

**Joint Use of Facilities Agreement
San Bruno Park School District and the City of San Bruno**

This Agreement for joint use of selected facilities within the boundaries of the SAN BRUNO PARK SCHOOL DISTRICT and the CITY OF SAN BRUNO is entered into this _____ day of _____, 2022, between the SAN BRUNO PARK SCHOOL DISTRICT (“District”) and the CITY OF SAN BRUNO (“City”) for use of both District and City facilities. District and City are collectively referred to as the “Parties” and each individually as a “Party.”

RECITALS

WHEREAS, the Community Recreation Act (California Education Code sections 10900 through 10914.5) authorizes school districts and cities to organize, promote, and conduct community recreation programs and activities to promote the health and general welfare of the community; and

WHEREAS, the California Civic Center Act (California Education Code sections 38130-38138) establishes a civic center at every school for use by citizens for a variety of purposes, including recreation; and

WHEREAS, the District is the owner of real property within the boundaries of the San Bruno Park School District and within City boundaries, 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 within the boundaries of the City and within the San Bruno Park School District boundaries, including facilities and active use areas that are capable of being used by the District for school activities and recreational purposes; and

WHEREAS, the City and District mutually agree that the provisions of adequately maintained recreation facilities and recreation program are beneficial to the residents of the City and to those who reside within the geographical boundaries of the District and the City; and

WHEREAS, City and District have a well-established history of working together to ensure their respective Facilities are available and utilized for the common good and for the enhanced benefit of the community; and,

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

WHEREAS, California Education Code section 10905 authorizes the governing bodies to enter into agreements with each other to promote the health and general welfare of the community and to enhance the recreational opportunities afforded to the community; and

As used in this Agreement,

“Owner” shall mean the Party to this Agreement that owns or leases a particular property and/or facility covered by this Agreement, either District or City, and

“Responsible Party” shall mean the Owner, except when the facility is being used by a Party and its Users who is not the Owner. When the City or its Users are using District facilities,

then the City shall be the Responsible Party during the time of such use. When the District and its Users are using City facilities, then the District shall be the Responsible Party during the time of such use.

“Facilities” include any property owned by the City or the District where programs may be located including, but not limited to school sites, parks, fields, community centers, etc.

“User” shall mean the Party using the Owner’s property and/or facility pursuant to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. Term of the Agreement.** This Agreement will continue for a period of two (2) years with review starting eighteen (18) months from its date of execution. This Agreement must be approved by the Board of Trustees of the San Bruno Park School District (“Board”) and the City Council of the City of San Bruno (“City Council”). The effective date of this Agreement (“Effective Date”) shall be retroactive to July 1, 2021 following the approval of the City Council and the San Bruno Park School Board
- 2. Cooperative Agreement.** As provided herein, the Parties hereby agree to cooperate in coordinating programs and activities conducted on City and School District properties and facilities. The Parties shall have the right to add or exclude properties during the term of this Agreement, provided that any such change shall be in writing and approved by the Parties. Reference to District Property or City Property in this Agreement shall include the facilities and the property upon which the facilities are located.
- 3. Permitted Uses.**

A. District Property

- 1) **District Use.** Subject to the schedule developed by the Parties per Section 6, the District shall be entitled to the exclusive use of District Property for all “school sponsored” educational and recreational activities at all times.
- 2) **City Use.** Subject to the schedule developed by the Parties per Section 6, the City will be entitled to use District Property for community recreational and educational purposes for the benefit of the community, City staff, and the City/Community at large. Additionally, the City acknowledges that the City’s, “Lion’s Park” baseball field sits on the District’s land, and after providing a 30-day notice based on the circumstances involved, the District has the right to take the land back at any point in time as it so chooses. The City will ensure that its use for community recreational and educational purposes will not interfere with the educational activities, unduly disrupt residents or jeopardize the safety of the students. If the City is not in compliance with this requirement, the District may require the City to stop its program/activities so that it may resume its educational activities and ensure the safety of its students.

B. City Property

- 1) **City Use.** Subject to the schedule developed by the Parties per Section 6, the City shall be entitled to the exclusive use of City Property for all park, recreation, and community service activities and/or programs sponsored by the City.
- 2) **District Use.** Subject to the schedule developed by the Parties per Section 6, the District will be entitled to use of City Property for District educational and recreational activities and/or educational programs for the benefit of District students, District Staff, the District, and the City/Community at large.

4. Compliance with Law. All use of District and City Property shall be in accordance with all applicable state and local laws, regulations, and ordinances (“Law”), including each Parties’ adopted policies. In the case of a conflict between the terms of this Agreement and the requirements of Law, the state law shall govern. Any actions taken by the Parties that are required by Law, but are inconsistent with the terms of this Agreement, shall not be construed to be a breach or default of this Agreement.

5. Communication

A. Designation of Employees. The District Superintendent and the City Manager 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.

- 1) The representatives from each agency shall hold meetings at least twice yearly in July and January to review the performance of the Joint Use program and at other times and as needed to discuss interim issues that arise during the term of the Agreement. Representatives will make every attempt to disclose requested use for the following 6 months at these meetings.
- 2) If the representatives from each agency are unable to reach resolution on a particular matter, the Parties agree to a dispute resolution process as provided for in Section 19.

6. Scheduling Use of Property

A. Master Schedule. The District Superintendent and the City Manager, or their designated representatives, shall develop a master schedule for joint use of facilities and to allocate property use as defined in Section 3. The designated representatives shall schedule twice yearly meetings per section 5.A.1. or at such other times as mutually agreed upon by the Parties. At these meetings, the designated representatives will review and evaluate the status and condition of joint use properties and modify or confirm the upcoming season schedule.

B. Scheduling of City Property. The District shall be responsible for scheduling the use of City Property in accordance with the most recent regular procedures of the City for granting permits for the use of City facilities, as set forth in the City’s policies and administrative regulations.

C. Scheduling of District Property. The City shall be responsible for scheduling the use of District Properties 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 policies and administrative regulations. The District will require the User to input the requested use into the District software Facilitron.

7. Fees and Allocation of Costs

A. Fees.

- 1) For City properties, facility use outside of “normal business hours” will require payment of direct costs of Facility Attendants and/or Custodial Staff. If a Kitchen is used at any time, the direct cost of kitchen staff will be charged. “Normal business hours” are Monday through Friday from 7:00 AM to 10:00 PM, with the exception of City observed holidays. Exceptions to these business hours may be determined in the schedule developed per section 6 of this Agreement.
- 2) For School District properties, facility use outside of “normal business hours” will require payment of direct costs of Custodial Staff. If the Kitchen is used at any time, the direct cost of kitchen staff will be charged. “Normal business hours” are Monday through Friday from 7:00 AM to 10:00 PM, with the exception of District observed holidays. Exceptions to these business hours may be determined in the schedule developed per section 6 of this Agreement.

B. Tracking of Costs. Each Party shall provide to the other Party an accounting, on an event basis, of all overtime and other costs incurred as a result of duties carried out under this Agreement.

C. Allocation of Costs. The Parties agree that no facility rental charges will be imposed between the Parties. However, should the Owner incur direct costs pertaining to the facility rental or maintenance that are in excess of their normal operating costs, these costs will be reimbursed by the Responsible Party on a fee schedule set up by the Owner. The following costs will be considered.

- 1) Direct personnel costs as defined in the Owner’s facility rental rate schedule posted on the Owner’s website.
- 2) Extraordinary costs incurred due to use of the facility by the User i.e. Capital planning assessments as set forth in Section 8(d).

8. Improvements

- A.** A Party shall not make any alterations, additions, improvements, or changes to any property owned by the other Party without prior express, written approval of the Owner.
- B.** Any such alterations, additions, or improvements will be at the expense of the requesting Party, unless otherwise agreed upon.
- C.** Each Party may require, as a condition of approval, the demolition or removal of any alterations, additions, or improvements made by the other Party, at such Party’s sole expense, at the expiration or termination of this Agreement.
- D.** The Parties acknowledge that, for reasons unrelated to inadequate maintenance, facilities may, over time, deteriorate to a point that maintenance becomes uneconomical, and repair and replacement of the facilities becomes advisable. In the event that a Party concludes that a facility should be repaired or replaced, both Parties shall in good faith, meet to discuss the options of repair or replacement and shall attempt to reach agreement as to whether the facility should be repaired or replaced, and an agreement as to equitable sharing of costs of any such repair or replacement.

In the event an agreement cannot be reached, the Parties shall engage in the dispute resolution process set forth in Section 19.

9. Interagency Training. The Parties shall operate training and orientation programs for key personnel implementing this Agreement. The Parties shall each be responsible for ensuring their employees are trained.

A. Twice yearly, the City will operate a training session and invite the District to participate. The training will cover:

- 1) Joint use policy and procedures
- 2) Contractual requirements
- 3) Emergency procedures
- 4) Scheduling and schedule changes

B. On a yearly basis and as needed, the District will operate a training session and invite the City to participate. The training will cover:

- 1) Joint use policy and procedures
- 2) Contractual requirements
- 3) Emergency procedures
- 4) Scheduling and schedule changes

10. Supervision, Emergency Action, Security, and Inspections

A. Supervision and Enforcement. The Responsible Party shall ensure that each User trains and provides an adequate number of competent personnel to supervise all activities on the Owner's Property. The Responsible Party shall ensure that the User enforces all of the Owner's rules, regulations, and policies while supervising activities or programs on the Owner's Property.

- 1) In accordance with California Education Code section 45125.1, the City and District anticipate that City employees will not interact with students without District supervision. However, if it is later determined that City employees will interact with District students without supervision, such employees are required to undergo a criminal background check pursuant to California Education Code section 44237.

B. Emergency Action. Nothing in this Agreement shall limit either Owner's right to make unlimited use of all or any portion of its property during an emergency. For purposes of this Agreement, an emergency is any circumstance or event that the Owner, in Owner's sole discretion, deems to pose an actual or potential danger to life or property. The Parties shall exchange and keep current a list of authorized representatives, by name or by title, to be contacted in the event of an emergency. Additionally, the Responsible Party shall ensure that the User is trained in emergency procedures including but not limited to:

- 1) In the event of an emergency, the User shall call 911.

- 2) For information related to facility accessibility at the time of the use, the User shall call the non-emergency Police line at 650-616-7100.
- 3) The 24 hour a day toll free number of the District software, Facilitron, will be listed on the User's permit and posted at School District sites in case of facility access issues.

C. Security. The Owner shall provide the User with access to the Owner's Property. The Responsible Party and Owner shall be jointly responsible for providing keys, security cards, and training as needed to the User's employee(s) who are responsible for opening and locking the Owner's Property while supervising activities or programs. The Owner is responsible for notifying the Responsible Party if locks or codes are changed.

D. Inspection and Notification. The Responsible Party shall ensure that the User inspects the Owner's Property after use to determine whether the site is being returned in the condition that it was received. The Responsible Party shall notify the Owner within 72 hours in the event that Owner's Property suffers damage during User's use. Such notification shall entail written notification by letter or email to the Owner's designated employee identifying the damaged property, date of detection, name of inspector, description of damage, and, if known, the estimated costs to repair or replace the property.

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

12. Maintenance, Custodial Services, and Restroom Facilities. The Responsible Party shall ensure that the User exercises due care in the use of the Owner's Property and that the User shall, during the time of its use, keep the Owner's Property in neat order. The Owners shall be responsible for the regular maintenance, repair, and upkeep of their respective Properties.

13. Restitution and Repair. The Responsible Party shall make restitution for the repair of damage to the Facility that occurred during User's use of Owner's Property.

A. Inspection and Notification. The Responsible Party shall, through its designated employee, inspect and notify the Owner of any damage, as described above in Section 10(d).

B. Repairs. Except as mutually agreed, the Responsible Party or 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 shall agree to make such repairs within the estimated and/or fixed costs agreed upon. If it is mutually determined or as a result of dispute-resolution under Section 16 of this Agreement that the User is responsible for the damage, then the Responsible Party agrees to reimburse the Owner at the estimated and/or fixed costs agreed upon.

C. Reimbursement Procedure. The Owner shall inspect the property and submit a damage claim and estimated costs in writing to Responsible Party within thirty (30) days of the damage notification. Within two (2) weeks of completion of repairs, the Owner shall send an itemized invoice to the Responsible Party. The Responsible Party shall reimburse the Owner in full within 90 days of receipt of such invoice.

D. Disagreements. The Responsible Party shall retain the right to disagree with any and all items of damage to buildings or equipment as identified by the Owner, provided this disagreement is identified within two (2) weeks after a first notification.

- 1) The User shall notify the Owner of any disagreements in writing by letter or email to the District's designated employee. The User shall clearly identify the reasons for refusing responsibility for the damages. Failure to notify the Owner of the disagreement within the prescribed time period shall be considered as an acceptance of responsibility by the Responsible Party.
- 2) After proper notification, designated representatives of the Interested Parties, shall make an on-site investigation and attempt a settlement of the disagreement.
- 3) In the event an agreement cannot be reached, the matter shall proceed as described in Section 16 of this Agreement.
- 4) The Owner shall have the right to make immediate emergency repairs or replacements of Property without voiding the User's right to disagree.

14. Indemnification. Each Party shall defend, indemnify, and hold harmless the other Party, and its officers, officials, governing board and members thereof, employees, and volunteers from and against any and all liability, loss, damage, expense, cost including, without limitation, cost and fees of litigation (including reasonable attorneys' fees) of every nature to the extent such liability, loss, damage, expense, or costs are caused by the failure of a Party's officers, agents, volunteers, contractors, and employees to comply with any of its obligations contained in the Agreement by the party from whom indemnification is sought and except for the sole negligence or willful misconduct of the Party seeking indemnification. This indemnity shall survive the termination of this agreement.

15. Insurance. Throughout the term of this Agreement, each Party shall obtain and maintain, at its own expense, the minimum insurance coverage set forth below.

A. Each Party agrees, for the term of this agreement, to either maintain insurance policies or self-insure with limits of not less than the following:

- 1) General Aggregate: Two Million Dollars (\$2,000,000.00).
- 2) Personal Injury: One Million Dollars (\$1,000,000.00).
- 3) Each Occurrence: One Million Dollars (\$1,000,000.00).

B. Name the other Party, its officers, agents, and employees as additional insureds. The City shall require in its City of San Bruno Community Services Registration Form Liability Release that as a condition of participating in any program, all participants will release and indemnify the San Bruno Park School District and the City from any and all liability arising from their participation in such programs.

C. The District shall require in its registration liability release that as a condition of participating in any program on City property, all participants will release and indemnify the City of San Bruno from any and all liability arising from their use of City property and participation in such programs.

- D. Contain provisions making the insurance to be provided herein primary whereby no insurance held by the other Party shall be called upon to contribute to a loss and not be cancelled without thirty (30) days advanced notice to the other Party.
- E. To the best of their ability, each Party shall notify the other of any accident or incident relating to its use of the other's property pursuant to this Agreement, which involves injury or property damage which may result in the filing of a claim or lawsuit against any of the Parties, and, of any actual third-party claim or lawsuit arising from or related to services under this Agreement.

16. Dispute Resolution. Should a dispute arise out of this Agreement, the designated representatives shall attempt to resolve the dispute in a timely manner by using the following process:

- A. Educating users about the need to try to resolve any disputes in a direct, timely and respectful manner at the level at which the disagreement occurs.
- B. Providing users with a defined resolution process that is to be followed if the dispute cannot be resolved satisfactorily for all parties at the level at which it occurs. This process will utilize the following steps:
 - 1) If a dispute is not resolved by the involved parties, it should be referred to the designated representatives. They will meet and attempt to find a resolution within 30 days of the referral.
 - 2) Disputes that are unresolved at the level of the designated representatives, shall be referred to the City Manager and the District Superintendent, or their designees, for resolution.
 - 3) In the event that the Superintendent and City Manager are unable to resolve the dispute, the Parties agree to work, in good faith, to resolve the dispute through mediation with a mutually acceptable neutral third party before, and as a condition precedent to, the initiation of any adjudicative action or proceeding.
 - 4) The cost of the mediator, if any, shall be shared by the Interested Parties.
 - 5) If a mediated settlement is reached, neither Party shall be the prevailing party for the purposes of this settlement.
- C. If a mediated settlement is not reached and it is such that the dispute needs to be adjudicated, the dispute should be heard by a court of competent jurisdiction in San Mateo County.

17. Termination. This Agreement may be terminated by each of the Parties at any time prior to its expiration for any reason whatsoever, including circumstances beyond their control, with six (6) months written notice. If there is a current program running at the time of termination, that program can be completed prior to the agreement being terminated.

18. 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.

19. Not a Joint Venture or Joint Powers Authority. The Parties intend by this Agreement to establish only an arrangement with regard to facilities management and use for school activities and recreational opportunities for the community, and do not intend to create a joint powers agency, partnership, joint venture, or joint enterprise of any kind.

20. Party Employees. For purposes of this Agreement, all persons employed in the performance of services and functions for District shall be deemed District employees and no District employees shall be considered as an employee of the City, nor shall such District employees have any City pension, civil service, or other status while an employee of the District. Further, all persons employed in the performance of services and functions for the City shall be deemed City employees and no City employee shall be considered as an employee of the District, nor shall such City employees have any District pension, civil services, or other status while an employee of the City.

21. Non-Discrimination. The Parties agree that in providing use of the other's property, the hiring of staff, and the selection and use of volunteers, all persons will be treated equally and without regard to or because of race, color, religion, ancestry, national origin, sex, age, sexual orientation, marital status or disability, and in compliance with all anti-discrimination laws of the United States of America and the State of California.

22. No Third-Party Beneficiary. This Agreement is only for the benefit of the Parties as public entities and shall not be construed as or deemed to operate as an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action or obtain any right to benefits or position of any kind for any reason whatsoever

23. Notices and Contracts. All notices, demands, request, approvals, authorizations, or designations hereunder by a Party to the other Party shall be in writing, unless otherwise specified in this Agreement, and shall be given and served upon the other Party, sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

District: Superintendent, San Bruno Park School District
500 Acacia Avenue
San Bruno, CA 94066

City: City Manager, City of San Bruno
567 El Camino Real
San Bruno, CA 94066

Each of the above Parties may change its address or contact person by written notice to the other Party.

24. Authority to Sign. By signing below, each of the signatories represents and warrants that he or she has been duly authorized to execute this Agreement on behalf of the Party on whose behalf he or she is signing.

25. Severability. If any provision of this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall remain in full force and effect, unless amended or modified by mutual consent of the Parties.

26. 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

SAN BRUNO PARK SCHOOL DISTRICT

CITY OF SAN BRUNO

By: _____

Dr. Michael Milliken
Superintendent

By: _____

Jovan D. Grogan
City Manager

APPROVED AS TO FORM:

By: _____

Kelly Rem
Legal Counsel for District

By: _____

Marc L. Zafferano
City Attorney