

## APPENDIX 3

# Sample Agreements

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

### **Santa Barbara, California**

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

### **Oldsmar, Florida**

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

### **Sammamish, Washington**

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

### **Charlotte, North Carolina**

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



## Santa Barbara, California

---

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



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

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

**WITNESSETH:**

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

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

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

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

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

**1. Principles**

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

## **2. Joint Planning**

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

## **3. Joint Development**

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

## **4. Appropriations**

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

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

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

## **5. Joint Use**

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

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

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

## I. City Facilities Available for Joint Use

### Recreation Facilities

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

**Recreation Facilities Limited to Monday to Thursday Use**

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

**Parks**

Ortega Park  
Skofield Park

**Parks Limited to Monday to Thursday Use**

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

**J. City Facilities Not Available for Joint Use**

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

**6. Scheduling**

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

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

## **7. After-School Recreation Programming**

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



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

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

**8. Maintenance of Facilities Jointly Developed or Used**

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

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

- F. The City, as directed by District, shall collect on behalf of the District any user, custodial or maintenance fees established by the District for scheduled use of District property. Collected fees shall be remitted to the District quarterly. The District shall determine the amount of such fees.
- G. The District shall provide all custodial services for auditoriums, gymnasiums, restrooms and other indoor facilities on District property. The District, at the discretion of the Superintendent of Schools, may charge scheduled users (including the City) a custodial fee for custodial staff time even if custodial staff is working regularly scheduled hours. If District facilities are used at a time when custodial staff is not regularly on duty, or when a custodian is required to open a facility, the scheduled user shall pay the cost of the custodial staff time.

**H. City Maintenance of District Facilities**

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

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

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

**I. Maintenance of Athletic Fields**

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

**a. Field Maintenance**

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

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

**b. Field Scheduling and Monitoring**

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

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

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

**c. Field Lighting**

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

**9. Joint Use Vehicle Program**

- A.** District agrees to grant to City, upon its application and in accordance with the terms of this Agreement, use of passenger vans and buses owned by District ("District Vehicle(s)").
- B.** City agrees to grant to District, upon its application and in accordance with the terms of this Agreement, use of passenger vans and buses owned by City ("City Vehicle(s)").
- C.** District Vehicles and City Vehicles may sometimes be referred to collectively as "Joint Use Vehicles").
- D.** Neither party shall pay any rental or use fee for the use of the other's vehicles. This reciprocal offer of use constitutes good and valuable consideration for this agreement.
- E.** No Joint Use Vehicle may be used outside of Santa Barbara County without prior written permission of the owner of the vehicle. No employee of either party may use any Joint Use Vehicle for personal use.

**F. Vehicle Scheduling and Priority of Use**

- a. General Timing.** In general, City Vehicles will be made available to District when public schools are in session, and District Vehicles will be made available to City when public schools are not in session.
- b. Written Requests.** The party wanting use of the other party's vehicle will submit a written vehicle use request to the other party's transportation supervisor in advance.
- c. Request Contents.** Vehicle use requests will include, to the extent known by the party making the request, the class of vehicle

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

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

#### **10. Restrooms on Junior High School Sites**

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

#### **11. Park Ranger Patrol Program**

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

## **12. Establishment of City and District Joint Use Committee**

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

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

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

The Committee shall be responsible for:

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

## **13. Term of Agreement**

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

## **14. Indemnification**

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

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

**15. Complete Understanding and Amendments**

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

**16. Notices**

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

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

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

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

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

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

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

Signatures



## Oldsmar, Florida

---

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



## JOINT-USE-OF-FACILITIES AGREEMENT

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

### WITNESSETH:

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

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

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

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

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

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

## JOINT-USE-OF-FACILITIES AGREEMENT

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

### WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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


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

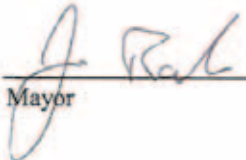
12. **Headings.** The headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope of intent of this Agreement or any part hereof, or in any way affect the same, or construe any provision hereof.

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

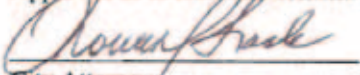
ATTEST:

CITY OF OLDSMAR, FLORIDA

  
City Clerk, *Interim*

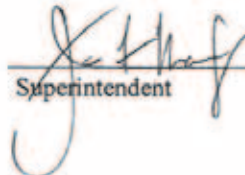
By:   
Mayor

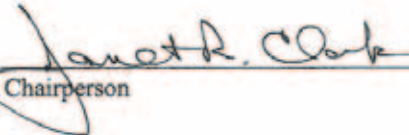
Approved as to form and content:

  
City Attorney

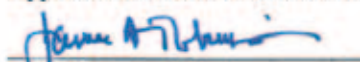
ATTEST:

THE SCHOOL BOARD OF PINELLAS  
COUNTY, FLORIDA

 Jim Madden for  
Superintendent

By:   
Chairperson

Approved as to form and content:

  
General Counsel

## Exhibit "A"

### FACILITY USE AUTHORIZATION FORM

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

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

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

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

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

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

Additional conditions, if any:

City of Oldsmar

School Board of Pinellas County, Florida

\_\_\_\_\_  
Authorized Representative Date  
for Agency

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

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

RPC #



## Sammamish, Washington

---

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



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

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

#### SECTION 1: Purpose and Subject Matter

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

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

The parties agree that during the time period covered by this Agreement, the athletic fields and facilities are intended to be used jointly for school and community recreation purposes for the benefit of District students, the District, and the City at large. In planning programs and scheduling activities on school grounds, the security, academic, athletic and recreational needs and opportunities of school-aged children will be the highest priority and be adequately protected.

#### SECTION 2: Joint Use

##### A. District Facilities

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

##### B. City Facilities

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

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

#### C. Personnel

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

#### SECTION 3: District Outdoor Athletic Facilities Scheduling and Use:

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

##### Elementary Fields:

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

Sun: 9:00 a.m. - Dusk

Secondary Schools Fields:

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

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

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

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

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

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

(1) City of Sammamish Youth Organizations:

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

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

(2) City of Sammamish Adult Organizations:

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

(3) Other Youth Organizations:

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

(4) Other Adult Organizations:

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

#### SECTION 4: Joint Improvements & Renovations

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

#### SECTION 5: Fees and Charges

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

#### SECTION 6: Security

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

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

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

#### SECTION 7: Clean-up and Maintenance

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

#### SECTION 8: Advertising

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

#### SECTION 9: Annual Meeting

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



## SECTION 10: Conflict Resolution

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

## SECTION 11: Term of Agreement

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

## SECTION 12: Operating Rules



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

#### SECTION 13: Indemnification and Insurance

- a. District Property Leased to City.

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

- b. District Property Not Leased to City.

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

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

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

- c. City Property Leased to District.

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

d. City Property Not Leased to District.

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

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

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

SECTION 14: Insurance:

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

- (1) Nature of Coverage.

(a) The District shall maintain commercial general liability coverage or shall obtain a coverage agreement through a Risk Pool authorized by Chapter 39.34 RCW which shall provide liability coverage to the District for the liabilities contractually assumed by the District in this Agreement, and arising out of the activities pertaining to this Agreement.

(b) By requiring such liability coverage, the District shall not be deemed to, or construed to, have assessed the risks that may be applicable to the City in this Agreement. The City shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

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

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

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

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

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

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

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

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

(a) Liability Coverages. To the extent of the District's negligence as herein assumed, the District's liability coverage shall be primary coverage as respects the City, its officers, officials, employees, and agents. Any insurance and/or self insurance maintained by the City, its officers, officials, employees, and agents shall not contribute with the District's coverage or benefit the District in any way.

(b) All Policies and Coverage Agreements. Coverage shall not be suspended, voided, canceled, materially reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice, sent by registered mail, has been given to the City.

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

(1) Nature of Coverage.

- (a) The City shall maintain commercial general liability coverage or shall maintain liability coverage via the City's self-insurance program for the liabilities contractually assumed by the City in this Agreement, and arising out of the activities pertaining to this Agreement.
- (b) By requiring such liability coverage, the District shall not be deemed to, or construed to, have assessed the risks that may be applicable to the City in this

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

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

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

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

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

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

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

#### SECTION 15: Assignment

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

#### SECTION 16: Severability

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

#### SECTION 17: Notice

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

If to the City:

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

If to the District:

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

SECTION 18: Non-Waiver

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

SECTION 19: Integration

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

SECTION 20: Filing

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

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

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

\_\_\_\_\_  
Ben Yazici  
City Manager  
City of Sammamish

STATE OF WASHINGTON    )  
  ) SS  
COUNTY OF KING         )

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

instrument, on oath stated that \_\_\_\_\_ was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Lake Washington School District No. 414, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2004.

\_\_\_\_\_  
\_\_\_\_\_[Print Name]  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON    )  
  ) SS  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that Ben Yazici is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Sammamish, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2004.

\_\_\_\_\_  
\_\_\_\_\_[Print Name]  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

309\G:\LWSD\MISC\SamSchoolDistInterlocal.2004-04-12.doc

## Charlotte, North Carolina

---

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





MECKLENBURG COUNTY

CONTRACT # 040584

NORTH CAROLINA

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

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

**BACKGROUND**

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

## AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

Joint Use Hickory Grove Gym - FINAL 3.24.04

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

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

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

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

copy to: The Premises  
Attn. Principal

If to County:

Attn.: Director, Parks and Recreation

When so given, the notice shall be effective three (3) days after the date of mailing. Either party may change its notice address by giving written notice thereof to the other party. Either party may also give notice by hand delivery at the above address or by facsimile at such numbers that may be established by the parties from time to time.

24. **RELATIONSHIP.** The relationship between CMBE and County is strictly that of landlord and tenant, and nothing contained in this Agreement shall be deemed to make the parties joint ventures or partners or to grant County any fee interest in the Premises or any improvements constructed therein.

25. **SEVERABILITY.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

26. **AMENDMENTS.** This Agreement may be amended only by written instrument executed by the parties hereto.

27. **WAIVER, CONSENT AND APPROVAL.** Any consent or approval required hereunder and any waiver of a provision hereof shall be effective only if given in writing signed by the representative of the party to be charged, and then such waiver, consent or approval shall be effective only in the specific instance and for the purpose given. Whenever under this Agreement the approval or consent of a party is required, such approval shall not be unreasonably withheld or delayed.
28. **APPLICABLE LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina, and any action brought in connection herewith shall be brought in Mecklenburg County, North Carolina.
29. **CMBE'S ENTRY.** In addition to CMBE's rights under Section 1 above, with the County's permission, CMBE shall have the right, at reasonable times and in a reasonable manner, to enter the Premises for any necessary or appropriate purpose, including inspection and maintenance.
30. **ENTIRE AGREEMENT.** The entire agreement, intent and understanding between CMBE and County concerning the Premises is contained in the provisions of this Agreement and the Memorandum of Understanding. The terms of this Agreement shall control if any of the provisions in the documents conflict. Any stipulations, representations, promises or agreements, written or oral, made prior to or contemporaneously with this Agreement shall have no legal or equitable effect or consequence unless reduced to writing herein or in such agreements.
31. **SPECIAL PROVISIONS.**
- A. **Signage.** As part of the initial construction of the New School, CMBE shall cause to be constructed signage on the School Property reasonably acceptable to both CMBE and County staff identifying the school and recreation facility. Thereafter, County shall place park signs upon the School Site within or adjacent to the Premises at locations deemed necessary by either County or CMBE to inform the public of the location of the Premises and the rules governing its use. The placement of such signs shall not interfere with CMBE's use of the School Property for school purposes and the location thereof shall first be approved by School Staff. All Park & Recreation signage shall be maintained by County.
- B. **Equipment.** County shall provide, at its expense, the equipment it deems appropriate to be used in the Premises. CMBE will provide the equipment it uses for instructional purposes, provided, however, School Staff may request use of County's equipment, which requests County will endeavor to grant.



IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed in duplicate, with all the formalities required by law as of the day and year first above written.

**THE CHARLOTTE-MECKLENBURG  
BOARD OF EDUCATION**

(SEAL)

Attest

Secretary

By:

Chairperson

THIS INSTRUMENT AS BEEN PREAUDITED IN THE  
MANNER REQUIRED BY THE SCHOOL BUDGET  
AND FISCAL CONTROL ACT.

Approved as to Form  
Board of Education Attorney

The Charlotte-Mecklenburg Board of Education,  
Finance Officer

Guy Chamberlain, Assistant Superintendent  
for Building Services

STATE OF NORTH CAROLINA )  
COUNTY OF MECKLENBURG )

I, a Notary Public of the County and State aforesaid, certify that James L. Pughsley personally came before me this day and acknowledged that he is the Secretary of The Charlotte-Mecklenburg Board of Education and that by authority duly given and as the act of said Board of Education, the foregoing instrument was signed in its name by the Chairperson of said Board of Education and attested by him as Secretary of said Board of Education.

Witness my hand and official stamp or seal, this the 30<sup>th</sup> day of June, 2004.

[SEAL]

Notary Public

My Commission Expires: 6.23.07

Joint Use Hickory Grove Gym - FINAL.3.24.04

CONTRACT # 090584

MECKLENBURG COUNTY

(SEAL)

Attest:

James Spay  
Clerk to the Board of Commissioners

By: [Signature]  
Gen. County Manager

THIS INSTRUMENT AS BEEN PREAUDITED IN THE  
MANNER REQUIRED BY THE LOCAL  
GOVERNMENT BUDGET AND FISCAL CONTROL  
ACT.

MA Bethune  
Approved as to Form  
County Attorney

[Signature]  
Mecklenburg County,  
Director of Finance

[Signature] 4/2/04  
Wayne Weston, Director Park & Recreation

INSURANCE PROVISIONS REVIEWED AND  
APPROVED BY DIVISION OF INSURANCE AND  
RISK MANAGEMENT

By: [Signature]

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF MECKLENBURG )

I, a Notary Public of the County and State aforesaid, certify that Janice S. Paige personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Mecklenburg, North Carolina and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the County Manager and attested by her as Clerk to said Board of Commissioners.

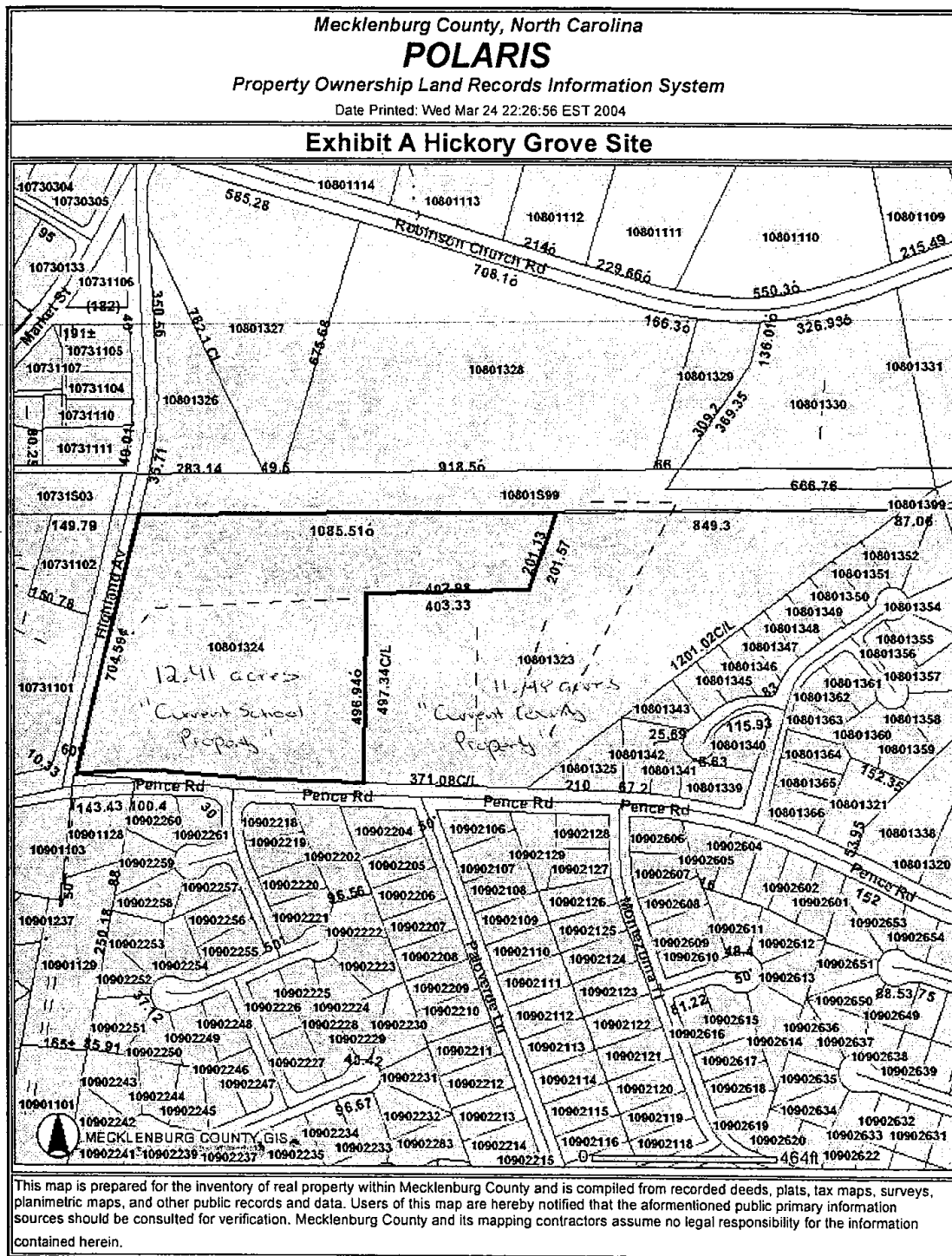
Gen.

Witness my hand and official stamp or seal, this the 20<sup>th</sup> day of May, 2004.

[SEAL]

Angela A. White  
Notary Public

My Commission Expires: JANUARY 5, 2005



<http://maps2.co.mecklenburg.nc.us/servlet/com.esri.esrimap.Esrimap?ServiceName=RealE...> 3/24/2004

