

RESOLUTION NO 2013 - 15



**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SUNNYSIDE, WASHINGTON, AUTHORIZING  
USE AGREEMENT BETWEEN THE CITY OF SUNNYSIDE  
AND THE SUNNYSIDE SCHOOL DISTRICT #201  
FOR THE PURPOSE OF RECREATION PROGRAMS**

**WHEREAS**, the Sunnyside School District, hereinafter referred to as “District” and the City of Sunnyside, hereinafter referred to as “City” acknowledge their responsibility to organize, promote and conduct programs for a leisure education and recreation pursuant to RCW 28A.14, et. seq., RCW 67.20, et. seq., and RCW 35A.35.010, and other pertinent statutes and rules; and

**WHEREAS**, the Sunnyside community has clearly indicated a desire for the implementation and development of new and expanded recreation program services for all members of the community; and

**WHEREAS**, it is also the desire of the District and the City to provide such programs and services in the most economic and efficient method during these times of limited resources and escalating costs; and

**WHEREAS**, in order to have sufficient locations to provide additional recreational programs for the purpose of practice, games, etc., the District and the City wish to enter into a Facilities Use Agreement, attached hereto as Exhibit “A” and incorporated herein by this reference; and

**WHEREAS**, Resolution 2012-83 and Agreement A-2012-76 which were approved by City Council on December 10, 2012 are hereby rescinded and replaced with this resolution and agreement presented to City Council on February 25, 2013; and

**WHEREAS**, the City Council finds and determines that entering into such agreement is in the best interests of the residents of the City of Sunnyside and will promote the general health, safety and welfare.

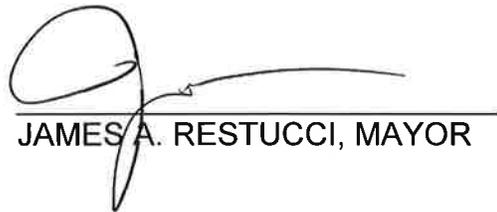
**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON** as follows:

**SECTION 1.** That Resolution 2012-83 and Agreement A-2012-76 are hereby rescinded and replaced with this resolution and Agreement approved February 25, 2013.

**SECTION 2.** That the City Council hereby authorizes a Use Agreement with the Sunnyside School District #201, as attached hereto as Exhibit "A" and incorporated herein by this reference, and the Interim City Manager is hereby authorized to enter into said agreement for and on behalf of the City of Sunnyside, and to prepare, execute and administer all documents and reports necessary or appropriate to accomplish the purposes of the agreement.

**SECTION 3.** This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

**PASSED** this 25<sup>th</sup> day of February, 2013.

  
\_\_\_\_\_  
JAMES A. RESTUCCI, MAYOR

**ATTEST:**

  
\_\_\_\_\_  
DELILAH SAENZ, GMC, CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
KERR LAW GROUP, LLP  
Attorneys for the City of Sunnyside

**USE AGREEMENT BY THE CITY OF SUNNYSIDE  
AND SUNNYSIDE SCHOOL DISTRICT #201  
FOR FACILITIES FOR A RECREATION PROGRAM**

**THIS AGREEMENT** is made and entered into by and between SUNNYSIDE SCHOOL DISTRICT #201, a Municipal Corporation, hereinafter referred to as the "District", and the CITY OF SUNNYSIDE, a Municipal Corporation, hereinafter referred to as the "City".

**WITNESSETH:**

**WHEREAS**, the District and the City acknowledge their responsibility to organize, promote and conduct programs for leisure education and recreation pursuant to RCW 28A.14, et. seq., RCW 67.20, et. seq., and RCW 35A.35.010, and other pertinent statutes and rules; and,

**WHEREAS**, the Sunnyside community has clearly indicated a desire for the implementation and development of new and expanded recreation program services for all members of the community; and,

**WHEREAS**, the District and the City are authorized pursuant to RCW 39.34 to conduct this cooperative undertaking; and,

**WHEREAS**, it is also the desire of the District and the City to provide such programs and services in the most economic and efficient method during these times of limited resources and escalating costs; and,

**WHEREAS**, it is the intent of this agreement to formulate a policy of use by the City of District facilities in the fulfillment of community recreation needs and the discharge of the District's obligation and responsibilities, pursuant to RCW 28A.14, et. seq., and to formulate a policy of use by the District of City facilities in fulfillment of such needs.

**NOW, THEREFORE**, in consideration of the mutual terms, covenants and conditions contained herein, the parties, acting through appropriate action of the respective governing and legislative bodies do hereby mutually agree as follows:

1. Use of District Facilities by City.

1.1 The facilities of the District will be made available for community youth recreation purposes sponsored or co-sponsored by the City on a first consideration basis, when such facilities are not being used by the District and after these facilities are determined to be available to the City. The District, however, retains exclusive and absolute priority for the use of its facilities for any school related or school

EXHIBIT "A"

sponsored activity or existing agreements with local youth organizations, formal or informal, during school hours or not, and whether or not school is in session.

1.2 The City will provide adequate and responsible supervision of City sponsored or co-sponsored activities. The minimum age for all supervisors will be eighteen (18) years of age.

1.3 The City will request issuance of appropriate keys to facilities used for scheduled activities and will be responsible for the openings of and securing facilities. The authorization to issue these keys will be made by the facilities director or designee.

1.4 Since the City will be performing supervisory responsibilities and providing recreation instructors, subject to the approval of the District administrative officer, and will be providing light custodial maintenance (pick up all garbage, sweep the floors and clean up any small messes) of all areas and facilities to be used by the City at a City sponsored or co-sponsored youth event, the City shall not be charged for the use of facilities for Recreational purposes, unless District staff labor is assigned under special circumstances and agreed upon by the City and District in advance.

1.5 The District's facilities that are used by the City will be left in their condition existing before said event, and the City shall be responsible for light custodial maintenance of all areas and facilities following a City sponsored or co-sponsored event. There will be a minimum charge of \$29/hour (2 hour minimum) for events taking place on Friday through Sunday for custodial services provided to include the opening and closing of the gym, and clean up after the event. Fee does not apply to events taking place Monday through Thursday.

1.6 The City will be responsible for the complete replacement or reimbursement of any equipment, property or facilities which are lost, stolen, or damaged due to negligence of the City's officers, agents, employees, supervisors or designees which occur during a City sponsored or co-sponsored recreational activity.

1.7 The City agrees to defend, indemnify and hold harmless the District, its officers, employees and directors from all claims, liabilities or suits, including attorney fees and costs, arising out of injuries or damages to person or property caused by negligent acts of the City, its employees, agents, or sub-lessees or sub-contractors while occupying the premises of the District. As a condition of this Agreement, the City shall obtain liability insurance in sufficient amounts to cover any loss or liability arising out of this Agreement. The minimum general liability coverage shall be \$1,000,000 per occurrence; and \$2,000,000 general aggregate. The District shall be listed as an additional insured on the policy and the City shall provide the District with a Certificate of Insurance within thirty (30) days of the date of this Agreement. In the event of any proposed or actual alteration or termination of insurance coverage, the City shall promptly notify the District of such changes.

EXHIBIT "A"

2. Use of City Facilities by District.

2.1 The Parks and Recreation facilities of the City, including the City pool and the Sunnyside Community Center will be made available for school or community recreation purposes sponsored or co-sponsored by the District on a first consideration basis, when such facilities are not being used by the City and after these facilities are determined to be available to the District. The City, however, retains exclusive and absolute priority for the use of its facilities for any City related or City sponsored activity, formal or informal.

2.2 The District will provide adequate and responsible supervision of District sponsored or co-sponsored activities. The minimum age for all supervisors will be eighteen (18) years of age.

2.3 The District will request issuance of appropriate keys to facilities used for scheduled activities and will be responsible for the openings of and securing of facilities. The authorization to issue these keys will be made by the City.

2.4 Since the District will be performing supervisory responsibilities and providing recreational instructors, subject to the approval of the City administrative officer, and will be providing light custodial maintenance of all areas and facilities to be used by the District at District sponsored or co-sponsored event, the District shall not be charged for the use of facilities for recreational purposes, nor for City pool admissions or normal lifeguard fees, unless City staff labor is assigned under special circumstances and agreed upon by the District and City in advance.

2.5 The City's facilities that are used by the District will be left in their condition existing before said event, and the District shall be responsible for light custodial maintenance of all areas and facilities following a District sponsored or co-sponsored event.

2.6 The District will be responsible for the complete replacement or reimbursement of any equipment, property, or facilities which are lost, stolen, or damaged due to negligence of the District's officers, agents, employees, supervisors or designees which occur during a District sponsored or co-sponsored recreational activity.

2.7 The District agrees to defend, indemnify and hold harmless the City, its officers, employees and directors from all claims, liabilities or suits, including attorney fees and costs, arising out of injuries or damages to person or property caused by negligent acts of the District, its employees, agents, or sub-lessees or sub-contractors while occupying the premises of the City. As a condition of this Agreement, the District shall obtain liability insurance in sufficient amounts to cover any loss or liability arising out of this Agreement. The minimum general liability coverage shall be \$1,000,000 per occurrence; and \$2,000,000 general aggregate. The City shall be listed as an additional insured on the policy and the District shall provide the City with a Certificate of Insurance within thirty (30) days of the date of this Agreement. In the

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event of any proposed or actual alteration or termination of insurance coverage, the District shall promptly notify the City of such change.

3. Term.

This Agreement shall commence upon the appropriate action of the governing bodies of the District and the City on the date of last required signature, and shall continue for a period of one (1) year from that date, provided that this Agreement shall automatically be renewed on a yearly basis thereafter, unless otherwise modified or terminated.

4. Amendments.

The Agreement may be amended at any time by the mutual consent of the parties expressed by the adoption of appropriate resolution by the legislative body of each party.

5. Termination.

This Agreement may be terminated by either party acting alone for any reason upon thirty (30) days written notice to the other party. This Agreement may be terminated at any date upon the mutual agreement of the parties.

6. Non-Discrimination.

In the use, scheduling, administration and operation of the facilities under this Agreement, the City and the District shall not discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental or physical handicap. The City will fully comply with all applicable federal, state and local laws, ordinances, executive orders and regulations, which prohibit such discrimination. Any violation of this provision shall be considered a violation of this Agreement and shall be grounds for cancellation, termination or suspension.

7. Interlocal Agreement Provision.

This Agreement is entered into pursuant to RCW 39.34 as an Interlocal Agreement between the parties. It is not intended that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquiring or holding or disposing of real property anticipated. The City's City Manager and the District's Superintendent are designated as Co-Administrators of this Agreement.

This Interlocal Agreement shall be filed with the Yakima County Auditor, or posted on the City and the District's website as provided by RCW 39.34.

EXHIBIT "A"

8. Waiver.

Waiver of any default in the performance of this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of this Agreement.

9. Dispute Resolution.

In the event of a dispute regarding the enforcement, interpretation or breach of this Agreement, the parties shall first meet in a good faith attempt to resolve such dispute. In the event they are unable to resolve such dispute, either individually or with the assistance of a mediator, the dispute shall be resolved by binding arbitration pursuant to RCW 7.04A; with venue being placed in Yakima County, Washington; with all parties waiving the right of a jury trial upon *de novo* appeal, if any; and the substantially prevailing party being awarded its attorney fees and costs as additional award and judgment against the other.

Dated this \_\_\_\_\_ day of February, 2013.

**CITY OF SUNNYSIDE**

**SUNNYSIDE SCHOOL DISTRICT #201**

By \_\_\_\_\_  
Aaron J. Markham  
Acting City Manager

By \_\_\_\_\_  
Board President

**ATTEST:**

By \_\_\_\_\_  
Member

\_\_\_\_\_  
Delilah Saenz, City Clerk

By \_\_\_\_\_  
Member

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Member

\_\_\_\_\_  
KERR LAW GROUP, LLP  
Attorneys for the City of Sunnyside

By \_\_\_\_\_  
Member

**ATTEST:**

\_\_\_\_\_  
Richard D. Cole, Superintendent  
Secretary of the Board