

THIS COMMUNITY BENEFIT AGREEMENT [hereinafter "Agreement"], made and entered into this 24th day of September 2018, by and between **THE CITY OF ASHEVILLE**, [hereinafter called "City"] and the **ASHEVILLE CITY BOARD OF EDUCATION**, the legal and administrative entity for Asheville City Schools [hereinafter called "ACS"], both of the State of North Carolina.

WITNESSETH

WHEREAS, the City and ACS are mutually interested in an adequate program of community recreation under the auspices of the City Parks and Recreation Department [hereinafter "Department"];

WHEREAS, the City and ACS are authorized to enter into Interlocal Agreements with each other, and to do all things necessary or convenient to aid and cooperate in the cultivation of citizenship by providing for adequate programs of community recreation; and

WHEREAS, in the interest of providing the best services with the least possible expenditure of public funds, full cooperation between the City and ACS is necessary.

NOW THEREFORE, in consideration of these premises, the City and ACS do now agree, pursuant to N. C. Gen. Stat. § 160A-461, et. seq., to enter into the Agreement based on the following terms and conditions:

1. Purpose:

- (a) Subject to the requirements and scheduling stated herein and subject to pre-existing contracts and memorandum of understandings with other third-parties, ACS shall make available to the City for community recreation activities all of its School areas and facilities located in its Schools situated in areas of Asheville served by the Department with all use of facilities fees waived.
- (b) Subject to the requirements and scheduling stated herein and subject to pre-existing contracts and memorandums of understanding with other third-parties, the City will make

available to ACS for school events, activities and/or programs City recreation facilities which are suitable for such events, activities and/or programs with all use of facilities fees waived.

2. Scheduling:

- (a) It is recognized that ACS' facilities are intended primarily for school purposes and for the benefit of children of school age. It is therefore agreed that, in planning programs and scheduling activities at ACS' facilities, the recreational needs and opportunities of such children will be well considered, and the program and property adequately protected.
- (b) It is hereby agreed that the Community Programming staff for the City will recommend the areas and facilities requested by the City, and that the Principal for the School or the designee shall approve or disapprove these recommendations. The Community Programming staff for the City shall work-out in a schedule of dates at least (8) eight weeks in advance for the use of School facilities by the City and will arrange that schedule so as to avoid conflicts between School and recreation use; that in the scheduling of said School facilities, School events and programs shall have first priority and recreation programs will have second priority and other events by other groups or agencies shall have third priority.
- (c) The School Principal or designee shall select the facilities requested by ACS, and those selections are subject to the approval of City Community Programming staff. The School Principal for the School or designee will work-out a schedule of dates at least (8) eight weeks in advance for the use of the City's facilities and that schedule will be arranged so as to avoid conflicts between recreation and School use; that in the scheduling of said facilities, recreation department activities shall have first priority and School events and programs will have second priority and other events by other groups or agencies shall have third priority.
- (d) It is further agreed for planning purpose each organization will submit a request for use of the facilities at least (8) eight weeks prior to date of requested use. If a facility request is less

than the required (8) eight weeks, the request must be made by the Assistant Superintendent or the Department Director.

- (e) It is hereby agreed if a request is denied by staff of either agency, the Assistant Superintendent and Department Director will be notified within two (2) business days of the denial.
- (f) It is hereby agreed that City Community Programming staff will meet at least annually with the Principal at each School to discuss possible joint programming opportunities that would address the following: 1) Achievement Gap; 2) Student Wellness; 3) Current Community issues/challenges; and 4) Evaluation of the facility uses agreement.

3. Personnel:

- (a) The City, through the Department, agrees to provide adequate personnel to supervise the recreation activities which take place after School hours and during holiday and vacation periods at the selected School facilities. The City further agrees to pay the wages, at the applicable rate for time used, of the supervisor and/or custodian designated or agreed upon by the Principal of the School when applicable.
- (b) It is understood and agreed that the personnel employed by the Department shall be under the supervision of the Department. The School Principals shall be consulted in the planning and administering of a recreation program to be conducted by the Department at that Principal's School. The Department remains solely responsible for the programs conducted under their auspices.
- (c) No joint agency or joint venture is established by this Agreement and ACS and the City remain solely responsible for their respective programs under this Agreement.

4. Financing:

- (a) It is further agreed that the Department will furnish and supply expendable materials necessary for carrying on a Community Recreation Program for all ages, in or on the facilities under its supervision.

5. Improvements and Maintenance:

- (a) It is further agreed that the City may install sprinkler systems, turfing, lighting, play equipment, fencing and additional equipment for recreation, not in conflict with School use, on areas selected by the Department Director, subject to the prior written approval by the Superintendent. Any installations of equipment or construction on the premises belonging to ACS, for community recreation purposes, shall then be at the City's cost or proportionally shared by the City and ACS, as the respective annual budget appropriations of City and ACS permit.
- (b) It is further agreed that plans and specifications for the placement of all equipment and permanent improvements upon the premises belonging to ACS and the type, design and construction of such improvements shall be approved by the Superintendent or designee prior to any installation thereof.
- (c) It is further agreed that the cost of maintaining these improved areas shall be borne proportionately by the City and ACS as determined by the relative use of the areas, and further that the City and ACS agree to maintain such areas in good condition during the periods of their respective responsibility.

6. Ownership of Property:

- (a) It is further agreed that permanent improvement or equipment installed or erected on ACS property by the City shall remain the property of the City and may be removed if use of the area is terminated, provided such improvement can be removed without injury or damage to the property of ACS and, provided further, that in the event any or all of the property with

City's improvements belonging to ACS be required for exclusive use by the ACS, the City shall be reimbursed for actual cost of installation of any permanent improvements, less depreciation thereon to be agreed upon by the City and the ACS, where it will not be practical to remove such or where they must be removed for exclusive use by ACS, or must remain on the premises for use by ACS.

- (b) The real property of ACS and of the City utilized for the purpose of this Agreement shall be and remain the property of the respective owners during the term of this Agreement.

7. Maintenance:

- (a) The City assumes full responsibility for any and all damage, injury or breakage to any buildings, windows, fences, fields or other property owned by ACS and located on ACS' property as result of the City using said property and the City shall also be responsible for keeping said premises free and clear of trash or litter brought or left on premises by the players or spectators. The City shall be responsible for security guards during recreation activities, if needed, in connection with its use of the premises. The City shall be responsible for selecting sites appropriate for their recreational purposes and sites which are in satisfactory and safe condition for those purposes.
- (b) ACS assumes full responsibility for any and all damage, injury or breakage to any buildings, windows, fences, fields, or other property owned by the City and located on the City's property as a result of ACS using said buildings and land of the City and the ACS shall also be responsible for keeping said premises belonging to the City free and clear of trash or litter brought or left on premises by the players or spectators. ACS shall be responsible for security guards during recreational activities, if needed, in connection with its use of the premises. ACS shall be responsible for selecting sites appropriate for their recreational purposes and sites which are in satisfactory and safe condition for those purpose.

8. Indemnification:

(a) City assumes all risk of injury, loss, damage or death to any person or property arising out of or incurred in connection with its use of the premises belonging to ACS and hereby agrees, to the extent allowed by law and to the extent of applicable insurance coverage, to indemnify ACS absolutely and in full against any loss, claim, demand, liability, damage, judgment, or expense sustained by ACS as a result thereof; and in this connection, City agrees, at its expense to:

1. maintain in full force during this Agreement, a policy or policies of comprehensive liability insurance written by one or more responsible insurance companies licensed to do business in this State, which insures City and ACS against liability for injuries to persons or property and death of any person occurring in or about the premises belonging to ACS, or
2. to maintain a program of self-insurance for public liability for injury or death in lieu of purchasing coverage which will be used to indemnify ACS.

(b) It is not the intent of either party by entering this Agreement to waive any immunity available either at common law or by statute, nor is this Agreement intended by either party to be an insurance contract.

9. Duration:

The Agreement shall begin at 12:01 am on the 1st day of Nov. 2018, and shall end on June 30, 2019, but shall renew automatically on an annual basis unless either party provides to the other party a three (3) month written notice that it desires to terminate this Agreement or portions of this Agreement.

10. Amendment:

This Agreement may be amended at any time by the written consent of both parties.

11. Termination:

It is further understood and agreed that either party to this Agreement may at any time terminate this Agreement upon giving in writing, to the other party, three (3) month written notice of its intention to terminate same.

12. Miscellaneous:

It is further agreed that this Agreement nullifies and voids any previous agreements between ACS and City for use of facilities.

13. Notification:

If either party in this Agreement needs or desires to provide any notice to the other, they shall provide the notice to the contact listed here:

City contact:

Roderick Simmons
Director
PO Box 7148, Asheville, NC 28802
828-259-5800
rsimmons@ashevillenc.gov

Asheville City
Schools contact:


Dr. Terrence McAllister
Assistant Superintendent
85 Mountain St., Asheville, NC 28801
828-350-7000
terrence.mcallister@ashevilleschools.net

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf.

CITY OF ASHEVILLE

ASHEVILLE CITY BOARD OF EDUCATION


Roderick Simmons
Director, Asheville Parks and Recreation


Denise Patterson, Ed.D.
Superintendent

24 2 9/24/2018
Date

9/24/2018
Date