

JOINT USE AGREEMENT 3:

Opening School Facilities for Use During Non-School Hours and Authorizing Third Parties to Operate Programs

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

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

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

Joint Use Agreement 3 is a model agreement between the school district and the local city, town, or county government (referred to generically as “City”), in which the school district agrees to allow the local government to open for community use designated school district indoor and outdoor recreation facilities, such as gymnasiums, playgrounds, blacktop areas, and playing fields during time, such as weekends and holidays, when the district is not using the facilities. It also allows for third parties, such as youth organizations or youth sports leagues, to operate recreation programs using school facilities.

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

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

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

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

NPLAN is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Joint Use Agreement 3: Opening School Facilities for Use During Non-School Hours and Authorizing Third Parties to Operate Programs

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

Recitals

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

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

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

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

Comments about "Recitals":

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

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

1. Term

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

Comments about "Term":

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

2. Effective Date

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

Comments about “Effective Date”:

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

Some school districts may be reluctant to open facilities for after-hour use, fearing property damage. The Agreement designates responsibility for damage repair in section 16. Both parties should inspect facilities before opening them to use to establish an understanding of the condition of the facilities prior to the Agreement.

3. Facilities covered

The term “Active Use Areas” will be used for purposes of this Agreement to mean the designated fields, playgrounds, parking lots, gymnasiums, _____ *[list other types of facilities]* owned by the District as identified on Attachment A to this Agreement. The District and the City shall have the right to add or exclude Active Use Areas during the term of this Agreement, provided that any such change shall be in writing and approved by both the District and the City.

Comments about “Facilities Covered”:

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

4. Permitted Uses of Active Use Areas**a. District Use**

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

b. City Use

At all other times and subject to the schedule developed by the City and the District, the City and third parties authorized by the City will be entitled to access to and use of Active Use Areas, without charge, *[or list payment or reference to payment schedule]* for community recreational and educational purposes for the benefit of District students, the District, and the City at large. The City’s obligations under this Agreement shall also apply to third parties using the Active Use Areas. The City shall be responsible for ensuring third parties comply with all obligations under this Agreement when using Active Use Areas. The City shall enforce all District rules, regulations, and policies provided by the District while supervising community recreational activities at Active Use Areas. In planning programs and scheduling activities on school grounds, the security, academic, athletic, and recreational needs and opportunities of school-aged children will be the highest priority and be adequately protected. The periods of use of Active Use Areas by the City or third parties shall be referred to as “Public Access Hours.”

Comments about “City Use”:

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

c. Third-Party Use

All third-party use of Active Use Areas shall be subject to all District rules, regulations, and policies. The City and the District agree that in providing access to Active Use Areas for use other than by the District or the City, the following priorities for use shall be established:

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

Comments about “Third-Party Use”:

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

5. Compliance With Law

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

6. Communication**a. Designation of Employees**

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

b. Joint Use Interagency Team

- i** The District and the City shall establish a Joint Use Interagency Team (“Interagency Team”), composed of staff representatives of the District and the City, to develop the schedule for use of District Active Use Areas, to recommend rules and regulations for the District and the City to adopt to implement this

Agreement, to monitor and evaluate the joint use project and Agreement, and to confer to discuss interim problems during the term of the Agreement.

- ii The Interagency Team shall hold conference calls or meetings _____ [*add frequency of meetings here*] to review the performance of the project and to confer to discuss interim problems during the term of the Agreement. If the Joint Use Interagency Team is unable to reach a solution on a particular matter, it will be referred to _____ [*District official*] and _____ [*City official*], or their designees, for resolution.
- iii The Joint Use Interagency Team shall review the Agreement by _____ each year to evaluate the project, determine changes to the schedule, and to propose amendments to this Agreement.

Comments about “Communication”:

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

7. Scheduling Use of Property

Comments about “Scheduling Use of Property”:

Depending upon the size of the District and City and the number of properties and potential users involved, the arrangements may require a great deal of planning and specificity. The parties may wish to include the general practice and procedures in the Agreement and elaborate more specifically in an attached exhibit or other document.

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

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

a. Master Schedule

The District and the City shall develop a master schedule for joint use of District Active Use Areas to allocate property use to the District, the City and third parties. The Interagency Team shall schedule regular _____ [*frequency of meetings*]

meetings or at such other times as mutually agreed upon by the District and City. At these meetings, the District and the City will review and evaluate the status and condition of jointly used properties and modify or confirm the upcoming _____ [year/season/etc.] schedule.

b. Scheduling of District Property

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

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

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

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

Comments about “Scheduling of District Property”:

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

8. Documentation and Allocation of Operational Costs

Comments about “Documentation and Allocation of Operational Costs”:

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

a. Tracking Use of Facilities

The District shall track use of the Active Use Areas under this Agreement.

b. Documentation of Costs

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

c. Payment of Overtime

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

Comments about “Payment of Overtime”:

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

9. Fees and Charges**Comments about “Fees and Charges”:**

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

a. Fees

The _____ [*City or District depending upon who will be responsible for scheduling*] may charge fees to third-party users of District Active Use Areas to cover any administrative and maintenance costs which the District or the City may incur. Any fees and costs shall be assessed according to District policy.

b. Documentation of Fees

The District and the City shall maintain records of fees collected under this Agreement.

c. Annual Review of Benefits

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

Comments about “Annual Review of Benefits”:

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

10. Improvements

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

Comments about “Improvements”:

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

11. Interagency Training

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

Comments about “Interagency Training”:

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

12. Supervision, Security and Enforcement

a. Supervision and Enforcement

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

b. Security

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

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

c. Inspection and Notification

The City staff shall inspect the District’s Active Use Areas to ensure these sites are

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

Comments about "Supervision, Security and Enforcement":

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

13. Supplies

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

14. Maintenance, Custodial Services, and Toilet Facilities

a. Maintenance

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

[Option One:]

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

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

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

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

b. Custodial

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

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

c. Toilet Facilities

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

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

Comments about “Maintenance, Custodial Services, and Toilet Facilities”:

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

15. Parking

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

16. Restitution and Repair

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

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

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

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

- a. Inspection and Notification** The District shall, through its designated employee, inspect and notify the City, of any damage, as described above in subsection 12(c).
- b. Repairs** Except as mutually agreed, the City shall not cause repairs to be made for any building, facility, property, or item of equipment for which the District is responsible. The District agrees to make such repairs within the estimated and/or fixed costs agreed upon. If it is mutually determined or if it is the result of problem-resolution under subsection 16(d) of this Agreement that the City is responsible for the damage, then the City agrees to reimburse the District at the estimated and/or fixed costs agreed upon.
- c. Reimbursement Procedure** The District shall send an invoice to the City’s designated employee within _____ days of completion of the repairs to or replacement of damaged property. The invoice shall itemize all work hours,

equipment, and materials with cost rates as applied to the repair work. If the repair is completed by a contractor, a copy of the contractor's itemized statement shall be attached. Actual costs shall be reimbursed if less than estimated and/or fixed costs. The City shall reimburse the District within _____ days from receipt of such invoice.

- d. Disagreements** The City shall retain the right to disagree with any and all items of damage to buildings or equipment as identified by the District, provided this disagreement is made within _____ days after a first notification.
- i** The City shall make any disagreements in writing to the District by letter, facsimile, or email to the District's designated employee. The City shall clearly identify the reasons for refusing responsibility for the damages. Failure to make the disagreement within the prescribed time period shall be considered as an acceptance of responsibility by the City.
 - ii** After proper notification, members of the Joint Use Interagency Team, or other designated representatives of the City and District, shall make an on-site investigation and attempt a settlement of the disagreement.
 - iii** In the event an agreement cannot be reached, the matter shall be referred to _____ [City official] and _____ [District official], or their designees, for resolution.
 - iv** The District shall have the right to make immediate emergency repairs or replacements of property without voiding the City's right to disagree.

Comments about "Restitution and Repair":

After discussion, the parties will tailor this provision to best suit their needs. The District may want the City to make any repairs or may want to make the repairs using its own personnel or contractors and have the City reimburse the District for the costs. Parties should address: (1) Which party will be responsible for making the repairs; (2) The timeline for making repairs; (3) The method and timeline for making reimbursements; and (4) The method for resolving disputes over repairs/reimbursements.

17. Liability and Indemnification

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

The City shall indemnify and hold harmless, the District, its Board, officers, employees and agents (collectively, the "School Parties" and individually, a "School Party") from, and if requested, shall defend them against all liabilities, obligations, losses, damages, judgments, costs, or expenses (including reasonable legal fees and costs of investigation) (collectively "Losses") as a result of (a) personal injury or property damage caused by

any act or omission during the Public Access Hours; or (b) any damage to any District property as a result of access granted pursuant to this Agreement; provided, however, the City shall not be obligated to indemnify the School Parties to the extent any Loss arises out of the negligence or willful misconduct of the School Parties. In any action or proceeding brought against a School Party indemnified by the City hereunder, the City shall have the right to select the attorneys to defend the claim, to control the defense and to determine the settlement or compromise of any action or proceeding, provided that the applicable School Party shall have the right, but not the obligation, to participate in the defense of any such claim at its sole cost. With respect to damage to District facilities, remediation will be provided at the full cost of replacement or repair to the facility, as applicable.

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

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

Comments about "Liability and Indemnification":

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

18. Insurance

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

- a. Commercial General Liability for bodily injury and property damage, including Personal Injury and Blanket Contractual, with limits of _____ per occurrence _____ aggregate.
- b. Workers' Compensation. Workers' compensation coverage, as required by _____ [state law].

- c. _____ [*Other types of insurance required*].
- d. Documentation of Insurance. The City and District shall provide to each other a certificate of insurance each year this Agreement is in effect showing proof of the above coverage. In the event the City or District is self-insured for the above coverage, such agency shall provide a letter stating its agreement to provide coverage for any claims resulting from its negligence in connection with joint use facilities in the above amounts.

Comments about “Insurance”:

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

19. Termination

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

Comments about “Termination”:

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

20. Entire Agreement

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

Comments about “Entire Agreement”:

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

21. Amendments

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

Comments about “Amendments”:

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

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

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

Signatures