledge that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

7.12 Amendments

The parties agree that it may be desirable in the future to modify the rights and obligations of the parties as set forth herein. Therefore, this Agreement may be modified or amended upon the mutual agreement of the parties. This Agreement may not be modified or amended except by a writing duly executed by the District and the City.

7.13 Severability

If any Article, Section, provision, paragraph, sentence, clause, or phrase contained in this Agreement shall become illegal, null, void, or against public policy, for any reason, or shall be held by a court of competent jurisdiction to be illegal, null, void, or against public policy, the remaining Articles, Sections, provisions, paragraphs, sentences, clauses, and phrases contained herein shall not be affected thereby.

7.14 Counterparts

This Agreement may be signed in one or more counterparts, which taken together, shall constitute one original document.

7.15 Due Authority

Each individual signing this Agreement warrants and represents that he or she has been authorized by appropriate action of the party which he or she represents to enter into this Agreement on behalf of that party.

7.16 Recital and Exhibits

All Recitals stated herein and all Exhibits attached hereto or referenced herein are incorporated as effective and operative parts of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

SCV Boys Girls Club
Sierra Vista Joint Use Facility
Capital Budget

07/19/05
02:33 PM

Sources of Funds	Total		Paid	
	Amount	Club Portion	Mar-03	Jul-03
District SB 50/Hardship	\$ 2,200,000			
SB 1795, Joint Use	1,016,000			
City of Santa Clarita**	1,200,000			
Club Grants (see detail below)	889,891	\$889,891	(\$500,000)	(\$62,391)
Club Operations Transfers*	545,000	545,000		
Expansion Campaign	350,000	350,000		
TOTAL	\$ 6,200,891	\$ 1,784,891	\$ (500,000)	\$ (62,391)
Cumulative Balance Due		\$ 1,784,891	\$ 1,284,891	\$ 1,222,500

Club Grant Detail	Total Amount	Paid	
		Mar-03	Jul-03
L.A. Times	\$ 20,000		
McCabe	100,000		
Weingart	200,000		
Parsons	100,000	(\$100,000)	
Alhanson	150,000	(150,000)	
Amateur Athletic Foundation	62,391		(62,391)
Keek Foundation	250,000	(250,000)	
PacBell	5,000		
Helen English	2,500		
TOTAL	\$ 889,891	(\$500,000)	(\$62,391)
Available Balance		389,891	327,500

In Club Capital Account:
 Grants 327,500
 7/1/2003 Transfer 18,000
 10/1/2003 Transfer 30,000
 Other 375,500
 City Funds** 350,000
 Total Funds in account 725,500

** Expansion Campaign goal to raise \$1,200,000 during the period of October 2002 through December 2004 to be used:

Capital Fund	\$350,000
Endowment Fund	170,000 to be allocated
FF&E	
Transfer to Operations	400,000
Total	\$920,000 (includes Wm. S. Hart Facilities Foundation commitment of \$250,000)

* Includes former separate line item for McKeon \$100,000 OJP
 ** \$350,000 of City's commitment is in Club's Capital Account

JOINT FACILITY USE AGREEMENT BETWEEN GREATER VALLEJO RECREATION DISTRICT AND THE VALLEJO CITY UNIFIED SCHOOL DISTRICT

THIS AGREEMENT is entered into this 15th day of June 2004 by and between the Vallejo City Unified School District, hereinafter referred to as “VCUSD,” and the Greater Vallejo Recreation District, hereinafter referred to as “GVRD,” under authority granted by the Joint Exercise of Powers Act (Government Code, Section 6500 et. seq.) and the Education Code (Sections 10900 through 10915 and 40040 through 40057) of the State of California.

WITNESSETH:

WHEREAS, GVRD operates and maintains certain public parks and recreation facilities, hereinafter called “City Property,” which are capable of being used by VCUSD for educational purposes and for VCUSD-sponsored recreation activities, and VCUSD operates and maintains certain school athletic fields, turf areas, tracks/ stadiums, tennis courts, swimming pools, and indoor school facilities, hereinafter called “School Property,” which are capable of being used for community recreation activities sponsored and conducted by GVRD; and

WHEREAS, GVRD and VCUSD desire to provide by contract for the use of such School Property by GVRD for community recreation activities and for the use of City Property for educational purposes and recreational purposes sponsored by VCUSD in order to provide for a program of community recreation activities pursuant to Chapter 6, Division 12 of the Education Code, commencing at Section 16851;

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth and pursuant to the provisions of the Education Code herein above referred to, it is agreed as follows:

I. VCUSD Property

VCUSD agrees to make available to GVRD selected school property for community recreation activities.

- A.** The Specific areas to be used for such purposes shall be those agreed upon between the Superintendent of VCUSD or designee hereinafter called “Superintendent,” and General Manager or designee thereafter called “Manager,” and at such times as may be agreed upon by the Manager and Superintendent. It is understood and agreed by the parties to this Agreement that the use of VCUSD facilities is controlled by each school in the VCUSD, the scheduling and reservation of facilities as VCUSD schools shall be dependent upon authorization concurred in by officials of the particular subject school and the Superintendent.
- VCUSD and GVRD shall charge fees as listed (in the fee schedule approved) by both GVRD and VCUSD Governing Boards.

II. GVRD Property

GVRD agrees to make available to VCUSD GVRD parks, recreation areas and meeting spaces for educational purposes and recreational activities sponsored by VCUSD.

- A.** The specific City Property to be used for such purposes shall be those agreed upon between the Superintendent and Manager. These needs will be reviewed annually at a joint needs meeting in July. A joint need assessment will be developed at this meeting wherein the VCUSD and GVRD anticipated program needs will be outlined and the venues tentatively reserved. The reservations will be presented to each School site and GVRD Administration, to be confirmed no later than the last week in August.

III. Request Procedure

- A. School Property: The GVRD shall use the form “Application / Permit to Use School Property,” Exhibit 1, available at each school. GVRD must submit all necessary certificates of insurance and any other documentation prior to use. VCUSD will then send approved request form with all Charges delineated Co requester. Fees assessed will be paid in full 30 days prior to each specific facility use or the permit for that specific use will be cancelled. A Notice of Cancellation for non-payment will be faxed to GVRD by VCUSD 23 days prior to the planned booking. It shall be the responsibility of GVRD to make this payment prior to the cancellation date, Proof of insurance shall be presented at the Needs Assessment meeting in July.
- B. City/GVRD Property: The requester will request and complete GVRD’s “Facility Use Contract” form. available at various locations indicated in Exhibit III, at school sites and at VCUSD Office. Detailed procedures are listed in the attached “Procedures for School District Personal Usage of GVRD Facilities.” VCUSD will provide all required certificates of insurance and other documents prior to use. Groups outside, but related to, the VCUSD (such as Booster Clubs and certain PTA groups) shall follow all procedures required by GVRD, and be charged fees at the rates listed in the attached Fee Schedule. Outside groups must show separate proof of insurance, as they are not covered under VCUSD insurance policy. It is the sole responsibility of GVRD to ensure that they have received all required fees and insurance from both Outside and VCUSD groups.
- C. When GVRD has a program that is configured for the benefit of VCUSD students and this program is offered between 3pm and 9pm Monday through Friday, there will be no charge to GVRD for Facility use or staffing. Only the time needed by this program will be reserved. Uses other than the above mentioned program must be permitted use and may be charged accordingly.

IV. General Guidelines

- A. Request for facility usage should be submitted at least sixty (60) days prior to the requested. usage date, Requester should be aware of space limitations and should make every effort to reserve space as far in advance as is feasible.
- B. It is the user’s responsibility to be aware of the specific rules and regulations that apply to the facility and to abide by them. VCUSD and GVRD shall inform requester of all applicable rules regulations and fees prior to use. GVRD and VCUSD may not sublet facilities at any time. Users must be a member of, authorized participant with, or employee for the requesting entity (GVRD or VCUSD) and shall only request facilities for activities that are covered under their insurance policy.
- C. User provides own materials and equipment to be used in such educational and community recreation activities, being understood and agreed, however, that all permanent equipment owned by VCUSD on School Property or by GVRD on City Property may be used for such purposes, at the sole discretion of the Owner. Equipment provided by user shall be removed after each use, unless prior arrangements have been made with either School Principal or GVRD as appropriate.
- D. User shall provide all supervisory personnel during use. VCUSD or GVRD may deny use based on inadequacy or negligence of supervision.
- E. Parking is permitted in designated lots only. Vehicle parking on VCUSD playgrounds/asphalt or GVRD park or field areas is strictly prohibited and is grounds for denial of future use.
- F. Physical improvements or alterations to City or School Property by other party are not permitted.
- G. The baseball/softball facility users are responsible for field preparation and clean-up after use, except in instances in which the GVRD and VCUSD have made prior arrangements that GVRD will “line” the field.
- H. Users are responsible for cleaning and picking up all debris created by the Use. Trash must be properly disposed of Failure to adequately clean up after use may be grounds for, cancellation of VCUSD Use Permit, or City Property use.

- I. GYRD and VCUSD user shall inform the other party on the unsafe condition of the School or City Property used which is observed or created by the user within 24 hours of the use date.

V. Cancellations and Changes

- A. VCUSD shall make every effort to notify GVRD not less than (7) working days, prior to a GVRD event to be held in VCUSD facilities that is to be cancelled by the VCUSD because of VCUSD usage. The VCUSD shall make every effort to ensure that cancellations occur only because of unforeseen school conflicts.
- B. GVRD shall make every effort to notify VCUSD not less than 72 hours (or three (3) working days, whichever is greater) prior to an event to be held in VCUSD facilities that is to be cancelled by GVRD. GVRD shall make every effort to ensure that cancellations occur only because of unforeseen conditions.
- C. Life: Health and Safety Exception: GVRD or VCUSD may, if authorized by the Superintendent of VCUSD or General Manager of GVRD cancel any event at any time including during the event if it is deemed that a serious risk to VCUSD or GVRD property, authorized users, officials, spectators or the public is eminent.

VI. Damage from Use

- A. The users will be charged a replacement fee for lost or damaged equipment plus any cost associated with repairs.
- B. Unauthorized use or tampering with VCUSD or City/GVRD property is prohibited. The users will be charged for necessary repairs or replacement.
- C. Spectator control and clean-up is the responsibility of the users. Users will be charged for cost incurred by VCUSD or GVRD to clean the property or for repair and/or replacement of property and/or equipment due to damage caused by actions of spectators and/or participants.
- D. GVRD shall be responsible for any damage to School property that may result from any GVRD sponsored recreation activities being conducted on School property.
- E. GVRD shall be responsible for any damage to VCUSD property that may result from any school-sponsored activities being conducted on City property.

VII. Indemnify and Hold Harmless

- A. VCUSD shall indemnify and hold harmless the GVRD, their respective officers, agents or employees, from all claims, suits or actions of every name, kind, and description, brought forth on account of injuries to or death or any person or damage to property rising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, or activities giving rise to strict liability of the VCUSD or any person directly or indirectly employed by or acting as agent of the VCUSD in the performance of this agreement or utilization of the GVRD property under this agreement, including the concurrent or successive passive negligence of GVRD, its respective officers, agents or employees. It is understood that the duty of VCUSD to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.
- B. The GVRD shall indemnify and hold harmless the VCUSD; their respective officers, agents or employees, from all claims, suits or actions of every name, kind, and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omission, ultra-hazardous activities, or activities giving rise to strict liability of the GVRD or any person directly or indirectly employed by or acting as agent of GVRD in the performance of this agreement or utilization of the VCUSD property under this agreement including the concurrent or successive passive negligence of the VCUSD, its respective officers, agents or employees. It is understood that the duty of GVRD to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

VIII. Priority Use

GVRD priority use of VCUSD property shall be established in the following manner:

The first business week of July each year GVRD will meet with VCUSD to request dates for GVRD use of VCUSD Facilities. These permit requests will be compared with the District Master Schedule and reservations will be made:

- A. Summer Reservations during the time period of July 1 to August 30 will be confirmed at this meeting.
- B. School Year Reservations from September 1 to June 30 shall be confirmed no later than the last week of August.
- C. All other outside groups' reservation requests shall be processed beginning the second week of July.
- D. Requests for Permit to Use Facilities submitted after the initial *July* meeting will be processed in the same manner as are those requests from all other groups requesting use of VCUSD property.

All Agreements made in this section are with the understanding that school property may in times of emergency be acquired by State or Federally authorized agencies without notice. During such an emergency all agreements contractual or not are in suspense. VCUSD priority use of GVRD property shall be as established in the following manner:

- A. Requests for the use of Community Centers shall be made 12 months in advance.
- B. Requests for pool and sports facilities shall be made 90 days in advance.

Termination of Agreement

This Agreement provides for a program of community recreation activities using GVRD and VCUSD Property. It is intended to establish the general understanding of the parties and is in addition to any other Agreement between VCUSD and GVRD pertaining to the use of specific facilities at a particular named site belonging to VCUSD and/or GVRD. This Agreement shall remain in full force and effect so long as VCUSD and GVRD shall maintain and operate facilities capable of joint recreation use; provided, however, that this Agreement may be amended by mutual written consent or terminated without cause on ninety (90) days' notice hereinafter upon either party giving written notice of its intention to terminate or amend to the other.

IX. Periodic Reviews and Revisions to Agreement

The GVRD and the VCUSD agree to review this Agreement every three years. Revisions to the Agreement are valid only with the mutual written consent of both parties.

X. Term

Subject to [termination], the term of this Agreement shall be from July 1, 2004, through and including June 30, 2007. At the end of this three (3) year period and each extension period, the Agreement shall automatically renew for a period of 3 years, unless either party gives the other written notice of its intent not to renew the Agreement at least 30 days before the expiration of this Agreement or any extension thereof.

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:

A. 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.

B. 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.

C. 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.

D. 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.

E. 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

F. 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.

G. 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:
 - i. Junior High School After-school Sports and Recreation Program
 - ii. Elementary After-School Opportunities for Kids Program
 - iii. Elementary Recreation After-School Program
 - iv. Youth Sports Leagues for Elementary School Age Youth

H. 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:
 - i. Aerate and fertilize sport fields.*
 - ii. De-thatch sport fields.*
 - iii. Re-grade, fill holes and seed/re-sod the sport fields.*
 - iv. Repairs or maintenance to field lights.
 - v. 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 H.h). To the extent the provisions of this subsection H.h conflict with other provisions of this Agreement, the provisions of this subsection shall control.
 - i. Field Maintenance
 - 1. 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.

2. **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.
 3. **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.
 4. **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.
 5. **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.
- ii. **Field Scheduling and Monitoring**
1. **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.
 2. **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.

3. 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.

- iii. 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.

I. 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
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

[Empty rectangular box for signature]

COMPACT BETWEEN MERCED CITY SCHOOL DISTRICT MERCED PARKS AND RECREATION DEPARTMENT

AGREEMENT

WHEREAS, the City of Merced and the Merced City School District are mutually interested in and concerned with the provision of adequate facilities for the recreation and physical well-being of the people of the City of Merced; and

WHEREAS, the Merced City School District and City of Merced have certain play areas, gymnasiums, auditoriums, and other recreational facilities under their respective jurisdictions suitable for community recreation programs, and the City, in its Recreation and Parks Department, has in its employ certain employees who supervise, direct and conduct such community recreation programs; and

WHEREAS, the governing bodies of each of the above named parties are agreed that community recreation is necessary for the development of good citizenship and for promoting and preserving the health and general welfare of the inhabitants of the territory over which they have jurisdiction, and the parties hereto feel that this agreement should be entered into for the purpose of carrying out a recreational program, under the provisions of Section 10900 et. seq. of the Education Code of the State of California and any amendments thereto or otherwise.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED BETWEEN

THE MERCED CITY SCHOOL DISTRICT, hereinafter known as the District, and CITY OF MERCED, hereinafter designated as the City, that:

I.

The District and City shall make available to each other for community recreation activities those certain facilities described in Exhibit A attached hereto and made a part hereof. Prior to use of a facility, both District and City shall agree upon a financial arrangement for said use of those certain facilities, if appropriate. If no fee is established prior to use of a facility, the fee for such use shall be \$0.

II.

The use of any facilities selected hereunder shall be in accordance with the regular procedures of District and City in granting permits for use of facilities as provided for by the laws of California and the rules and regulations of the Board of Education of District and the Merced City Council.

Regular procedures of the District in granting permits for use requires that an Application and Agreement For Use of School Facilities Form be submitted and approved prior to use.

Regular procedures of the City in granting permits for use requires that an Application For Use of Facilities be submitted and approved prior to use.

III.

Time schedules shall be established for said use by designated representatives of the Superintendent of Schools of District and Director of the Recreation and Parks Department of City.

It is further agreed that a schedule of dates and times for use of the District school facilities and Recreation and Parks Department facilities will be worked out in advance; that this schedule will be so arranged as to avoid any conflict between the school and the Recreation and Parks Department use in the scheduling of said school facilities. School events and programs shall have first priority and the recreation program established by City shall have second priority and any other events by other groups or agencies shall have third priority. In the scheduling of Recreation and Park facilities it is further agreed that the City recreation program shall have first priority, the school events and programs shall have second priority and any other events by other groups or agencies shall have third priority. Any such schedule so established may be changed by mutual agreement.

IV.

The City through its employees in the Recreation and Parks Department agrees to provide adequate qualified personnel to supervise facilities used and the recreation activities conducted which take place after school hours and during holiday and vacation periods at the selected sites. In the employment of personnel for this program the Recreation and Parks Department will give first consideration to school employees providing they are qualified and available for such work. If District employees are hired by the City such person(s) shall be considered the employee and agent of the City for all purposes of this Agreement while so employed. When qualified people are not available from the school system the City shall have the right to hire persons outside the school system. City will comply with all requirements of Education Code Section 10911.5.

It shall be permissible where such activities are beneficial to both school and recreation programs to allow the working hours of City personnel to be integrated with District school hours. In the event such activities are conducted during school hours with students the employee of the Recreation and Parks Department shall be subject to the administrative authority and supervision of the principal of the school. Except as hereinbefore set forth the personnel employed by the City shall be under the supervision of the City Recreation and Parks Department.

V.

It is recognized that school properties and facilities are intended primarily for school purposes and for the benefit of students. It is therefore agreed that in planning programs and scheduling activities on school grounds the recreational needs and opportunities of such students will be well provided for and adequately protected.

VI.

It is further agreed that in the event any dispute or difference arises as a result of the recreation program conducted on sites jointly used and selected as above outlined or as to use of a school district facility said dispute shall be settled and arbitrated by the Board of Education of District and the Recreation and Parks Commission of City, in accordance with such arbitration procedures as established by the American Arbitration Association.

VII.

It is further understood and agreed that the school district will install and maintain (when and where appropriate or feasible) all fences, play apparatus and facilities necessary for its school program and that on the sites agreed upon said equipment, apparatus and facilities may be used by City for community recreation purposes. It is further understood and agreed that the City Recreation and Parks Department will, with the approval of the school superintendent, furnish and supply all portable facilities and equipment necessary for the community recreation program which are not included as a requirement for the school program and that in the event said facilities and equipment are so furnished and where available that they may be used by the school district for school purposes.

VIII.

It is further agreed that the school district shall provide all the custodial services for auditoriums gyms, and other indoor facilities of any school plant used by the City and District. The City shall provide all custodial services on parks, park buildings, swimming pools, and other facilities mutually used by the District and the City. The cost of providing custodial services shall be agreed upon prior to use.

IX.

District shall provide all supervisory personnel whenever school-sponsored activities are being conducted on City property.

District shall indemnify, defend and hold City harmless from all claims or causes of action for injury to persons or damage to property resulting or arising from the District's use of City property, including any claims which may arise by reason of dangerous or defective condition of City property.

District shall provide evidence, satisfactory to the City, that District has casualty and liability insurance coverage for any such claims or causes of action, and that such insurance shall name City as an Additional Insured.

District shall be responsible for any damage to City property which may result from any school-sponsored activities being conducted on City property.

City shall provide all supervisory personnel whenever community recreation activities are being conducted on District property.

City shall indemnify, defend and hold District harmless from all claims or causes of action for injury to persons or damage to property resulting or arising from the City's use of District property, including any claims which may arise by reason of dangerous or defective condition of District property.

"City use" is defined as

- A. Programs or activities which are sponsored or administered by the City; or
- B. Programs or activities of youth sports or other organizations which have registered or coordinated their activity with the City. A list of these organizations is attached hereto as Exhibit B and made part hereof.

Prior to their use of District facilities, the organizations listed in Exhibit "B" shall enter into a written agreement with the City, requiring the organization to indemnify, defend and hold harmless the City and the District for injury to person or property resulting or arising from that organization's use of District or City property. The organization's agreement with the City shall also require the organization to obtain personal liability insurance in an amount not less than \$500,000 per occurrence and \$500,000 per injury, and property damage insurance in an amount not less than \$500,000. Said insurance shall name the City and the District as additional insured and shall provide for thirty days (30) notice to the City and the District before cancellation.

Organizations which are coordinated by the City but do not appear in Exhibit B may be permitted use of District facilities under this agreement by entering into the same indemnification and insurance agreement specified in the preceding paragraph. The City shall give the District written notification in the event that such an organization will be using District facilities.

City shall provide evidence, satisfactory to the District, that City has casualty and liability insurance coverage for any such claims or causes of action and that such insurance shall name District as an Additional Insured.

City shall be responsible for any damage to District property which may result from any community recreation activities being conducted on District property.

X.

This agreement shall be effective on February 1, 1993 and shall remain in force for one year. The parties agree that this agreement shall be deemed renewed from year to year unless one notifies the other in writing no later than thirty (30) days prior to the end of the yearly term that of its intention to terminate the agreement.

XI.

This agreement has been drafted jointly by the City and the District with the advice of legal counsel.

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

EXHIBIT "A"
MERCED CITY SCHOOLS AGREEMENT

Facilities/Properties Owned or Operated by City

- A. All City parks including play fields ball fields and tennis courts
- B. All City buildings and facilities under the jurisdiction of the Recreation and Parks Department
- C. Memorial plunge
- D. North Campus swimming pool (summer)
- E. Ada Givens swimming pool
- F. Stephen Leonard swimming pool
- G. Storage rooms and restrooms as mutually agreed upon
- H. All hard surface outside courts

Facilities /Properties Owned by Merced City School District

- A. All playgrounds. play fields and ball fields
- B. Classrooms and multi-purpose facilities
- C. Hoover School gymnasium and auditorium
- D. Tenaya School gymnasium and auditorium
- E. Rivera School gymnasium

EXHIBIT "B"
MERCED CITY SCHOOLS AGREEMENT

List of Organizations that have Registered with the City

- A. Merced Girls Softball League
- B. Merced Youth Soccer Association
- C. Merced Youth Football Association
- D. Merced Youth Baseball

APPENDIX 3

PHLP Model California Joint Use Agreements

PHLP has developed model agreements for the four types of joint use outlined in this toolkit:

- 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

These model agreements are designed to serve as templates for California communities to use to develop their own joint use agreement. Each template is also available (as a Word document) at www.healthyplanning.org.

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.

In order 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.

Joint Use Agreement 1

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

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.

RECITALS

WHEREAS, the Community Recreation Act (California Education Code sections 10900 through 10914.5) authorizes 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 California Civic Center Law (California Education Code sections 38130-38138) establishes a civic center at every school for use by citizens for a variety of purposes, including recreation; 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, California Education Code section 10905 authorizes the governing bodies to enter into agreements with each other to promote the health and general

welfare of the community and to enhance the recreational opportunities afforded to the community; and

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

1. Term

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

— **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.

— **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 and document existing conditions before opening them to use to establish an understanding of the condition of the facilities prior to the Agreement.

2. Effective Date

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

3. Facilities covered

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

Terms of this Agreement shall 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.

— **Facilities Covered:**

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

4. Permitted Uses of Active Use Areas

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

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

— **Permitted Uses of Active Use Areas:**

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

5. Compliance With Law

All use of District and City property shall be in accordance with state and local law. 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:**

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 needs and practices.

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 that these sites are returned in the condition they were received. The staff shall ensure that 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: —

The City and District can determine who will provide supervision. This model clause provides for the City to provide supervision.

D. Supervision

The [*City*] shall provide personnel necessary for the direction or supervision of activities sponsored by the City at Active Use Areas. The City shall enforce all District rules, regulations, and policies 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.

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.

— Custodial:

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

G. Toilet Facilities

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

Toilet Facilities: —

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

7. Obligations of District

A. Designation of Employee

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

B. Access and Security

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

D. Equipment and Storage

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

Equipment and Storage:

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

E. Custodial

The District shall make its trash receptacles available during Public Access Hours. The City shall encourage community users to dispose of

trash in the trash receptacles. If there is a significant increase in trash volume, the District shall notify the City's designated employee so that the City may provide custodial services necessary to keep the Active Use Areas in a neat, orderly, and sanitary condition at all times during the Public Access Hours.

F. Toilet Facilities

The District shall 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.

— **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.

Maintenance: — 8. Maintenance

The parties need to allocate responsibility for maintenance of the facilities. The model provides two options. Communities will determine how to best share resources in the most cost-effective manner.

[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]*.

9. Restitution and Repair

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

The City shall be wholly responsible for repairing, remediating, or funding 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.

— **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.

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.

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 Community Recreation Act authorizes a city and district to enter into agreements to promote community recreation. (Education Code § 10905.) It does not expressly address the terms of those agreements. The California Tort Claims Act governs tort liability under agreements between public entities. (Government Code §§895 – 895.8.) Government Code § 895.2 provides that the public entities are jointly and severally liable for injury caused by negligent or wrongful act or omission occurring in the performance of the agreement. Section 895.4 provides that as part of the agreement, the public entities may provide for contribution or indemnification by any or all of the parties upon liability arising out of performance of the agreement. Thus, the public entities may allocate the ultimate financial responsibilities among themselves in whatever manner seems best to them. The District and City have three possible 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.

Operational Costs: — 10. Operational Costs

In this section, the parties can allocate any costs associated with the Agreement. Attorneys for the City and District will ensure any cost allocation comports with state and local laws.

A. Documentation of Costs

The City and the District shall maintain records of costs associated with the Agreement. Each party shall provide to the other party an accounting on an annual basis of all costs associated with the Agreement.

B. Allocation of Costs

C. 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.

12. Insurance

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

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

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.

resulting from its negligence in connection with joint use facilities in the above amounts.

Evaluation/Conflict Resolution: — 13. 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.

- 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.

14. Termination

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

Entire Agreement: — 15. 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.

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

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.

Any Additional Provisions Required by State or Local Law: — 17. Any Additional Provisions Required by State or Local Law

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

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.

Amendments:

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



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.

In order 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.

Joint Use Agreement 2

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

RECITALS

WHEREAS, the Community Recreation Act (California Education Code sections 10900 through 10914.5) authorizes 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 California Civic Center Law (California Education Code sections 38130-38138) establishes a civic center at every school for use by citizens for a variety of purposes, including recreation; 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, California Education Code section 10905 authorizes the governing bodies to enter into agreements with each other to promote the health and general

— 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.

welfare of the community and to enhance the recreational opportunities afforded to the community; and

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

1. Term

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

— **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.

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.

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

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 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.

— **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.

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.

— **Indoor Facilities:**

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

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: — **4. 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. In the case of a conflict between the terms of this Agreement and the requirements of state law, the state law shall govern. Any actions taken by the District or the City that are required by state law, but are inconsistent with the terms of this Agreement shall not be construed to be a breach or default of this Agreement.

6. Obligations of City

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 that these sites are returned in the condition they were received. The personnel shall ensure that 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

— **Obligations of City:**

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

Supervision: —

The City and District can determine who will provide supervision. This model clause provides for the City to provide supervision.

— **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 (e.g., 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.

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 should determine whether to permit community access to District restroom facilities. This model Agreement permits 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's designated employee within _____ days after inspection. Such notification shall consist of sending written notification by letter, facsimile, or email to the City's designated employee identifying the Active Use Area, date of detection, name of inspector, description of damage, and estimated or fixed costs of repair or property placement.

D. Equipment and Storage

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

E. Custodial

The District shall make its trash receptacles available during Public Access Hours. The City shall encourage community users to dispose of trash following use in the trash receptacles. If there is a significant increase in trash volume, the District shall notify the City's designated employee so that 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.

F. Toilet Facilities

a. Indoor Active Use Areas

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

8. Maintenance

[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.

— **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.

Toilet Facilities: —

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

Maintenance:

The parties need to allocate responsibility for maintenance of the facilities. The model provides two options. Communities will determine how to best share resources in the most cost-effective manner.

[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]*.

9. Restitution and Repair

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

The City shall be wholly responsible for repairing, remediating, or funding 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(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 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.

Restitution and Repair:

The parties will tailor this provision to best suit their needs after discussion. 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.

- 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.

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 Community Recreation Act authorizes a city and district to enter into agreements to promote community recreation. (Education Code § 10905.) It does not expressly address the terms of those agreements. The California Tort Claims Act governs tort liability under agreements between public entities. (Government Code §§895 – 895.8.) Government Code § 895.2 provides that the public entities are jointly and severally liable for injury caused by negligent or wrongful act or omission occurring in the performance of the agreement. Section 895.4 provides that as part of the agreement, the public entities may provide for contribution or indemnification by any or all of the parties upon liability arising out of performance of the agreement. Thus, the public entities may allocate the ultimate financial responsibilities among themselves in whatever manner seems best to them. The District and City have three possible 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.

Operational Costs: — 10. Operational Costs

In this section, the parties can allocate any costs associated with the Agreement. Attorneys for the City and District will ensure any cost allocation comports with state and local laws.

A. Documentation of Costs

The City and the District shall maintain records of costs associated with the Agreement. Each party shall provide to the other party an accounting on an annual basis of all costs associated with the Agreement.

B. Allocation of Costs

C. 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.

12. Insurance

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

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

— **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 state and local law and practice.

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 use to address problems that may occur during the operation of the Agreement.

— **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.

14. Termination

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

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.

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.

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.

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

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.

Amendments:

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



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.

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

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

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

Recitals: _____

Recitals are a preliminary statement in a contract or agreement explaining the reasons for entering into the agreement, 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.

RECITALS

WHEREAS, the Community Recreation Act (California Education Code sections 10900 through 10914.5) authorizes 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 California Civic Center Law (California Education Code sections 38130-38138) establishes a civic center at every school for use by citizens for a variety of purposes, including recreation; 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, California Education Code section 10905 authorizes the governing bodies to enter into agreements with each other to promote the health and general welfare of the community and to enhance the recreational opportunities afforded to the community; and

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

1. Term

This Agreement will begin on _____ and will continue for a period of _____ years, *[and then shall be automatically renewed on a _____ basis]* unless sooner terminated as provided for hereinafter in Section 19.

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.

Effective Date: _____

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:

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.

Some school districts may be reluctant to open facilities for after-hours 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. 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.

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-hours 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.

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 that 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 them.

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. In the case of a conflict between the terms of this Agreement and the requirements of state law, the state law shall govern. Any actions taken by the District or the City that are required by state law, but are inconsistent with the terms of this Agreement shall not be construed to be a breach or default of this Agreement.

6. Communication

A. Designation of Employees

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

B. Joint Use Interagency Team

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

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 use to address issues that arise during the operation of the Agreement.

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.

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

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 – Option One:

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, when 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 Civic Center Act (Education Code § 38134) and the Community Recreation Act (Education Code § 10912) permit a school district to recoup direct costs and, in certain situations, impose higher fees on certain users of school district property. Attorneys for the City and District will ensure any cost allocation comports with state and local laws.

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. Each party shall provide to the other party an accounting on an annual basis of all 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.

9. Fees and Charges

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 charges shall be assessed according to state law and District policy.

B. Documentation of Fees

The District and the City shall maintain records of fees collected under this Agreement. Each party shall provide to the other party an accounting on an annual basis of all fees collected under this Agreement.

C. Annual Review of Benefits

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].

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.

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 a separate one.

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 City 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.

11. Interagency Training

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.

Interagency Training:

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

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 that these sites are returned in the condition they were received. The City shall ensure that 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.

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 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.

Custodial: —

The parties will need to make arrangements for trash disposal during City and third party use of 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 options, but depending on the proposed uses of District and City properties, the parties may wish to assign maintenance responsibilities differently.

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.

C. Toilet Facilities

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 ___ to this Agreement.

16. Restitution and Repair

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

The City shall be wholly responsible for repairing, remediating, or funding 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.

— Restitution and Repair:

The parties will tailor this provision to best suit their needs after discussion. 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.

- 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:

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 Community Recreation Act authorizes a city and district to enter into an agreement to promote community recreation. (Education Code § 10905.) It does not expressly address the terms of those agreements. The California Tort Claims Act governs tort liability under agreements between public entities. (Government Code §§895 – 895.8.) Government Code § 895.2 provides that the public entities are jointly and severally liable for injury caused by negligent or wrongful act or omission occurring in the performance of the agreement. Section 895.4 provides that as part of the agreement, the public entities may provide for contribution or indemnification by any or all of the parties upon liability arising out of performance of the agreement. Thus, the public entities may allocate the ultimate financial responsibilities among themselves in whatever manner seems best to them. The District and City have three possible 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.

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 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.

19. Termination

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

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.

Entire Agreement: — 20. 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.

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.

— 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: — 22. Any Additional Provisions Required by State or Local Law

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



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. 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.

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

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

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

Recitals: —

Recitals are a preliminary statement in a contract or agreement explaining the reasons for entering into the agreement, 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.

RECITALS

WHEREAS, the Community Recreation Act (California Education Code sections 10900 through 10914.5) authorizes 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 California Civic Center Law (California Education Code sections 38130-38138) establishes a civic center at every school for use by citizens for a variety of purposes, including recreation; 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, California Education Code section 10905 authorizes the governing bodies to enter into agreements with each other to promote the health and general welfare of the community and to enhance the recreational opportunities afforded to 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.

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. Cooperative Agreement

As provided herein, the District and the City hereby agree to cooperate in coordinating programs and activities conducted on all of their respective properties and in all of their respective facilities listed on Exhibit A (“District Property”) and Exhibit 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

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-hours 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.

include the facilities and the property upon which the facilities are located. As used in this Agreement, “Owner” shall mean the party to this Agreement that owns a particular property and/or facility covered by this Agreement, and “User” shall mean the other party using the Owner’s property and/or facility under the terms of this Agreement. “Public Access Hours” shall mean the hours during which the City or third parties use District Property.

4. Permitted Uses

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.

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

— 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.

— 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 them.

City Use: —

This section provides that the City is responsible for the actions of third parties using the District property and 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 for scheduling to the District.

state and local law. In the case of a conflict between the terms of this Agreement and the requirements of state law, the state law shall govern. Any actions taken by the District or the City that are required by state law, but are inconsistent with the terms of this Agreement shall not be construed to be a breach or default of this Agreement.

6. Communication

A. Designation of Employees

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

B. Joint Use Interagency Team

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

- 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.

— Joint Use Interagency Team:

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.

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.

7. Scheduling Use of Property

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

Scheduling of District Property – Option One:

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, when a district may want to retain scheduling responsibilities.

facilities, as set forth in the District’s policy _____, attached hereto as Exhibit __ 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 Exhibit __ and incorporated herein by reference, as it may be amended from time to time, or as otherwise provided by this Agreement.

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. Each party shall provide to the other party an accounting on an annual basis of all 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.

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 charges shall be assessed according to state law and District policy.

B. Documentation of Fees

The District and the City shall maintain records of fees collected under this Agreement. Each party shall provide to the other party an accounting on an annual basis of all fees collected under this 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]*.

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.

— **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 Civic Center Act (Education Code § 38134) and the Community Recreation Act (Education Code § 10912) permit a school district to recoup direct costs and, in certain situations, impose higher fees on certain users of school district property. Attorneys for the City and District will ensure any cost allocation comports with state and local laws.

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 a separate one.

— **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.

- 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.

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.

— **Interagency Training:**
In order to assure the success of the Agreement and program, key personnel must understand the purposes and procedures required under the Agreement.

Supervision, Security, and Enforcement: — 12. Supervision, Security, and Inspections

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

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 that these sites are returned in the condition they were received. The User shall ensure that 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.

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

— **Maintenance, Custodial Services, and Toilet Facilities:**

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

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 ___ to this Agreement.

16. Restitution and Repair

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

The User shall be wholly responsible for repairing, remediating, or funding 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(d) 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

— **Restitution and Repair:**

The parties will tailor this provision to best suit their needs after discussion. 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.

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:

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 Community Recreation Act authorizes a city and district to enter into an agreement to promote community recreation. (Education Code § 10905.) It does not expressly address the terms of those agreements. The California Tort Claims Act governs tort liability under agreements between public entities. (Government Code §§895 – 895.8.) Government Code § 895.2 provides that the public entities are jointly and severally liable for injury caused by negligent or wrongful act or omission occurring in the performance of the agreement. Section 895.4 provides that as part of the agreement, the public entities may provide for contribution or indemnification by any or all of the parties upon liability arising out of performance of the agreement. Thus, the public entities may allocate the ultimate financial responsibilities among themselves in whatever manner seems best to them. The District and City have three possible 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.

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.

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 state and local law and practice.

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

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.

—

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.

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.

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.

22. Any Additional Provisions Required by State or Local Law





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