

Joint Use of SAU #88 and City of Lebanon Recreation Facilities

The Joint Use Agreement is an agreement between the SAU 88 and the City of Lebanon, in which the school district and city agree to open all or designated recreational facilities to each other for community and school use. Thus, the school district agrees to allow the city 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 evenings, weekends and holidays, when the district is not using the facilities. In turn, the city opens its facilities for district use.

This Agreement will designate the specific recreation facilities to be opened to use and address access, security, supervision, maintenance, custodial services, and repairs or restitution. In addition, this Agreement contains a procedure for resolving disputes, a mechanism for scheduling use of the facilities, and an allocation of costs, risks, and insurance.

Joint Use of District and City Recreation Facilities

JOINT LICENSE AGREEMENT BETWEEN THE LEBANON SAU#88 ("DISTRICT") AND CITY OF LEBANON ("CITY") FOR USE OF RECREATION FACILITIES

Recitals

WHEREAS, school districts and cities are authorized and encouraged to organize, promote, and conduct community recreation programs and activities to promote the health and general welfare of the community; and

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

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

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

NOW, THEREFORE, the District and the City agree to grant each other a revocable license to use each other's real property and to cooperate with each other as follows:

1. Term

This Agreement will begin on October 10, 2012 and will continue for a period of 1 year, and then shall be automatically renewed on an annual basis unless terminated as provided for hereinafter in Section 17.

2. Effective Date

This Agreement shall be effective on the later of October 10, 2012 or upon inspection of the property as described hereinafter in Section 4 and identified in Exhibit A by District and City officials as required by Section 10(c).

3. Cooperative Agreement

As provided herein, the District and the City hereby agree to cooperate in coordinating programs and activities conducted on all their respective properties and in all their respective facilities. Reference to District Property or City Property in this Agreement shall include those facilities and the property owned by either the District or the City and identified on Exhibit A as may be amended from time to time. As used in this Agreement, "Owner" shall mean the party to this Agreement that owns a particular property and/or facility covered by this Agreement, and "User" shall mean the other party using the Owner's property and/or facility under the terms of this Agreement.

4. Licensed Real Estate

The properties that are made a part of this Agreement are listed on the attached Exhibit A. The District and the City shall each have the right, within their sole discretion, to add or exclude properties they own during the term of this Agreement, provided that any such change shall be in writing and written notice provided to the other party no later than June 1 before the annual renewal of the Agreement. In the event of such a change, an amended Exhibit A will be made a part of this Agreement.

5. Permitted Uses

The real estate listed on Exhibit A shall be used under this Agreement for public purposes, for school-related or community educational or recreational activities that are sponsored by either the District or the City. It is acknowledged that, at times, either the District or the City will allow their property to be used by other non-profit community organizations. Therefore, the parties agree that scheduling the use of their respective facilities will follow the priorities as listed below:

a. District Property

The District will strive to complete both District and City scheduling of activities at least 6 weeks ahead of each season, and then any third party use will be scheduled after that time. Priority of use for scheduling of District Property is in the following order:

i. District Use: First Priority

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

ii. City Use: Second Priority

At all other times and subject to the schedule jointly developed by the City and the District, the City will be entitled to use District Property, without charge except as otherwise described in this Agreement and consistent with the District's current policy for use of District property, for community recreational and educational purposes for the benefit of District students, the District, and the City at large. The City shall enforce all District rules, regulations, and policies provided by the District while supervising community recreational activities on District Property. In planning programs and scheduling activities on school grounds, the security, academic, athletic, and recreational needs and opportunities of school-aged children will be the highest priority and be adequately protected.

iii. Third-Party Use: Third Priority

At times when District property has not been scheduled for use by the District or the City in accordance with this Agreement, the District may allow for use of its property by third parties consistent with its current policies.

b. City Property

i. City Use: First Priority

The City shall be entitled to the exclusive use of City Property for the regular conduct of park, recreation, and community service activities and/or programs sponsored by the City.

ii. District Use: Second Priority

At all other times and subject to the schedule jointly developed by the City and District, the District will be entitled to use City Property, without charge except as otherwise described in this Agreement, and consistent with the City's current policy for use of City property, for District educational and recreational activities and/or programs.

iii. Third-Party Use: Third Priority At times when City property has not been scheduled for use by the City or the District in accordance with this Agreement, the City may allow for use of its property by third parties consistent with its current policies.

6. Compliance with Law

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

7. Communication

The District and the City shall assign staff to develop the schedule for use of District and City Property, to recommend rules and regulations for the District and City to adopt to implement this Agreement, to monitor and evaluate the Agreement, and to confer to discuss interim problems during the term of the Agreement.

- a. The assigned staff shall communicate regularly to review the performance of the Agreement and to confer to discuss interim problems during the term of the Agreement. If the staff are unable to reach a solution on a particular matter, it will be referred to the SAU 88 Superintendent, and Lebanon City Manager, or their designees, for resolution.
- b. The assigned staff shall review the Agreement no later than June 1 each year to determine changes to the schedule, evaluate the effectiveness of this Agreement and propose amendments, if necessary.

8. Scheduling Use of Property –

a. District Property

The District shall have responsibility for scheduling the use of District Property according to its policy and procedures and scheduling tools. Requests from the City for use of District Property shall be submitted to the District's Facility Administrative Assistant, or other designee.

b. City Property

The City shall have the responsibility for scheduling the use of City Property according to its policy and procedures and scheduling tools. Requests from the District for the use of City recreational facilities must be submitted directly to the City's Recreation and Parks Department. Requests for library use must be submitted directly to the City's Library Department. All other requests to use City Property must be submitted to the City Manager's Office via the current application process for the use of City Property.

9. Documentation and Allocation of Operational Costs

a. Tracking Use of Facilities

For the purpose of documenting the effect of the other party's use of either District or City Property and allocating operational costs, the District and the City shall each track the use made by the other party of their respective Properties under this Agreement.

b. Payment of Facility Staff

In the event that Owner's staff is required to work outside of their normal working hours, including overtime, for purposes related to the use of the facilities such as opening or securing the facilities before or after events scheduled by a User, or responding to facility emergencies as a result of User events, the extra cost incurred by the Owner to compensate the staff will be charged to the User, according to the fee schedule listed in the Owner's current policy and procedures. The fee schedule of the District and City will be provided to each other prior to the start of each renewal term of this Agreement.

c. Fees

There will be no fees charged for District use of City facilities, or for City use of District Facilities, with the following exception: Additional costs incurred by the Owner due to the use of Owner's Property by the other party will be charged to the User.

d. Documentation of Costs

The District and the City shall maintain records of costs associated with the use of their respective properties under this Agreement.

10. Supervision , Security, and Inspections

a. Supervision and Enforcement

Each User shall provide and train an adequate number of competent personnel to supervise all activities on the Owner's Property, and provide that personnel with an emergency call list. The Owner shall provide the User with a current set of rules, regulations and policies before the start of each renewal term of this Agreement, and User shall enforce all of the Owner's rules, regulations, and policies while supervising activities or programs on the Owner's Property. Indoor facility use will require Owner personnel to be on-site for the duration of the activity or event. The Owner may also require Owner personnel to be on-site for large outdoor assemblies.

b. Security

The Owner shall provide the User with access to the Owner's property during scheduled events. The Owner will provide access and training as needed to the User's employee(s) responsible for opening and locking the Owner's property while supervising activities or programs.

c. Inspection and Notification

Prior to the Effective Date of this Agreement, the Parties shall jointly inspect all property identified on Exhibit A and will indicate on Exhibit A that the property has been inspected and is in satisfactory condition for its intended use. The User shall

inspect the Owner's property after use to ensure these sites are returned in the condition they were received. The User shall ensure the Owner is notified within five (5) business days in the event that Owner's property suffers damage during User's use. Such notification shall consist of sending written notification by letter or email to the Owner's designated employee identifying the damaged property, date of detection, name of inspector, and description of damage. The Owner shall also regularly inspect its own property and similarly notify the User within five (5) business days of the discovery of any damage sustained during the User's use.

11. Supplies

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

12. Maintenance, Custodial Services, and Toilet Facilities

a. Maintenance

The User agrees to exercise due care in the use of the Owner's Property. The User shall during the time of its use keep the Owner's Property in neat order. A charge for custodial services will be assessed when these requirements are not met.

The Owners shall be responsible for the regular maintenance, repair, and upkeep of their respective Properties.

b. Custodial

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

c. Toilet Facilities

In the event that the Owner does not already have available facilities, the User shall place temporary, portable, restroom facilities at the outdoor properties at the discretion of the Owner. It shall be the responsibility of the User to maintain and pay for the cost of these temporary facilities.

13. Parking The Owner shall permit User access to available parking during User's events.

14. Restitution and Repair

The User shall make restitution for the repair of damage to the Owner's Property as a result of use by User.

a. Inspection and Notification The User shall, through its designated employee, inspect and notify the Owner, of any damage, as described in subsection 10(c).

b. Repairs Except as mutually agreed, the User shall not cause repairs to be made for any property, facility, building, or item of equipment for which the Owner is responsible. The Owner agrees to make such repairs within the estimated and/or fixed costs agreed upon. If it is mutually determined or if it is the result of problem-resolution under section 14d of this Agreement that the User is responsible for the damage, then the User agrees to reimburse the Owner at the estimated and/or fixed costs agreed upon.

- c. **Reimbursement Procedure** The Owner shall send an invoice to the User's designated employee within ten (10) business days of completion of repairs or replacement of damaged Property. The invoice shall itemize all work hours, equipment, and materials with cost rates as applied to the repair work. If the repair is completed by a contractor, a copy of the contractor's itemized statement shall be attached. Actual costs shall be reimbursed if less than estimated and/or fixed costs. The User shall reimburse the Owner within thirty (30) calendar days from receipt of such invoice, unless the User disagrees under section 14d below, in which case the User shall reimburse the Owner within thirty (30) calendar days of the resolution of the disagreement, if applicable.
- d. **Disagreements** The User shall retain the right to disagree with any and all items of damage to property, buildings or equipment as identified by the Owner, provided this disagreement is made in writing within ten (10) calendar days after a first written notification from Owner.
 - a. The User shall notify the Owner of any disagreements in writing by letter, facsimile, or email to the District's designated employee. The User shall clearly identify the reasons for refusing responsibility for the damages. Failure to make the disagreement within the prescribed time period shall be considered as an acceptance of responsibility by the User.
 - b. After proper notification, designated representatives of the City and District shall make an on-site investigation and attempt a settlement of the disagreement.
 - c. In the event an agreement cannot be reached, the matter shall be referred to City Manager and School Superintendant, or their designees, for resolution. In the event the parties are unable to resolve the matter at that point, they agree to use non-binding mediation next to try and resolve the issue before any other methods of dispute resolution are used.
 - d. The Owner shall have the right to make immediate emergency repairs or replacements of Property without voiding the User's right to disagree.

15. Liability and Indemnification

- 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 and the use of District Property, 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 while using District Property.
- 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 and the use of City Property, 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 while using City Property.

16. Insurance

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

- a. Commercial General Liability for bodily injury and property damage, including Personal Injury and Blanket Contractual, with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- b. Workers' Compensation. Workers' compensation coverage, as required by New Hampshire State Law.
- c. Documentation of Insurance. The District and the City shall provide to each other a certificate of insurance each year this Agreement is in effect, prior to the beginning of a new term, showing proof of the above coverage.

17. Termination

This Agreement may be terminated at any time for reasons within the discretion of either party if advance written notice is given to the other party no later than 120 (one hundred twenty) calendar days prior to the expiration of this Agreement's then-current term, or at any time within the discretion of an Owner in the event of a breach of this Agreement, gross misuse of property or negligence by a User upon thirty (30) calendar days advance written notice to the User.

18. 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.

19. 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.

20. Independent Entities

Neither party is an agent, agency or department of the other, and nothing herein shall be construed as creating an agency relationship between the District and the City.

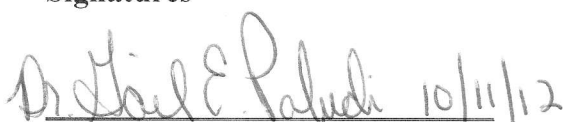
21. Applicable Law

This Agreement shall be construed in accordance with the laws of the State of New Hampshire.

22. Assignment

This Agreement may not be assigned or transferred by either party.

Signatures


SAU 88 Superintendant / Date


City of Lebanon, Manager / Date