



School District 271

DISTRICT ADMINISTRATIVE CENTER
311 North 10th Street, Coeur d'Alene, ID 83814

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August 2, 2012

Ms. Sandi Bloem, Mayor
Ms Wendy Gabriel, City Administrator
Mr. Mike Gridley, City Attorney
Mr. Troy Tymesen, Finance Director/Business Manager

Good Afternoon:

Accompanying this letter is the Joint Powers Agreement (JPA) discussed at a recent meeting in the law offices of Ramsden & Lyons. At that meeting, we proposed making changes to the document and inquired if the City was amenable to renegotiation of parts. We appreciate Mr. Tymesen's response which indicated that the City would be willing to consider proposed changes. District submits proposed changes below for the City's consideration:

1. The School District proposes removing all of ii & iii under 1. A – **Duties of the District** as shown:

As to ii – The District believes the length of the agreement should be two (2) years as the District's similar agreement with the City of Hayden is timed. By having shorter agreement time-periods, the agreement can be more responsive to changed circumstances of either party and/or their governing Board or Council, as the case may be. In the current difficult financial environment, the District is not prepared to commit to build a new gymnasium or rebuild an existing gymnasium. The District currently does not have available funds to do that.

As to iii – It does not make good sense, nor is it good business practice for the District to commit the Ramsey Elementary School gymnasium to a single entity for a forty (40) year use-period. In this proposed version, the District continues to acknowledge the initial 30-year use periods committed by the District to the City on Fernan, Woodland, Skyway & Project CDA gymnasiums and the City's dollar commitment in the construction of the involved gymnasiums.

2. The School District proposes removing and replacing language under 1. B – **Duties of the City** as shown:

As to ii – Remove “Pay the District Thirty Thousand Dollars and no/100 (\$30,000.00)” and substitute “Pay the DISTRICT all Documented Maintenance Costs of Facilities annually for the two (2) years of this Agreement, not to exceed \$75,000, per year. District will invoice City by May 1, and City will remit payment within thirty (30) days.” The District's Maintenance Director calculated the District's current costs for the just-ended fiscal year on the total of eleven (11) facilities used by City at over \$65,000. Documentation can be provided to demonstrate the District's costs.

As to iii – The District proposes changing the percentage of gross earnings from 5% to 6%, payable monthly and applicable to City’s direct use or from City use through sublet to third parties. All payments must be accompanied by a spreadsheet document identifying the revenue source, amount and time. The District further proposes ANY third-party subleases shall be pre-approved by District prior to City’s commitment. The District also proposes the City pay Two Thousand and 00/100Dollars (\$2,000.00) annually toward the total District annual licensing costs of \$6,000 for the scheduling software known as ‘School Dude,’ which will replace currently used and unsatisfactory SDR software.

For your information, the District tracked all revenue receipts, including City’s payments under the current JPA during the period 7/1/10 through 6/30/12. City’s payments of \$30,000 received on 3/15/11 & \$30,098 on 2/10/12 were identified. The second payment referenced “Gym Rental % from Skyhawks.” Nowhere else in our Building Use revenue account was there any reference to Skyhawks or any other known City-sponsored program. The District has requested an explanation of and accounting for these percentage payments, as well as documentation by check copies or some similar fashion. The information to date suggested that the City accounted for revenue in the amount of \$1,961, an amount that seems far too low given the 2-year period. The District is awaiting documentation by City regarding this revenue. It does seem unlikely to District that the total gross revenue City received under this clause over a 2-year period was \$1,961.

3. The District proposes replacing language in 9.A. *Duration* as follows: TEN shall read TWO and (10) shall read (2) in both locations.
4. The District proposes adding language under 9.F. *Creation of Joint Board* as follows: after ‘thereto’, “The Representatives shall meet quarterly to address routine governance issues.”

District assures City it wishes to continue an even-handed balanced partnership with City and believes these changes can contribute to that finely-tuned relationship.

Thanks for your time reviewing the district’s proposals.

Sincerely,



Hazel Bauman
Superintendent
Coeur d’Alene School District 271



Wendell Wardell
Chief Operating Officer
Coeur d’Alene School District 271

enclosure

JOINT POWERS AGREEMENT
SHARED USE OF RECREATIONAL FACILITIES

THIS AGREEMENT, entered into this ____ day of _____, 2012, by and between the **CITY OF COEUR D'ALENE**, a municipal corporation of the State of Idaho, organized and existing under the Constitution and the laws of the State of Idaho, hereinafter referred to as the "CITY" show address is City Hall, 710 E. Mullan, P.O. Box 489, Coeur d'Alene, ID, 83816-0489, and **SCHOOL DISTRICT #271 OF KOOTENAI COUNTY**, commonly referred to as **COEUR D'ALENE SCHOOL DISTRICT NO. 271**, hereinafter referred to as the "DISTRICT," whose address is 311 North 10th Street, Coeur d'Alene, Idaho, 83814, to provide for the shared use of recreational facilities which are owned by each of the parties within the Coeur d'Alene, Idaho area.

WITNESSETH:

WHEREAS, the DISTRICT is a school district created and operating pursuant to authority granted in Title 33, Idaho Code, operating principally, but not exclusively, in the City of Coeur d'Alene, Kootenai County, Idaho; and

WHEREAS, the DISTRICT is empowered by the statutes of the State of Idaho, with particular reference to Idaho Code §33-601 and its appropriate subparts, the Idaho Code §67-2326, et seq., to enter into agreements with other state entities for the purposes of sharing facilities and promulgating the statutory mandates of providing public education; and

WHEREAS, the CITY is vested with certain authority as set forth in Idaho Code Title 50 and Idaho Code §67-2326 and 67-2327, and under said authority has the power to enter into this Agreement as herein set forth; and,

WHEREAS, each party desires to enter into this Agreement for the purposes of defining the rights, duties, and responsibilities of each party related to the shared use of recreational facilities owned individually by the parties.

NOW, THEREFORE, the parties agree as follows:

1. Duties of the Parties:

In conjunction with the foregoing recitals and statements, the duties of the parties are as follows:

A. Duties of the DISTRICT. The DISTRICT shall:

- i. Allow the CITY to use recreational facilities owned by the DISTRICT provided such use is consistent with the provisions of this Agreement and any other agreement between the parties relating to the shared use of recreational facilities.
- ~~ii. Construct or remodel ONE (1) gymnasiums built to the CITY's specifications during the ten (10) years of this Agreement when the next elementary or middle school is built or remodeled by the DISTRICT within the city limits. The gymnasiums are to be built without additional cost to the CITY. The DISTRICT further agrees to amend this Agreement to allow for shared use of the new or remodeled gymnasium facilities under the terms of this Agreement without additional cost to the CITY. A description of the CITY's specifications for gymnasiums is attached hereto as Exhibit "A," which by this reference is incorporated herein.~~
- ~~iii. If after the first six (6) years of this Agreement, the DISTRICT has not constructed or remodeled one (1) gymnasium to the CITY's specifications, the DISTRICT will execute a thirty (30) year agreement with the CITY to allow the~~

~~CITY to jointly use the Ramsey Elementary School gymnasium and associated facilities. The agreement must be substantially similar to the other joint use agreements between the parties and ensure that the CITY's use of Ramsey Elementary School gymnasium and associated facilities is secondary to only the DISTRICT's use of the facilities.~~

~~iv.ii.~~ The existing joint use agreements with the CITY cover the following facilities:

- a. Fernan Elementary Gymnasium
- b. Woodland Middle School Gymnasium
- c. Skyway Elementary Gymnasium
- d. Project CDA Gymnasium

B. Duties of the CITY. The CITY shall:

- i. Allow the DISTRICT to use designated recreational facilities owned by the CITY provided such use is consistent with the provisions of this Agreement and any other agreement between the parties relating to the shared use of recreational facilities.
- ii. Pay the DISTRICT ~~THIRTY THOUSAND DOLLARS and no/100 (\$30,000.00)~~ all Documented Maintenance Costs of Facilities annually for the ten (10) two (2) years of this Agreement, not to exceed \$75,000, per year. District will invoice City by May 1, and City will remit payment within thirty (30) days. All payments from the CITY required by this Agreement are subject to an annual appropriation for the payment by the City Council.
- iii. Provide to the DISTRICT, ~~FIVE-SIX PERCENT (56%)~~ of any gross revenues generated by the CITY's direct use of DISTRICT facilities from money making

endeavors or CITY's use through sublet to third parties (i.e. Sky Hawk's Camp).
All payments are to be accompanied by a spreadsheet document identifying the revenue source, amount and time. Any third party subleases shall be pre-approved by DISTRICT.

iii.iv. CITY shall provide \$2,000 toward the total cost of the \$6,000.00 annual license fee for scheduling software for DISTRICT.

2. Facilities Subject to this Agreement:

A. DISTRICT Facilities:

The recreational facilities owned by the DISTRICT that are subject to this agreement are listed on Exhibit "B," attached hereto and by this reference incorporated herein.

B. CITY Facilities:

The recreational facilities owned by the City that are subject to this agreement are listed on Exhibit "B," attached hereto and by this reference incorporated herein.

3. Use:

A. DISTRICT Facilities:

The use of the DISTRICT facilities shall be set forth on Exhibit "C" attached hereto and by this reference incorporated herein, subject to the annual review of the actual use by the parties and such modifications as may be mutually agreed and reduced to writing and attached hereto. CITY use of DISTRICT facilities will be after normal School hours.

B. CITY Facilities:

The use of the CITY facilities shall be as set forth on Exhibit "B" attached hereto and by this reference incorporated herein, subject to annual review of the actual use by the parties and such modifications as may be mutually agreed and reduced to writing and attached hereto.

The CITY shall prepare the fields for the DISTRICT softball and baseball games at no cost to the DISTRICT.

4. Priority of Use:

A party's use of the other party's premises shall be subordinate to the owner's priority right of use of their own premises. The parties shall cooperate, one with the other, in giving reasonable notice of request for use of the other party's property/premises. It is understood between the parties when uses are scheduled for the use of one party's facilities by the other party, such uses shall remain undisturbed except for such emergencies as may arise from time to time. In the event there is a request by one party to the other party for the use of the other party's facilities that is not otherwise scheduled, the owning party shall not be required to provide use of the premises to the requesting party if the owning party has designated a proposed use on the same date or at the same time.

5. Provision of Janitorial and Other Services/Damage to a Facility/Supervision:

A. Janitorial and Other Services:

Each party, when using the facilities/premises available from the other party shall be responsible for the provision of maintenance and other like services as may be agreed upon from time to time, at the expense of the using party. The parties will create appropriate memorandum for each facility indicating the responsibilities of each party for maintenance, janitorial services and like services.

B. Damage to Facility:

Any damage to a facility or other property of the hosting party beyond normal wear and tear shall be the responsibility of the non-hosting party.

C. Supervision:

When either party is using the property of the other, the party using the property shall provide, at its own expense, sufficient supervision to prevent careless or malicious destruction of property.

6. Liability:

A. DISTRICT Liability:

The DISTRICT shall indemnify, defend, and hold the CITY harmless from and against any and all claims, losses, damages, injuries, liabilities, and costs, including attorneys' fees, court costs, and expenses and liabilities incurred in or from any such claim, arising from any breach or default in the performance of any obligation to be performed under the terms of this Agreement by the DISTRICT, or arising from any act, negligence, or omission by the DISTRICT or any of its agents, employees, and volunteers. The DISTRICT's liability under this paragraph shall be limited by the terms of the Idaho Tort Claims Act and the limits of any insurance provided under the Act and Idaho Code §67-5776.

7. Insurance:

A. DISTRICT:

The DISTRICT shall maintain comprehensive public liability and property damage insurance with limits reasonably satisfactory to the CITY as will protect it from claims for damages because of bodily injury, including death, or damages because of injuries or destruction or loss of use of property, which may arise from its operations under this Agreement whether such operations be by it or its agents or anyone directly or indirectly employed by the DISTRICT. In addition, the DISTRICT is responsible for the following: (a) The DISTRICT shall notify the CITY in writing as soon as practicable after notice of an injury or a claim in

received; (b) The DISTRICT shall cooperate completely with the CITY and/or the CITY's insurers in the defense of such injury or claim; and the DISTRICT shall take no steps (such as admission of liability) which will prejudice the defense or otherwise prevent the CITY from protecting the CITY's interests. All insurance required under this paragraph shall be maintained in full force and effect in a company or entity or companies or entities reasonably satisfactory to CITY and shall be maintained at the DISTRICT's expense until this Agreement terminates. Certificates of such insurance shall be provided to the CITY contemporaneously with the execution and delivery of this Agreement by the DISTRICT and at any other time upon reasonable notice by the CITY to the DISTRICT. Failure to maintain the insurance required by this Agreement shall be grounds for its immediate termination notwithstanding any other provisions governing termination of this Agreement.

B. CITY:

The CITY shall maintain comprehensive public liability and property damage insurance as will protect it from claims for damages because of bodily injury, including death or damages because of injuries or destruction or loss of use of property, which may arise from its operations under this Agreement whether such operations be by it or its agents or anyone directly or indirectly employed by the CITY. The CITY may purchase such policy, or may at its election be self-insured. The combined aggregate liability of the CITY and its employees for damages, costs, and attorney fees under state law, on account of bodily or personal injury, death, or property damage, or other loss as the result of any one occurrence or accident regardless of the number of persons injured or the number of claimants, shall be not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), unless the CITY has purchased applicable, valid, and collectible liability insurance coverage in excess of said

limit, in which event the controlling limit shall be the remaining available proceeds of such insurance. In addition, the CITY is responsible for the following: (a) The CITY shall notify the DISTRICT in writing as soon as practicable after notice of an injury or a claim is received; (b) The CITY shall cooperate completely with the DISTRICT and/or the DISTRICT's insurers in the defense of such injury or claim; and the CITY shall take no steps (such as admission of liability) which will prejudice the defense or otherwise prevent the DISTRICT from protecting the DISTRICT's interests. All insurance required under this paragraph shall be maintained in full force and effect in a company or entity or companies or entities reasonably satisfactorily to DISTRICT and shall be maintained at the CITY's expense until this Agreement terminates. Certificates of such insurance shall be provided to the DISTRICT contemporaneously with the execution and delivery of this Agreement by the CITY and at any other time upon reasonable notice by the DISTRICT to the CITY. Failure to maintain the insurance required by this Agreement shall be grounds for its immediate termination notwithstanding any other provisions governing termination of this Agreement.

8. Authority:

The parties hereto covenant and represent that the execution of this Agreement has been or shall be authorized by the governing Board of the respective party, and the individual signatures set forth herein are authorized by the governing Board of the respective party, and the individual signatures set forth herein are authorized and binding upon the respective party.

9. Compliance with Joint Exercise of Power Act (Idaho Code §67-2328):

In compliance with the Joint Exercise of Power Act as adopted by the State of Idaho, referenced in Idaho Code §67-2328, the parties covenant and agree as follows:

A. Duration:

This Agreement shall be effect for ~~TEN TWO (10)~~ (2) years from the date of its final execution and shall terminate upon the expiration of this term unless it is continued by written agreement of the parties, in which case said continuation may be for any term up to and including ~~TEN TWO (10)~~ (2) years. Either party may terminate this Agreement by giving the other party written notice ONE (1) year in advance of the desired termination date.

B. Administrative Entity:

The parties have agreed that no separate legal or administrative entity is created by this Agreement.

C. Purpose:

The purpose, as referenced in the recitals of this Agreement, is to provide for shared use of recreational facilities.

D. Manner of Financing and Maintaining Budget:

There shall be no separate financing or budgetary consideration by either of the parties, each party to maintain its own premises and costs of operation of such premises.

E. Termination and Disposal of Property:

In the event this Agreement is terminated, each party shall remain in possession of their particular premises affected hereby. No additional property jointly owned shall be created by this Agreement.

F. Creation of Joint Board:

Each party shall nominate one (1) or more individuals, which individuals shall constitute a joint board responsible for administering this undertaking. Each public agency shall be represented by their choice of representatives, each agency to have one (1) vote total. The

representatives shall meet at least annually for the purposes of reviewing this Agreement and providing any modifications or changes thereto. The representatives shall meet quarterly to address routine governance issues.

G. No Property Jointly Held.

No real or personal property shall be jointly held pursuant to this Agreement, each party to maintain the ownership and possession of their own property used, whether real or personal.

10. Venue:

In the event any legal proceeding shall be instituted between the parties, such legal proceeding shall be instituted in the First Judicial District of the State of Idaho.

11. Notice:

Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may, from time to time, direct in writing:

The **DISTRICT:** Coeur d'Alene School District #271
Chief Operating Officer
311 North 10th Street
Coeur d'Alene, ID 83814
Facsimile: (208) 664-1748

The **CITY:** Coeur d'Alene City Clerk
710 East Mullan
Coeur d'Alene, ID 83814
Facsimile: (208) 759-2284

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, (c) the day facsimile delivery is verified. Actual notice, however, and from whomever received, shall always be effective.

12. Severability:

If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law. It is the intention of the parties that if any provision of this Agreement is capable two constructions, one of which would render the provision void and the other of which would render the provision valid, the provision shall have the meaning which renders it valid.

13. Entire Agreement:

This Agreement embodies the entire agreement of the parties, and there are no oral agreements existing relative to the subject matter hereof which are not expressly set forth herein. The Agreement may be modified only in writing signed by both parties.

14. Waiver:

No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any other covenant, term or condition herein.

15. Force Majeure:

Any inability to perform this Agreement due to strikes, lockouts, labor disputes, acts of God, governmental restrictions, governmental regulations, governmental controls, enemy or

hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse performance by such party for a period equal to any such inability to perform.

16. Assignment of Agreement:

No assignment of this Agreement or of any right accruing under this Agreement shall be made, in part or in whole, by either party.

17. Binding effect:

This Agreement is for the benefit only of the parties hereto and shall inure to the benefit and be binding upon the parties and their respective heirs, legal representatives, successors, and assigns.

18. Duplicate Originals:

This Agreement shall be executed in duplicate originals, each party to retain one of the duplicate originals in executed form.

19. Promise of Cooperation:

Should circumstances change, operational difficulties arise or misunderstandings develop, the parties agree to meet and confer at the request of either party to discuss the issue and proposed solutions. Further, each party agrees not to bring a claim, initiate other legal action or suspend performance without meeting directly with the other party regarding the subject matter of the disagreement.

IN WITNESS WHEREOF, the authorized agent(s) of the Mayor and Clerk of the City of Coeur d'Alene and the appropriate agent/officer/trustee of Coeur d'Alene School District No. 271, together with the Clerk thereof, have affixed their official seal and signatures hereto the day and year first above written.

CITY OF COEUR D'ALENE

BY:

SANDI BLOEM, Mayor

ATTEST:

City Clerk

**SCHOOL DISTRICT NO. 271
OF KOOTENAI COUNTY, IDAHO**

BY:

AUTHORIZED AGENT/TRUSTEE

ATTEST:

Lynn M. Towne, Clerk of the Board