

Model Community Use Agreement

This Model Community Use Agreement draws from the exceptional Model tool published by the National Policy & Legal Analysis Network (NPLAN). For more NPLAN resources and information, see www.changelabsolutions.org.⁴⁹

This template agreement can help form the body of your own community use agreement. Each section can be expanded, eliminated, or tailored as your unique community use initiative requires. A printable version can be found in the library section of CHLPI's website at www.chlpi.org. As you'll see, some sections require you to review and include information from important documents, such as insurance policies. If you are meeting with your community use team to discuss the agreement, you'll want to be sure you have the information and documentation you need. These could include:

- Insurance policy
- Community use or shared use policy
- Hourly wage-rate for staff that clean or supervise the space
- Union requirements that relate to custodial or supervising staff
- A copy of any local ordinances or regulations with which your project must comply

Note that although the model agreement below addresses opening school facilities, it can be adapted to community use initiatives that take place in other types of spaces, such as town halls, private colleges, or libraries. The text boxes that are shaded gray contain notes about the significance of the different clauses and user options for making the agreement fit a specific initiative.

Opening Indoor and/or Outdoor School Facilities For Use During Non-School Hours

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

PURPOSE

In order to increase opportunities for physical recreation in the [CITY/TOWN] of [CITY/TOWN NAME], the parties agree as follows:

1. Definitions

For the purposes of this Agreement:

Public Access Hours refers to _____ hours on _____ [WEEKDAYS\WEEKENDS].

Designated Representatives refers to the individuals authorized to make decisions about how to carry out this agreement, as selected by the parties and identified in Section(s) _____.

In the Definitions section, explain any abbreviations you use in the rest of the document. This will help readers easily grasp the meaning of agreement, especially when the agreement is long and/or the community use concept is complex.

⁴⁹ This Model Joint Use Agreement draws from the exceptional model tool published by the National Policy & Legal Analysis Network (NPLAN). NPLAN's Model Joint Use Agreement 2 is available at: <http://changelabsolutions.org/publications/model-JUAs-national>. The terms and explanations of NPLAN's Model Joint Use Agreement has been edited to be relevant to the legal landscape in Massachusetts.

2. Term and Effective Date

This Agreement will be effective on _____, after inspection of the space by both parties, and will continue for a period of _____. The agreement will be automatically renewed every _____ unless sooner terminated as provided for in Section _____.

The term is the duration of the agreement. The agreement should include a specific start and end date. Although the parties can agree that the agreement should automatically be renewed on a regular basis, it is still helpful to have regular check-ins at the renewal time to be sure that any needed amendments are added to the agreement. The effective date is the date the agreement becomes operational (the date that each party begins to be obligated to perform their assigned tasks).

3. Facilities Covered

[INDOOR OR OUTDOOR FACILITY TO BE SHARED]: This agreement covers use of the following space located at _____ [ADDRESS] as described below and as pictured in Attachment A, with the inventory of equipment listed in Attachment B:

[DESCRIPTION]

The District and the [CITY/TOWN/NONPROFIT] may add or exclude additional facilities during the term of this Agreement, provided that any such change be in writing and approved by both parties.

Describe the space as completely as possible, including any parking or bathroom facilities that will be able to be used during the community use hours. Someone who has never been to the site before should be able to recognize the area where community use will take place by reading the description. When other documents, such as lists of equipment, photos, certificates, or related legal documents, will help anyone reading the agreement fully understand it, you can include the document as an Attachment.

4. Permitted Use of [FACILITIES DESCRIBED IN SECTION 3]

The District shall be entitled to the exclusive use of [FACILITY] for public school and school-related educational and recreational activities, including summer school, and at all other times except for the agreed-upon Public Access Hours, as described below.

The [CITY/TOWN/NONPROFIT] shall have access to the [FACILITY] for the purpose of [RECREATION OR OTHER PROGRAM] during the hours of _____ on _____ day(s) each week. These are known as the Public Access Hours.

The space could be open for several days each week after school or simply for a few hours on a weekday evening or weekend. The permitted community use could be as structured as a youth basketball league or as simple as open gym or playground hours with no set programming. The needs of the community and capacity of the community use site will dictate the permitted use and public access hours. If the space will be used only for a specific program and population, such as a youth basketball program, you can reflect this in the community use agreement by substituting Basketball Program for Public Access Hours (or using any short descriptive phrase that makes sense).

5. Compliance With Law

All use of District and [CITY/TOWN/NONPROFIT] 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 Massachusetts law, Massachusetts law shall govern.

6. Obligations of [CITY/TOWN/NONPROFIT]

In this section, the responsibilities of the city, town, or nonprofit will be fully described. This includes identifying the person who is authorized to make decisions about how to carry out the agreement and describing access and security procedures, staffing requirements, inspection processes, and maintenance issues.

a. Designation of Employee

The [CITY/TOWN/NONPROFIT] designates the following employee with whom the District, or any authorized agent of the District, may confer regarding the terms of this Agreement:

[Name, Title, Organization, Address, Phone Number, Email]

The [CITY/TOWN/NONPROFIT] may select a new employee as their Designated Representative, and must provide the District with the name and contact information of the newly selected individual within 5 business days.

b. Access and Security

The [CITY/TOWN/NONPROFIT] will designate someone to open and close the [FACILITY] during Public Access Hours.

This section will include information about how the person or people opening the space will obtain keys or other mechanisms of accessing and securing the space. It will also describe steps that need to be taken to make the space safe for the intended users. For example, if the space is going to be used in the winter evening hours, the people who open the space may need to turn on extra lights or put another layer of salt on the walkways surrounding the buildings.

c. Inspection and Notification

The [CITY/TOWN/NONPROFIT] personnel shall inspect the [FACILITY] to ensure these sites are returned in the condition they were received. The personnel will notify the District within _____ hours/days in the event that the [FACILITY] suffers damage during Public Access Hours.

d. Supervision

The city or town may wish to provide supervision during Public Access Hours or simply open the doors or gates to Public Access without supervision. This model clause provides for supervision.

The [CITY/TOWN/NONPROFIT] shall provide personnel necessary for the direction or supervision of activities during the Public Access Hours. The supervisors shall enforce all District rules, regulations, and policies provided by the District while supervising community recreational activities.

If there are specific instructions that supervisors or the people who use the community use site need to follow, the community use agreement should describe how they will become aware of these rules and procedures. It might specify a one-time training of site supervisors by District personnel, or mandate that special rules be posted during the Public Access Hours.

e. Equipment and Storage

The [CITY/TOWN/NONPROFIT] shall provide all expendable materials necessary for carrying out its programs, and

i. shall remove the materials from the [FACILITY] at the end of Public Access Hours.

OR

ii. shall store these materials in the [DESIGNATED STORAGE AREA] as approved by the District.

f. Custodial

The [CITY/TOWN/NONPROFIT] will encourage community users to dispose of trash in the trash receptacles.

7. Obligations of District

a. Designation of Employee

The District designates the following employee with whom the [CITY/TOWN/NONPROFIT], or any authorized agent of the [CITY/TOWN/NONPROFIT], may confer regarding the terms of this Agreement:

[Name, Title, Organization, Address, Phone Number, Email]

The District may select a new employee as their Designated Representative, and must provide the [CITY/TOWN/NONPROFIT] with the name and contact information of the newly selected individual within 5 business days.

b. Access and Security

The District shall provide access to the [FACILITY]. The District will provide keys, security cards, and training as needed to the [CITY/TOWN/NONPROFIT] employee(s) responsible for opening and locking the [FACILITY] for Public Access Hours.

c. Inspection and Notification

The District shall inspect the [FACILITY] after Public Access Hours and report any damage to the City within _____ days after inspection. They will notify the city by letter, facsimile, or email to the [CITY/TOWN/NONPROFIT]'s designated employee identifying the facility, date of detection, name of inspector, description of damage, and estimated or fixed costs of repair or property placement.

d. Equipment and Storage

The District shall provide a locked equipment storage facility at a location specified by the District for use by the [CITY/TOWN/NONPROFIT].

e. Custodial

The District shall make its trash receptacles available during Public Access Hours.

Many school and municipal custodians belong to a union, and employers must therefore comply with minimum work requirements and overtime policies when assigning tasks associated with increased use of community space. Community use discussions should include input from custodial staff on the costs associated with expanded hours or tasks.

f. Toilet Facilities

The District will make restroom facilities available during Indoor Public Access Hours. The District shall maintain these restroom facilities.

The parties should determine whether to permit community access to District restroom facilities. In a school that has multiple restrooms, the parties can decide that only one restroom will be made available and others will be locked or blocked off during Public Access Hours. Another alternative is to have the city or town place temporary, portable restrooms facilities onsite for use during the Public Access Hours.

8. Maintenance

The District will perform normal maintenance of the [FACILITY] at basic level of service subject to normal wear and tear. The District will notify the [CITY/TOWN/NONPROFIT] of any known change in condition of the [FACILITY].

In some locations in Massachusetts, school districts are responsible for maintenance of the buildings while the municipality's Department of Parks or Public Works is in charge of maintaining the surrounding fields and grounds. The party who already maintains the space should be assigned maintenance responsibilities under the agreement.

9. Restitution and Repair

[Option One: Model clause requiring the city or town to repair damage.]

The [CITY/TOWN/NONPROFIT] shall be wholly responsible to repair, remediate, or fund the replacement or remediation of any and all damage or vandalism to the [FACILITY] that occurs during Public Access Hours.

[Option Two: Model clause requiring the city or town 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 the [FACILITY] 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 Section _____ of this Agreement.
- b. **Repairs** Except as mutually agreed, the [CITY/TOWN/NONPROFIT] 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 conflict-resolution under Section _____ of this Agreement that the [CITY/TOWN/NONPROFIT] is responsible for the damage, then the [CITY/TOWN/NONPROFIT] 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/TOWN/NONPROFIT]'s designated employee within ____ 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 [CITY/TOWN/NONPROFIT] shall reimburse the District within _____ days from receipt of such invoice.
- d. **Disagreements** The [CITY/TOWN/NONPROFIT] shall retain the right to disagree with any and all items of damage to buildings, facilities, property, or equipment as identified by the District, provided this disagreement is made within _____ days after a first notification.
 - i. The [CITY/TOWN/NONPROFIT] shall notify the District of any disagreements in writing by letter, facsimile, or email to the District's designated employee. The [CITY/TOWN/NONPROFIT] 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/TOWN/NONPROFIT].
 - ii. After proper notification, designated representatives of the [CITY/TOWN/NONPROFIT] 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/TOWN/NONPROFIT]'s right to disagree.

After discussion, the parties will tailor this provision to best suit their needs. The District may want the city or town to make any repairs or may want to make the repairs using its own personnel or contractors and be reimbursed 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.

10. Operational Costs

a. Documentation of Costs

The [CITY/TOWN/NONPROFIT] and the District shall maintain records of costs associated with the Agreement.

b. Payment of Overtime

Each party shall bear the cost of any overtime incurred by their employees in carrying out this Agreement.

In this section, the parties can allocate any costs associated with the Agreement.

The parties may wish to absorb the costs each incur while implementing the Agreement or require one or the other to be responsible for the costs.

The District may want the city or town to pay rent to the District for use of the facility. However, in Massachusetts, the Recreational Use Statute offers liability protection to the school if it makes the space available to the public without charging a fee. The District may wish to manage its liability risks in other ways (such as using liability waivers or increasing its insurance coverage), and therefore decide to charge rent anyway.

The parties can also lay out the costs of opening the space and charge only that amount to the city or town to reimburse the District for extra expenses associated with community use. In this scenario, the District would retain the ability to use the Recreational Use Statute as a defense to a liability claim. In this case, the community use agreement should include a sentence that states:

Any funds collected by the parties for use of this space shall be used to reimburse the District and/or the [CITY/TOWN/NONPROFIT] for costs directly attributable to use of the facility by the [CITY/TOWN/NONPROFIT], in accordance with M.G.L. c. 21 §17C. These costs include: X, Y, and Z.

11. Liability and Indemnification

In a scenario where the District does not charge a fee to the city or town for its use of the community use space, the Massachusetts Recreational Use Statute offers the District protection from liability for personal injury or property damage. However, the District or the city or town may still want to include an indemnification or “hold harmless” clause to protect against any liability that they might incur. If appropriate, use the preamble below in your liability section, and decide whether you want to include Option One or Option Two.

In accordance with M.G.L. ch. 21 s. 17(c), the District makes the [FACILITY] available to members of the public for recreational purposes. The District has collected funds/will collect in the amount sufficient to reimburse the District for costs directly attributable to this expanded use of the [FACILITY] by [CITY/TOWN/NONPROFIT], as laid out below. The District is charging no fee for use of the space.

[Option One: The model clause below places responsibility on the city or town 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/TOWN/NONPROFIT] 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/TOWN/NONPROFIT] 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/TOWN/NONPROFIT] hereunder, the [CITY/TOWN/NONPROFIT] 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 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/TOWN/NONPROFIT] 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/TOWN/NONPROFIT], its officers, agents, or employees.
- b. The District shall defend, indemnify, and hold the [CITY/TOWN/NONPROFIT], 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.

An Indemnification Clause or "hold harmless" 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 or town have three options: (1) the city or town can take responsibility for the potential liability; (2) the District can take responsibility; or (3) they can share responsibility with a mutual indemnity clause.

12. Insurance

The [CITY/TOWN/NONPROFIT] and the District agree to provide the following insurance in connection with this Agreement.

- a. Documentation of Insurance. The [CITY/TOWN/NONPROFIT] 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/TOWN/NONPROFIT] 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 community use facilities in the above amounts.

or

- b. The District waives documentation of insurance by the [CITY/TOWN/NONPROFIT].

Insurance is a contract where one party (the *insurer*) promises to pay the insured's cost of loss, damage, or liability arising from the occurrence of a specific covered event. Personnel from the District and the city or town must confirm 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.

13. Evaluation/Conflict Resolution

- a. The [CITY/TOWN/NONPROFIT] and the District shall monitor the community use project and Agreement for its duration through their Designated Representatives. The Designated Representatives will hold conference calls or meetings _____ [add frequency of meetings here] to review the performance of the project and to discuss interim problems during the term of the Agreement. If the Designated Representatives are unable to reach a solution on a particular matter, it will be referred to _____ [City official] and _____ [District official], or their designees, for resolution.

b. The parties shall review the Agreement by _____ each year to evaluate the project and to propose amendments to this Agreement.

c. The parties recognize the primary purpose of [FACILITY] is [state purpose]. If disagreement continues after a good faith attempt to resolve a conflict over use of the space in accordance with the procedure stated above, the needs of the District will ultimately take precedence over the needs of the [CITY/TOWN/NONPROFIT].

The parties need to have a process by which to address and resolve any concerns or problems that arise during the Agreement and to evaluate the Agreement. The conflict process could involve a commitment to a certain number of in-person meetings where the parties work toward compromise and resolution. The parties should agree to use their best efforts, also known as “good faith,” to resolve problems.

14. Termination

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

The termination clause sets forth the conditions upon which either party can end the Agreement before its term expires. The parties 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.

15. 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.

This clause makes the written terms of the community use agreement the only guiding terms for the community use initiative. If the parties agreed to something verbally during negotiations but did not put it into the community use agreement, neither the District nor the city or town can enforce that verbal agreement. This protects both parties.

16. 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.

Signatures and Dates

You will need to know who has the authority to sign the community use agreement on behalf of the District and the city or town. Although a municipal employee and school principal may do most of the negotiating about the details of the agreement, the District Superintendent and the city or town’s Mayor may be required to approve and sign the document. Be sure to build time into the agreement process for any necessary review by attorneys from the district, the municipality, and/or the nonprofit.

Attachments

Remember to include all of the documents you refer to in the agreement as Attachments. Make a list of all Attachments following the signatures. When updating the agreement or drafting amendments, be sure to make sure the Attachments are current as well.