

NORTH CAROLINA  
DURHAM COUNTY

### **Interlocal Agreement for Use of Recreation Facilities**

This Interlocal Agreement for the joint use of mutually-agreed upon recreational and other public facilities is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2011, by and between the CITY OF DURHAM, a municipal corporation of the State of North Carolina, (hereinafter "City") and the DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION, a county board of education organized and existing pursuant to Chapter 115C of the North Carolina General Statutes (hereinafter "Board").

**Background.** The Board and the City each own real property located in the City which includes facilities and active use areas that are capable of being used for community recreation and public purposes by the City, and school recreation and other public purposes by the Board. The Board and the City desire to enter into this agreement for joint cooperation and action to ensure that the best facilities and services are provided to the citizens of Durham County with the least expenditure of public funds. Both parties are authorized to enter into agreements with each other to cooperate in shared use of these facilities and real property. The community use of school property and facilities is encouraged by the Community Schools Act, NCGS 115C-203, *et sec.* Additional authority for the Board and the City to enter into this Agreement is provided by NCGS 115C, Article 13; NCGS 115C-518; NCGS 115C-524(b); and NCGS 160A-274.

The City and the Board therefore agree as follows:

#### **1. Term**

- a.** This Agreement, except for the specific designation of facilities and hours for use in Attachment A, shall have a term of five (5) years from the date of execution by both parties and shall automatically extend for five (5) successive five-year terms, unless this Agreement is terminated by the City Manager or Superintendent of Schools by sending a notice of termination to the other party no less than ninety (90) days prior to the end of a term.
- b.** Attachment A is titled, "Recreation Facilities for DPS/DPR Cooperative Use," and is made part of this Agreement. It defines the facilities each party will make available to the other, with the days of the week and hours of that availability. Any properties owned by the Board or the City but not listed on Attachment A are not subject to this Agreement. This Agreement shall not override existing agreements between the City and the Board regarding properties not listed on Attachment A. A new Attachment A will be approved by both parties at least annually, will become effective upon approval, and shall remain in effect, unless terminated by a party with ninety (90) days' notice, until the approval by both parties of a new or revised Attachment A to replace it. Approval of a new or revised Attachment A will not change the other terms of this Agreement. Each new or revised Attachment A may be approved on behalf of the parties by the Director of Parks and Recreation and the Director of Community Education of Durham Public Schools.
- c.** Reference to "Property" in this Agreement shall include the facilities and the

real property upon which the facilities are located, listed in Attachment A. As used in this Agreement, “Owner” shall mean the party to this Agreement that owns a particular Property covered by this Agreement, and “User” shall mean the other party using the Owner’s Property under the terms of this Agreement. “Public Access Hours” shall mean the hours during which the City uses Board Property.

**2. Effective Date**

This Agreement shall be effective upon execution by both parties to the Agreement.

**3. Cooperative Agreement**

As provided herein, the Board and the City hereby agree to cooperate in coordinating programs and activities conducted on their properties and in their facilities listed in Attachment A. The Board and the City 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 both the Director of Community Education of the Durham Public Schools and the Director of Parks and Recreation.

**4. Permitted Uses of Board Property**

**a. Board Use**

The Board shall be entitled to the exclusive use of Board Property for public school and school-related educational and recreational activities, including summer school, and at such other times as Board Property is being used by the Board or its agents. Should the Board need to use Board Property for school-related use during the times that the City would have use of the Property according to Attachment A, the Board will give as much notice as possible to the City, and no less than ten (10) days’ written notice.

**b. City Use**

At all other times and subject to the schedule developed by the City and the Board as shown in Attachment A, the City will be entitled to use Board Property without charge for community recreational and educational purposes for the benefit of Board students, the Board, and the City at large. The Board shall provide to the City applicable Board rules, regulations, and policies to which the City and its users will be required to adhere while using Board property. The City shall provide to the Board applicable City rules, regulations, and policies to which the Board and its users will be required to adhere while using City property. In planning programs and scheduling activities on school grounds, ensuring the security, academic, athletic, and recreational needs and opportunities of school-aged children will be the highest priority and be adequately protected.

**5. Permitted Uses of City Property**

**a. City Use**

The City shall be entitled to priority use of City Property for the regular conduct of park, recreation, and community service activities and/or programs sponsored by the City. Should the City need to use City Property during the times that the Board would have

use of the Property according to Attachment A, the City will give as much notice as possible to the Board, and no less than ten (10) days' written notice.

**b. Board Use**

At all other times and subject to the schedule developed by the City and Board and shown on Attachment A, the City will permit the Board to use City Property, without charge, for Board educational and recreational activities and/or programs. For purposes of this Agreement, Board use includes use by members of the Durham Public Schools community, including parent-teacher organizations.

**6. Compliance with Law**

All use of Board 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 Board 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**

**a. Designation of Personnel**

The Board and the City shall each designate in writing a staff member with whom the other party, or any authorized agent of the party, may confer regarding the terms of this Agreement or the Attachment.

**b. Interlocal Agreement Interagency Team**

The Board and the City shall establish a Joint Use Interagency Team ("Interagency Team"), composed of staff representatives of the Board and the City, to develop the schedule for use of Board and City Property, to recommend rules and regulations 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.

- i. The Interagency Team shall hold conference calls or meetings no less frequently than quarterly to confer to discuss implementation and any problems during the term of the Agreement. At these meetings, the Interagency Team will review and evaluate the status and condition of jointly used properties and modify or confirm the upcoming quarter's schedule. If the Interagency Team is unable to reach a solution on a particular matter, it will be referred to the Director of Parks and Recreation and the Director of Community Education of the Public Schools, or their designees, for resolution.
- ii. The Interagency Team shall review the Agreement each year to evaluate its performance, determine changes to the schedule, and to propose amendments to this Agreement.

## **8. Scheduling Use of Property**

### **a. Master Schedule**

The Board and City shall develop Attachment A, which functions as a master schedule each year for joint use of Board and City Property.

### **b. Scheduling of City Property**

The City shall have responsibility for scheduling the use of City Property by any third party when the City and the Board are not using the Property.

### **c. Scheduling of Board Property**

The Board shall have responsibility for scheduling the use of Board Property by any third party when the City and the Board are not using the Property.

### **d. Periods out of Service**

In the interest of preserving and restoring fields, performing necessary repairs on building facilities, or protecting the safety and security of the participants, employees, citizens, or those affiliated with City or Board programs, the parties agree that may each establish times during which any Property shall not be in use and that either party will so inform the other with as much advance notice as possible.

## **9. Documentation and Allocation of Operational Costs**

### **a. Tracking Use of Facilities**

The Board and the City shall each track use of their respective Properties under this Agreement.

### **b. Documentation of Costs**

The Board and the City shall maintain a record of facility rental costs waived and personnel costs directly attributable to the other's party's use of a facility under this Agreement, specifically attributable to the Board's use of City Property or the City's use of Board Property.

### **c. Payment of Overtime**

Each party shall bear the ongoing cost of any overtime incurred by their employees in carrying out this Agreement. As a part of the documentation of costs, each party shall provide to the other party an accounting on an annual basis of all overtime costs incurred as a result of overtime duties carried out by their respective employees.

## **10. Fees and Charges**

### **a. Use of Facilities with no Fee**

The Board and City shall each use the other party's Property, as specified in this Agreement, without fee.

**b. Annual Review of Benefits**

The Board and City shall annually review the exchange of benefits based upon facility rental costs waived by either party that are directly a cost of the other party's use. Any compensation for an imbalance in joint use programming costs shall occur through balancing the exchange of future benefits, specifically increasing or decreasing one party's access to the other party's Property as needed to approximately equalize each party's costs.

**c. Each party shall staff its own usage under this agreement and shall bear all other costs of carrying out its rights and obligations under this Agreement.**

**11. Improvements**

- a. The Board shall obtain written consent of the City prior to making any alterations, additions, or improvements to City Property; the City shall obtain written consent of the Board prior to make any alterations, additions, or improvements to Board Property.
- b. Any such alterations, additions, or improvements will be at the expense of the requesting party, unless otherwise agreed upon. Such alterations, additions, or improvements will become the property of the Owner.
- c. Each party may, for good cause, require the demolition or removal at the expiration or termination of this Agreement of any alterations, additions, or improvements made by the other party. "Good cause" includes reasons of health, safety, or the Board's need to use the Board Property for educational purposes or the City's need to use City Property for municipal purposes.

**12. Interagency Training**

The Board and the City shall operate a joint training and orientation program for key personnel implementing this Agreement. The Board and the City shall be responsible for ensuring their employees attend the training.

**13. Supervision , Security, and Inspections**

**a. Supervision and Enforcement**

Each User shall train and provide an adequate number of competent personnel to supervise all activities on the Owner's Property. Each Owner shall provide to the User the applicable rules, regulations, and policies to which the User will be required to adhere while using the Owner's Property.

**b. Security**

The Owner shall provide the User with access to the Owner's Property. The Owner shall either (1) provide keys, security cards, and training as needed to the User's employee(s) responsible for opening and locking the Owner's Property while supervising activities or programs, or (2) provide a staff member who will be on-site during the use of the property to handle the access and security for the Owner. The

cost of providing these Security items shall be included into the Documentation of Costs.

**c. Professional Security**

Each User shall determine, based on the programming to be offered at a site, whether or not an event on the Owner's Property requires the hiring of professional security staff for that event. The Owner is encouraged to provide input on whether or not professional security staff is required, but the User will make the final determination.

**d. Inspection and Notification**

The User shall inspect the Owner's property prior to use and report any apparent and obvious damage to the Owner. The User shall inspect the Owner's Property after use to ensure these sites are returned in the condition in which they were received. The User shall ensure the Owner is notified within twenty-four (24) hours in the event that Owner's Property suffers damage during User's use. Such notification shall consist of sending written notification by letter, facsimile, or email to the Owner's designated employee identifying the damaged property, date of detection, name of inspector, and a description of damage. A representative of the Owner and the User shall meet at the Property within two (2) business days after this notification to assess the cost and the method of repair. Should the Owner discover damage to the property after use by the User, the Owner shall notify the User within twenty-four (24) hours of discovering such damage.

**14. Responsibility for Equipment**

The User shall furnish and supply all materials other than custodial supplies necessary to carry out its programs while using the Owner's Property. Responsibility for the safety or condition of any equipment brought to a facility or left in a facility, whether the facility is open or closed, is solely that of the party which owns the equipment.

**15. Maintenance, Fields, Custodial Services, Concession Facilities, 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. The Owners shall be responsible for the regular maintenance, repair, and upkeep of their respective Properties.

**b. Fields**

Each party shall be responsible for limited preparation of a ball field or athletic field prior to use of the site; that limited preparation may include responsibility for lining the field, placing the bases and pitching rubber, or placing a portable outdoor goal. The City agrees to mow, as needed, any field slated for City use no more than two days before that use, to drag the infield of a baseball or softball field, and to line the outfield, on a field owned by either party. Neither party will conduct any mowing or landscaping activities on the other party's Property without permission,

which shall not be unreasonably withheld.

**c. Custodial**

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

**d. Concession Facilities**

The Owner will decide whether to allow the use of concession facilities by a third party on any of its Properties.

**e. Toilet Facilities**

The City may place temporary, portable, restroom facilities at the Board's outdoor Properties at the discretion of the Director of Community Education. It shall be the responsibility of the City to provide for the delivery, removal and maintenance of these facilities.

**16. Associated Facilities**

**a. Parking**

During the approved use of one of its facilities by the City, the Board shall make available to the public the parking facilities associated with the facilities listed in Attachment A.

**b. Shelters**

The Board agrees that if one of its teams wants to have exclusive use during an event of a picnic shelter associated with a court, ball field, or athletic field, then that team shall be responsible for reserving that shelter through the City's reservations staff. That use shall be without charge if the shelter use is associated with an athletic event scheduled under the authority of this Agreement.

**17. Restitution and Repair**

The User shall be wholly responsible to repair, remediate, or fund the replacement or remediation of any and all damage from vandalism or beyond normal wear and tear to the Owner's Property during the User's use of that Property.

**a. Inspection and Notification**

The User shall, through its designated employee, inspect and notify the Owner of any damage, as described above in subsection 13(c).

**b. Repairs**

Except as mutually agreed, the User shall not cause repairs to be made for any of Owner's Property or items of equipment. The Owner agrees to make such repairs within the estimated and/or fixed costs agreed upon within thirty (30) days of receiving an estimate or the parties agreeing upon the costs, whichever is later. If it is mutually determined or if it is the result of problem resolution under Section 17d

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. Costs for repairs shall be directly reimbursed and not included in the balancing of costs described in ¶ 10b.

**c. Reimbursement Procedure**

The Owner shall send an invoice to the User's designated employee within five (5) 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) days from receipt of such invoice.

**d. Disagreements**

The User shall retain the right to disagree with any and all items of damage to buildings or equipment as identified by the Owner, provided this disagreement is made within three (3) days after a first notification.

- i. The User shall notify the Owner of any disagreements in writing by letter, facsimile, or email to the Board'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.
- ii. After proper notification, members of the Joint Use Interagency Team, or other designated representatives of the City and Board, 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 the Director of Parks and Recreation and the Director of Community Education of the Public Schools, or their designees, for resolution.
- iv. The Owner shall have the right to make immediate emergency repairs or replacements of Property without voiding the User's right to disagree.

**18. Liability and Indemnification**

The City and the Board agree that each is authorizing the use of its property pursuant to this Agreement only to the extent permitted by N.C.G.S. 115C-524(b), and that neither the Board nor the City incurs any liability to each other or any member of the public for permitting this use. No liability shall attach to Board or to the City Council, individually or collectively, for any injury suffered by reason of any use or maintenance of Property pursuant to this Agreement.

## **19. Insurance**

- a. The City and the Board shall maintain at all times during the term of this Agreement and during any and every extension thereof public liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, or the minimum required by North Carolina State Law, covering personal injury for each accident or occurrence growing out of either party's use or maintenance of the other party's Property and at least \$1,000,000 or the minimum required by North Carolina state law to cover property damage growing out of each accident or occurrence. Each party shall be named as an additional insured on all insurance policies held by the other party. Each party shall furnish the other party with evidence of such insurance and of its renewal as the premiums become due. Each party shall provide the other party with thirty (30) days' prior written notice of any reduction in coverage or cancellation of such insurance.
- b. The Board and the City are each responsible for insuring replacement value of their own respective Property.

## **20. Termination**

This Agreement may be terminated as provided in prior provisions of this Agreement.

## **21. 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.

## **22. Amendments**

Except as otherwise provided by specific provisions of this Agreement, modification or waiver of compliance with any of the terms of this Agreement shall only be by written instrument executed and approved in the same manner as this Agreement.

## **23. Lunsford Act**

Each party acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any place intended primarily for use, care, or supervision of minors, including but not limited to schools and playgrounds. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14, or any offense where the victim of the offense was under the age of 16 years at the time of the offense.

ATTEST:

CITY OF DURHAM

\_\_\_\_\_

By: \_\_\_\_\_

City Clerk

City Manager

ATTEST:

THE DURHAM PUBLIC SCHOOLS  
BOARD OF EDUCATION

\_\_\_\_\_

\_\_\_\_\_

Secretary of the Board

Board Chairperson

NORTH CAROLINA  
DURHAM COUNTY

ACKNOWLEDGMENT BY CITY OF DURHAM

I, \_\_\_\_\_, a notary public in and for said county and state, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he or she is \_\_\_\_\_ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its corporate name by its \_\_\_\_\_ City Manager, sealed with its corporate seal, and attested by herself as its said City Clerk or Deputy City Clerk.

This the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

My commission expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

NORTH CAROLINA  
DURHAM COUNTY

ACKNOWLEDGMENT BY DURHAM PUBLIC SCHOOLS

I, \_\_\_\_\_, a notary public in and for said county and state, certify that \_\_\_\_\_ personally appeared before me this day and stated that he or she is \_\_\_\_\_ Secretary of the Durham Public Schools Board of Education, a body corporate, and that by authority duly given and as the act of the said Board, the foregoing contract was signed in its name by its Chairperson, sealed with its corporate seal, and attested by himself or herself as its said Secretary or Assistant Secretary.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

My commission expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public