

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF COMMERCE CITY
AND
BRIGHTON SCHOOL DISTRICT 27J
FOR THE JOINT USE OF FACILITIES FOR PUBLIC RECREATION
AND EDUCATIONAL OPPORTUNITIES**

THIS MEMORANDUM is entered into this 1st day of April, 2002 by and between the CITY OF COMMERCE CITY, COLORADO, a municipal corporation, (hereinafter "CITY") and ADAMS/WELD COUNTIES SCHOOL DISTRICT 27J (hereinafter "DISTRICT").

I. INTENT

This Memorandum is intended to apply to those facilities lying within the shared boundaries of the City of Commerce City and School District 27J.

II. PURPOSE

The purpose of the Memorandum is to make better use of public school and City recreation facilities through joint cooperation between the CITY and DISTRICT.

III. TERM

This Memorandum shall be effective from the date of execution to December 31, 2011, subject to annual reviews and the right of termination as set forth herein.

IV. OBLIGATIONS

- A. The District will provide school facilities for public programs sponsored by the City. The City will make facilities available to the District for educational opportunities.
- B. Both parties will make available all necessary equipment, as specified in this Memorandum, for use by the other party for the operation of sponsored programs.

V. PRINCIPLES AND GOALS OF COOPERATION

- 1. The parties agree that their performance under this Agreement will be guided by the following goals and principles:
 - A. To find new ways of working together, which may include information sharing, joint planning, sharing special expertise, and other forms of intergovernmental collaboration, that will expand the parties' individual abilities to serve their constituents.
 - B. To share their resources in a manner that will enhance their capabilities without compromising their fundamental and statutory responsibilities.

- C. To keep the parties' cooperative relationships as simple, direct, and flexible as possible.
 - D. To define the parties' mutual obligations and responsibilities clearly and adequately so as to minimize confusion and misunderstandings.
 - E. To communicate regularly at different levels and strive to resolve differences swiftly and amicably.
 - F. To commit to use intergovernmental collaboration to better serve the public and to minimize costs for the ultimate benefit of the community.
 - G. To encourage shared use, cooperative scheduling, and consistency in application for use of the parties' facilities.
 - H. To identify and modify any policies, ordinances, resolutions, or regulations of the City or the District that is in conflict with the philosophy expressed in this Agreement.
2. This Memorandum Agreement shall apply to all sports, athletic, and recreational facilities, classrooms and parks owned and operated by either party.

VI. SCHEDULING USE OF FACILITIES

- A. Each party shall be permitted priority use of its own facilities, as follows:
 - 1. **City Priority** is given to official City functions, including classes, leagues, events, open recreation uses and meetings of boards, commissions and city departments.
 - 2. **School District Priority** is given to official School District or Board of Education functions, including meetings of administrative groups, PTA/PTO's, TEA, and other District groups, athletic events, leagues, tournaments, athletic and academic practices, other District-sponsored activities, and events related to instructional programs.
- B. To the extent a facility is not being used for a party's priority use, the other party will be given secondary priority scheduling and will be permitted to reserve the facility consistent with the facility calendar.
- C. Requests by one party for scheduling the other party's facilities are to be done on the facility owner's forms and pursuant to use scheduling procedures approved by each entity. The Building Usage Coordinator for the requested facility, or a designee will approve requests for use of a School District facility. The Building Usage Coordinator or a designee will approve requests for use of a City facility.
- D. Requests for routine and advance use needs should be submitted no later than May 30 of each year for District facilities and September 30 for City facilities. Reservation confirmations

for sites are to be returned no later than July 31 for the succeeding school year's requests for District facilities and two months in advance of the event for City facilities. Facility use requests will be confirmed on a yearly basis where feasible and not less than quarterly for requests of recreational class/lesson activity areas.

E. When the scheduling parameters set forth in the previous paragraph cannot be met, request will be handled on an "as available" basis. When conflicts of use schedules are encountered, each party will try to make reasonable accommodations for the requested use by looking at other facilities or sites within their respective systems.

F. A copy of the facility owner's use permit will be issued to the individual(s) in charge of any events reserved and approved by either entity. The permit will serve as the means of identification that the facility use was properly approved by City or School District officials and that the individual(s) named as the user(s) is/are present and in charge of the event.

G. Fees and charges for reservation of a party's facility by the other party are to be waived whenever possible unless prohibited by an ordinance of the City or a policy of the School District. A custodian must be on site during usage. Overtime or extended-hour costs incurred by a party that are related to the setup, cleanup, or security associated with the use of a facility by the other party, will be billed at the facility owner's existing rates.

VII. SUPERVISION OF USER PROGRAMS

A. For ease of understanding, the party using the facilities of the other party shall be designated hereinafter as the "User" and the party whose facilities are being used by the other party shall be designated hereinafter as the "Owner".

B. Qualified leaders, teachers, supervisors, coaches, or instructors capable of enforcing applicable rules and possessing the skills necessary to facilitate whatever programs the User seeks to conduct, with due regard for safety and health, shall be provided by User for all programs. The nature and extent of supervision to be provided shall be set forth in the Contract for Building Usage.

VIII. MAINTENANCE AND OPERATIONS

A. The Owner shall be responsible for routine maintenance and operating costs of its facilities to insure their safe and useful condition during regular operating hours. The Owner shall be responsible for the costs of utilities and maintenance and such other additional costs as specifically provided in the Use Agreement.

B. If the User observes any safety hazard(s) at the Owner's facility, it shall notify the Owner immediately and follow up with notification in writing. The User shall not use the facility until the hazard is corrected.

C. All incidental supplies required by the User shall be provided and paid for by the Owner, unless otherwise agreed in writing. If the Owner requests the User to provide other than incidental supplies or equipment, such items and the method of payment shall be specified in the Contract for Building Usage.

D. Subject to paragraph G, each party shall be responsible for payment of the costs of repairing any damage to its own facilities.

E. In the event damage beyond normal wear and tear is caused to a party's facility while the other party is using the facility, and the damage is proximately caused by the actions of any agent or the employee of the using party, or by any participant in a function or activity sponsored by the using party, the using party shall be responsible for the prompt and proper repair of the damage and for the costs of the repair, to the extent insurance proceeds are inadequate to cover the incurred expenses.

F. Normal maintenance, including, but not limited to, cutting grass and watering, will be the responsibility of the Owner. Preparation of fields for games, including dragging of the infield, chalking lines, pitcher's mount preparation, etc., shall be the responsibility of the party using the fields.

G. Site managers, principals, and grounds maintenance crews will work cooperatively in determining areas of responsibility and mutually agreeable standards of care and maintenance for any shared facilities and grounds. The same "level of maintenance" standards are encouraged at such facilities.

IX. ADMINISTRATION OF MEMORANDUM

A. Each party shall designate a representative or representatives who shall be jointly responsible for developing procedures to be utilized in implementing this Memorandum, processing Use Memorandums for City and District facilities, and providing other administrative services as necessary. Any disputes arising under this Memorandum which cannot be resolved by the above-mentioned representative(s) shall be referred to the School District Superintendent and the City Parks and Recreation Director, or designee, for joint resolution.

B. This Memorandum and the joint use of facilities provided for herein shall be reviewed on an annual basis to insure the education and recreation needs of the community are addressed.

X. BUILDING ALTERATIONS AND ADDITIONS

Upon written approval of the governing bodies of the City and District, or their designees, User may add to or alter buildings or other structures of the Owner when such alterations or additions are performed in conjunction with the use of the Owner's facilities. All costs of such additions and alterations shall be paid by the User unless otherwise agreed to in writing. The Owner shall have the right to establish standards for the design and construction of any such additions or alterations and such standards for the design and construction of any such additions or alterations shall be met by the User. Any Memorandum pertaining to alterations and

additions shall be in writing and shall specify the ownership status of such additions and alterations upon completion. Where no such ownership status is specified, such alterations and additions will become the property of the Owner, recognizing that the use and benefit received by the User shall be deemed adequate consideration.

XI. PURCHASE AND INSTALLATION OF EQUIPMENT AND IMPROVEMENTS

Upon written approval of the governing bodies of the City and District, or their designees, the User may purchase and install equipment in conjunction with its use of the Owner's facilities. All costs of such purchase and installation shall be borne by the User unless otherwise agreed in writing. The Owner shall have the right to set standards for location, design safety and other aspects of such purchase and installation, and such standards shall be adhered to by the User. Any Memorandum for purchase or installation of equipment shall be in writing and shall specify the ownership status of such property subsequent to its installation. Wherein a Memorandum for purchase or installation does not specify such ownership status, the User shall be deemed to have retained ownership and shall have the right to remove the equipment upon termination of this Memorandum, but shall be liable for any damage caused to the Owner's property caused by such removal.

XII. CONTROL OF FACILITIES USE

The Owner shall be responsible for determining use policies for its own facilities. The Owner shall be responsible for the provision of written copies of relevant use policies to the User. When violations of use policies are committed, the Owner shall immediately notify the User in writing. Failure to abide by existing policies may result in loss of use of the facility to the user.

XIII. CONDITION OF PREMISES AT THE END OF THE USE PERIOD

At the completion of the use period, the User shall return the facilities to the Owner in the same condition as when the period began, allowing for reasonable wear. The Owner shall immediately notify the User in writing if any damages occur. The User shall be responsible for any damages in excess of reasonable wear.

XIV. OWNERSHIP AND TITLE

Ownership and title to the facilities presently owned by each party shall not be affected by the provisions of this Memorandum.

XV. NEW FACILITY DEVELOPMENT

When the construction of new schools, parks, playgrounds, swimming pools, sports facilities or other facilities which lend themselves to joint development is contemplated by either party, the parties agree to consult with each other regarding the possibility of joint undertaking as

permitted by law. Nothing in this Memorandum shall be construed as creating an obligation on the part of either party to actually participate in a joint undertaking.

XVI. NON-DISCRIMINATION

Neither party shall discriminate against any employee, client or any other individual in any way involved with either party or its client because of age, race, creed, color, religion, sex, handicap or national origin, in the course of carrying out its rights and obligations pursuant to this Memorandum. Both parties shall comply with the provisions of Executive Order 75-5, which is incorporated into this Memorandum by reference, as if set forth in full herein.

XVII. TERMINATION

Either party may, at any time and without cause, terminate this Memorandum by providing to the other party 30 days written notice of intent to terminate. In the event of such termination, User shall pay for services rendered prior to the date of termination, and for costs for damages to facilities, if any, together with other obligations as set forth in this Memorandum. Furthermore, notwithstanding termination, the parties agree to honor all grant obligations associated with this Memorandum.

XVIII. NON-ASSIGNMENT

Neither party shall, at any time, assign this Memorandum without the prior written consent of the other party.

XIX. INSURANCE

Each party shall exchange evidence of its comprehensive liability insurance coverage with combined single limit coverage in the amount of one million dollars (\$1,000,000) for bodily injury and property damage or one million dollars (\$1,000,000) for bodily injury and one million dollars (\$1,000,000) for property damage. Coverage must be provided under such policy(ies) for premises/operations, independent contractors, products/completed operations and contractual liability. The City and the District are to be named as an additional insured for all operations performed within the scope of the contract of this Memorandum during the operation and use period. All certificates of insurance must provide for guaranteed thirty-day notice to the other party of cancellation, non-renewal or material change.

XX. INDEMNIFICATION

Each party shall indemnify, defend, and hold harmless the other party, its officers, departments, employees, and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature arising out of this Memorandum which are attributed to any act or omission of the other party, its agents, employees, or anyone acting under its direction, control, or on its behalf in connection with or incident to this Memorandum.

XXI. WRITTEN MODIFICATIONS

This Memorandum shall not be modified, amended, altered, or extended except through a written amendment signed by the parties.

XXII. COMPLIANCE WITH LAWS

Each party shall comply with all federal, state, and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Memorandum. The laws and regulations of the State of Colorado shall govern the rights of the parties, the performance of this Memorandum and any dispute thereunder. Any action relating to this Memorandum and any dispute thereunder shall be brought in a Colorado Court and the prevailing party in said dispute shall be entitled to recover its reasonable attorney fees, costs and expert witness fees. If any provision of this Memorandum is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law. Any changes in the governing laws, rules and regulations during the term of this Memorandum shall apply but do not require an amendment.

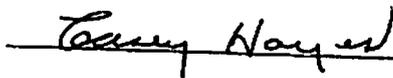
XXIII. AMERICANS WITH DISABILITIES ACT

Each party shall comply with all applicable provisions of the Americans With Disabilities Act (Public Law 101-336, 42 USC 12101-12213) and all applicable Federal Regulations under the Act including 28 CFR parts 35 and 36.

IN WITNESS HEREOF, the parties hereto have caused this Memorandum to be executed as of the date first appearing.

CITY OF COMMERCE CITY

ADAMS/WELD COUNTIES SCHOOL DISTRICT 27J



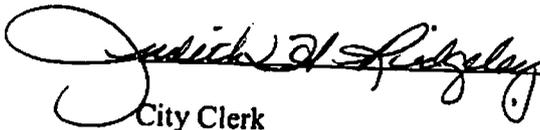
Mayor

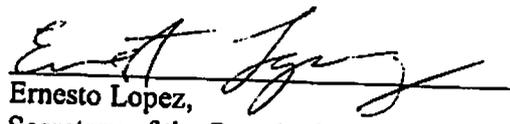


Laurie Maier,
President of the Board of Education

ATTEST:

ATTEST:


City Clerk


Ernesto Lopez,
Secretary of the Board of Education

APPROVED AS TO FORM AND CONTENT:

Christopher E. Gdowski

City Attorney

Christopher E. Gdowski
SEMPLE, MILLER & MOONEY, P.C.
Attorney for Brighton School District 27J