

# **JOINT USE AGREEMENT**

## **THE NEWPORT- MESA UNIFIED SCHOOL DISTRICT AND THE CITY OF COSTA MESA COLLABORATIVE AGREEMENT FOR USE OF FACILITIES AND ACTIVE USE AREAS**

THIS JOINT USE AGREEMENT HAS BEEN PRODUCED BY AND FOR  
THE NEWPORT-MESA UNIFIED SCHOOL DISTRICT AND THE CITY OF COSTA MESA,  
AS A COLLABORATIVE EFFORT TO CREATE COMMUNITY AT ALL PUBLIC  
FACILITIES THROUGHOUT THE CITY OF COSTA MESA.

THIS Joint Use Agreement ("AGREEMENT") is dated as of JULY 1, 2002, by and  
between the Newport-Mesa Unified School District ("DISTRICT"), a public school district duly  
organized and existing under the laws of the State of California and the City of Costa Mesa  
("CITY"), a municipal corporation and public body.

### **RECITALS**

WHEREAS, DISTRICT is the owner of real property and improvements thereon in the  
City of Costa Mesa/City of Newport Beach, including facilities and active use areas  
("DISTRICT FACILITIES"), which are capable of being used by CITY for community  
recreational and educational purposes; and

WHEREAS, CITY is the owner of public parks and recreational facilities in the City of  
Costa Mesa ("CITY FACILITIES") which are capable of being used by DISTRICT for  
educational and recreational purposes; and

WHEREAS, the CITY and DISTRICT desire to use and improve FACILITIES for  
community recreational and educational purposes; and

WHEREAS, this AGREEMENT is entered into pursuant to the provisions of Education  
Code Section 10900, et. Seq

NOW, THEREFORE, for and in consideration of the collaborative agreements herein  
contained, the parties hereto agree as follows:

#### **1. TERM AND COMMENCEMENT**

This AGREEMENT will commence as of the date in which the latter of CITY and DISTRICT  
approve and execute this AGREEMENT, and will continue for a period of five (5) years,  
unless sooner terminated as provided for hereinafter in Section 12. This AGREEMENT may  
be renewed for successive five (5) year terms. Such renewal will be deemed automatic  
unless AGREEMENT is sooner terminated as provided for hereinafter in Section 12 or upon  
written notice of intent not to renew given to the other party at least one (1) year prior to the  
expiration of AGREEMENT.

## 2. FACILITIES COVERED

The term "FACILITIES" will be used for the purposes of this AGREEMENT to mean any buildings, classrooms, multi-use rooms, auditoriums, and/or kitchens. The term "ACTIVE USE AREAS" will be used for the purposes of this AGREEMENT to mean any fields, playgrounds, restrooms, tennis courts, gymnasiums, pools, parking lots or other active use and recreational areas.

Terms of this AGREEMENT will apply to all FACILITIES in the City of Costa Mesa owned by CITY or DISTRICT with the exception of City Hall, the Corporation Yard or the Bear Street Educational Center and Yard.

FACILITIES that require a third party lease interest or sites with special provisions must be identified as such and included on a separate attachment to this AGREEMENT listed in Exhibit "A".

## 3. PERMITTED USES OF FACILITIES

A. DISTRICT will be entitled to the exclusive use of DISTRICT FACILITIES for public school and school-related educational and recreational activities, including summer school, and at such other times as DISTRICT FACILITIES are not being used by DISTRICT or its agents. At all other times, CITY will be entitled to use DISTRICT FACILITIES, without charge, for community recreational and educational purposes.

B. CITY will permit DISTRICT to use CITY FACILITIES, without charge, for DISTRICT educational and recreational activities, as long as such use does not conflict with the regular conduct of park, recreation, and community service activities sponsored by CITY.

## 4. SCHEDULING USE OF FACILITIES

A. DISTRICT and CITY will develop a master schedule for joint use of FACILITIES and ACTIVE USE AREAS. DISTRICT and CITY will schedule quarterly meetings unless alternate meeting times are mutually agreed upon. At these meetings both parties will review and evaluate the status and condition of jointly used FACILITIES AND ACTIVE USE AREAS, and to modify or confirm the upcoming quarter's schedule. CITY and/or DISTRICT will provide summary minutes of these quarterly meetings.

B. CITY will have the responsibility for scheduling all use of CITY FACILITIES.

C. The CITY will also have the responsibility for scheduling the use of DISTRICT ACTIVE USE AREAS during non-school hours beginning at 4:00 p.m., Monday through Friday, and all day Saturday and Sunday. School facilities will be permitted in the following order of priority:

1. Regular school programs or activities including summer school.
2. City-sponsored and/or school-sponsored youth programs or activities.
3. Other youth programs or activities.

4. City adult programs or activities.
5. Other adult programs or activities.

D. Scheduling requests for CITY and DISTRICT FACILITIES AND ACTIVE USE AREAS will be submitted on the approved standard form.

CITY and DISTRICT will provide the other with a minimum of fifteen (15) calendar days notice when canceling approved FACILITIES use dates. If either the CITY or DISTRICT cancels any approved reservation, the canceling party will make a reasonable effort to provide an appropriate alternative reservation site with the exception of C.I.F. practice or games.

E. Unless otherwise agreed to by site specific agreement, each party will maintain its own facilities, in a state of good repair, provide day-to-day maintenance, janitorial services including clean and stock restrooms throughout the day, structural repair, and replacement or repair of any major equipment.

## 5. OBLIGATION OF CITY

During the term of this AGREEMENT, CITY hereby covenants and agrees to the following:

A. Upon the expiration of the term of this AGREEMENT, or upon the sooner termination thereof, and when surrendered, CITY will leave FACILITIES in as good order and condition as FACILITIES were at the beginning of their term of this AGREEMENT.

B. With respect to ACTIVE USE AREAS located on DISTRICT FACILITIES utilized by CITY, CITY will maintain, or cause to be maintained, as identified in site-specific agreements, turf in playing areas.

C. DISTRICT will have the right to make emergency repairs to facilities and improvements on active use areas.

D. Any obligation for the custodial service necessary to keep CITY FACILITIES in a neat, orderly, and sanitary condition at all times during its use thereof under this AGREEMENT will be the CITY'S responsibility.

E. Allow no vehicles to enter upon DISTRICT FACILITIES except as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services or in designated public parking lots.

F. Appoint an employee with whom DISTRICT, or any other authorized agent of DISTRICT, may confer regarding the terms of this AGREEMENT.

G. Enforce all DISTRICT rules, regulations, and policies provided by the DISTRICT while directing community recreational and educational activities on DISTRICT FACILITIES.

H. Provide personnel necessary for the direction or supervision of activities sponsored by the CITY at DISTRICT FACILITIES.

I. Perform the normal maintenance of its own CITY FACILITIES as required under normal working conditions and fair wear and tear, unless otherwise addressed in a site-specific agreement.

J. Permit DISTRICT to jointly use specialized CITY equipment. These include, but are not limited to Mobile Recreation Unit, Mobile Skate Park Truck and Show Wagon. CITY will provide operators and staff for such equipment, vehicles, and services. Request for specialized CITY equipment, vehicles, and services must be submitted on the approved standard form 15 days prior to event date.

K. Permit DISTRICT to jointly use specialized CITY equipment at no cost including but not limited to, TV/VCR, overhead projectors, etc. Request for specialized CITY equipment must be submitted on the approved standard form 15 days prior to event date.

L. CITY will hold user groups responsible for picking up trash and debris at school sites and parks and depositing it into the proper trash bins. Fields and adjoining areas affected by a user group's use must be picked up and cleared of all trash. CITY will encourage user group's to leave school and park areas immediately after games and practices safely and quietly, especially after late games insuring good neighbor practices in residential neighborhoods.

## 7. OBLIGATIONS OF DISTRICT

During the term of this AGREEMENT, DISTRICT hereby covenants and agrees to the following:

A. Appoint an employee with whom CITY, or any other authorized agent of the CITY, may confer regarding the terms of this AGREEMENT.

B. Enforce all CITY rules, regulations, and policies while directing community educational and recreational activities at CITY FACILITIES. The CITY will provide the DISTRICT with rules, regulations, and policies for each CITY FACILITY.

C. Provide personnel necessary for the direction or supervision of activities sponsored by the DISTRICT at CITY FACILITIES.

D. Notify the CITY when reconfiguring fields or parking lots or placing portables on existing sites, at least 30 days prior to doing such.

E. May provide and maintain additional toilet facilities at DISTRICT FACILITIES, if necessary, in conjunction with CITY activities. DISTRICT will approve and locate the type of toilet facilities being portable, mobile, temporary, or fixed. DISTRICT may require user groups to pay for the additional toilet facilities at DISTRICT FACILITIES.

F. Perform normal maintenance on DISTRICT FACILITIES as required under normal working conditions and fair wear and tear.

G. Any obligation for custodial services necessary to keep DISTRICT FACILITIES in a neat, orderly, and sanitary condition at all times during its use thereof under this AGREEMENT will be the DISTRICT'S responsibility.

H. Permit CITY to jointly use DISTRICT school buses. DISTRICT will provide operators for DISTRICT buses. At the DISTRICT'S option, buses may be free or at the DISTRICT'S direct cost.

I. Permit CITY to use specialized DISTRICT equipment at no cost including but not limited to, TV/VCR, overhead projectors, etc. Request for specialized DISTRICT equipment must be submitted on the approved standard form 15 days prior to event date.

## 8. ADDITIONAL IMPROVEMENTS

A. CITY/DISTRICT will obtain prior written consent of CITY/DISTRICT to make any alterations, additions, or improvements to FACILITIES or active use areas. CITY/DISTRICT understand that any such alterations, additions, or improvements must comply with all state and local standards.

B. Any such alterations, additions, or improvements will be at the expense of the requesting party, unless otherwise agreed upon.

C. Each party may, for good cause, require the demolition or removal of any alterations, additions, or improvements at the expiration or termination of this AGREEMENT. "Good cause" includes reasons of health, safety, or the DISTRICT'S need for the FACILITY for educational purposes.

D. CITY/DISTRICT will have the right to make emergency repairs on any improvements made by the other and each party agrees to split the cost of such emergency repairs.

E. DISTRICT agrees to pay electrical, lighting, water, and other utility service costs associated with all alterations, additions, or improvements made by CITY upon DISTRICT FACILITIES, as identified in site-specific agreements when mutually beneficial to the DISTRICT.

F. If any alterations, additions, or improvements are destroyed by fire, war, earthquake, flood, storm, or other casualty beyond the control of the parties hereto, to such an extent which they cannot be restored to their previous condition within one hundred-twenty (120) days after the casualty, CITY will have the option to restore the structure or improvements to their condition as of the date of the casualty. In the event CITY does not elect to perform such restoration, CITY will remove all structures, improvements, and personal property from the site and return the site to its original condition, insofar as practical, unless otherwise mutually agreed. If site and improvements are destroyed by any of the causes enumerated above, and in the event they can be restored within one hundred-twenty (120) days after the casualty, CITY will restore them as soon as feasible. DISTRICT will do the same for alterations, additions, or improvements, which it has placed on CITY FACILITIES.

9. LIABILITIES AND INDEMNIFICATION

A. CITY is financially responsible for damages caused by CITY use of DISTRICT FACILITIES; DISTRICT is financially responsible for damages caused by DISTRICT use of CITY FACILITIES.

B. CITY will indemnify, defend, and hold harmless DISTRICT, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by CITY at DISTRICT FACILITIES, except those which arise out of the sole negligence of DISTRICT.

C. DISTRICT will indemnify, defend, and hold harmless CITY, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by DISTRICT at CITY FACILITIES, except those which arise out of the sole negligence of CITY.

10. ASSIGNMENTS AND SUBLEASE

A. CITY may enter into agreements of use by permit with groups for recreational and educational purposes. CITY will be the sole permitting agent for DISTRICT ACTIVE USE AREAS in the City of Costa Mesa and ACTIVE USE AREAS for use after 4:00 p.m. and Saturday and Sundays. Such agreements for use are subject to and deemed to incorporate by reference all provisions of this AGREEMENT.

B. CITY may charge a fair and responsible fee or accept in-kind services from permitted users to offset the costs associated with the use of CITY or DISTRICT ACITVE USE AREAS. Any fees generated for the use of District pools or gymnasiums in the City of Costa Mesa shall be turned over to the School District for the on-going maintenance of those pools and gymnasiums.

C. Neither CITY nor DISTRICT may assign or transfer this AGREEMENT, or any part thereof, without the written consent of the other party.

11. NOTICES

A. All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other will be in writing and will be deemed given and served upon the other party, if delivered personally or three (3) days after depositing in the United States mail, postage prepaid, addressed to:

If to CITY:

City of Costa Mesa

If to DISTRICT:

Newport-Mesa Unified School District

77 Fair Drive  
Post Office Box 1200  
Costa Mesa, California 92628-1200  
Attention: City Manager

2985-A Bear Street  
Costa Mesa, California 92626  
Attention: Superintendent

12. TERMINATION

A. This AGREEMENT may be terminated, with cause, at any time during the term hereof by either party of this AGREEMENT upon two (2) years written notice to the other party.

B. If this AGREEMENT is terminated by DISTRICT prior to its expiration, and CITY has made permanent improvements to any DISTRICT FACILITY, DISTRICT agrees to allow CITY to use those FACILITIES for a period of two (2) years. Such use will be pursuant to the provisions of this AGREEMENT.

C. Any potential purchase by DISTRICT of CITY improvements upon termination will be in accordance with amortization schedules established within site-specific agreements.

13. SEVERABILITY AND APPLICABLE LAW

Whenever possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT will be invalid under the applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions of this AGREEMENT. This AGREEMENT has been made and entered into in the State of California and the laws of said State will govern the validity and interpretation hereof and the performance hereunder by the parties herein.

14. AGREEMENT

This AGREEMENT sets forth the entire AGREEMENT between the parties with respect to the facilities listed in Exhibit "A". Both parties must in the form of a written amendment agree to any modifications.

15. WAIVER

The failure of CITY or DISTRICT to insist upon strict performance of any of the terms, conditions, or covenants in this AGREEMENT will not be deemed a waiver of any right or remedy which CITY or DISTRICT may have and will not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, or covenants herein contained.

16. BINDING EFFECT

This AGREEMENT and all the terms, covenants, conditions, and agreements herein contained will be binding upon and inure to the benefit of the parties hereto and their respective successors.

IN WITNESS WHEREOF, this AGREEMENT has been duly approved by both DISTRICT and CITY.

DISTRICT:  
Newport-Mesa Unified School District

CITY:  
City of Costa Mesa

By: \_\_\_\_\_  
(Insert typed name)  
President, Board of Education

By: \_\_\_\_\_  
(Insert typed name)  
Mayor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



## **Exhibit "A"**

FACILITIES that require a third party lease interest or sites with special provisions must be identified as such and are included in this AGREEMENT listed in Exhibit "A".

### **CITY FACILITIES**

Costa Mesa Tennis Center  
Golf Course  
Senior Center  
Child's Pace Room, Downtown  
Recreation Center

### **DISTRICT FACILITIES**

Canyon Elementary School  
Lindberg Elementary School  
Mesa Verde Elementary School